FINANCIAL CONDUCT AUTHORITY

Policy Statement

PS25/24

Ancillary Activities Test

December 2025

This relates to

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Chapter 1

Summary

1.1 The UK has some of the largest commodity derivatives markets in the world, serving many types of participants, including producers of commodities.

1.2 The Ancillary Activities Exemption (AAE) exempts commercial users or producers of commodities from the need to seek authorisation as an investment firm if they trade in commodity derivatives, emission allowances, or derivatives of emission allowances (referred to collectively as 'commodity derivatives') as an ancillary activity.

1.3 These firms are essential to the functioning and liquidity of UK commodity markets and rely on the AAE to access commodity derivatives markets to manage risk from their commercial activities. The AAE plays an important role in supporting economic activity by ensuring that producers, distributors and industrial consumers of commodities are not subject to disproportionate costs from authorisation.

1.4 To qualify for the AAE, a firm needs to perform the Ancillary Activities Test (AAT) to determine whether its activities are ancillary to its group's main business. The AAT, introduced under the European Union's (EU) second Markets in Financial Instruments Directive (MiFID II), is complex and requires annual market data to be sourced at a cost to perform the relevant calculations.

1.5 The Treasury has made legislative changes giving us power to set the rules defining the conditions under which firms can rely on the AAE. We set out our proposed rules in Consultation Paper (CP)25/19 Ancillary Activities Test.

1.6 Our proposals aimed to simplify how firms determine whether they can benefit from the AAE, and provide greater legal certainty. We proposed three separate and independent tests. A firm can use any of them to determine whether it can rely on the AAE by meeting the test conditions. Under our proposals, the AAT would comprise a new annual threshold test (commonly known as 'de minimis' test, which would exempt firms that undertake trading in commodity derivatives on a relatively small scale), along with modifications to two existing tests: the trading test and the capital employed test.

1.7 This policy statement (PS) summarises our original proposals, the feedback we received on them, and our response, including the final rules and guidance on changes to the AAT. There are further details in Chapter 3. Overall, respondents supported our approach to simplification, but raised significant concerns about the inclusion of on-venue trades in the annual threshold test.

Who this affects

1.8 Our rules will apply to non-financial firms that trade commodity derivatives seeking to rely on the AAE.

The wider context of this policy statement

Our consultation

1.9 The AAT is a complex framework that depends on annual market data. This makes it both costly and burdensome. In CP23/27, we consulted on guidance which aimed to clarify how firms should apply the AAT under a new legislative framework. Market participants, however, were concerned about the lack of legal certainty of an approach based only on FCA guidance.

1.10 To address this, the Treasury delayed the start of the new AAE framework until 1 January 2027, and in PS25/1 we confirmed that existing requirements would remain in place while considering a permanent solution. In July 2025, the Treasury proposed legislation enabling us to set rules defining the conditions under which firms can rely on the AAE. CP25/19 set out our proposed rules, and it is against this background – reflecting both the operation of the AAE and the feedback received from market participants – that we are now finalising the rules.

How it links to our objectives

Market integrity

1.11 Our final rules will give greater legal certainty to firms that rely on the AAE by outlining the test in rules rather than guidance. Relevant non-financial firms will be able to participate in UK commodity derivatives markets confident about their regulatory status. A clear and appropriately calibrated exemption will ensure that non-financial firms only need to incur the cost of authorisation, where it is proportionate to the nature and scale of their activity and its potential impact on market integrity.

1.12 Similarly, simplifying the test and changes that align with frameworks in other jurisdictions will help lighten the operational burden on relevant firms and may increase participation in UK commodity derivatives markets. This could lead to increased liquidity and better price formation, which help maintain orderly markets.

Secondary international competitiveness and growth objective (SICGO)

1.13 We consider that our final rules support SICGO by reducing the operational burden on firms associated with performing the current complex AAT. The new framework builds on existing tests and introduces the option for firms to undertake 1 of 3 quantitative tests, each with clear and proportionate thresholds. Together, these measures simplify the assessment process and provide a framework that is broadly consistent with the approaches adopted in other jurisdictions.

What we are changing

1.14 Under the current regime, firms must meet the conditions for both the market share test and the main business test to rely on the AAE. Under our final rules, we are introducing 3 separate and independent tests: a new annual threshold test, and modified versions of the trading and capital employed tests. Firms will be able to rely on the AAE if they meet the conditions of any one of these.

1.15 The new annual threshold test allows firms that trade over-the-counter (OTC) commodity derivatives on a relatively small scale (i.e. below a fixed monetary threshold of £3bn) to rely on the AAE. The calculation includes only cash-settled commodity derivatives – that is, derivatives that either must or can be cash-settled. In response to feedback, this test does not include exchange-traded derivatives. This test replaces the current market share test, which is based on annual averages of overall market activity in relevant commodity derivatives on an asset class basis.

1.16 We are retaining the existing methodology for calculating the trading and capital employed tests but the applicable thresholds for both tests will be at 50%. Both tests calculate a firm's relevant trading activities against the group's activities. For the trading test, the group's activities will include, for UK-based entities, their OTC trading and trading conducted on UK trading venues, and for non-UK-based entities, their trading conducted on UK trading venues. For the capital employed test, the group's activities will include the capital employed worldwide, not just within the UK.

Outcome we are seeking

1.17 In line with the broader objective under the Wholesale Markets Review (WMR) and SICGO, we are simplifying the AAT. We aim to establish a regime that provides greater legal clarity and certainty for firms by building on existing tests, and adding to the choice of quantitative criteria to use to determine whether they require authorisation or are exempt, for these purposes. We have also sought to ensure that our approach preserves market integrity, factors in best international practices, and maintains open access to UK commodity markets for non-financial firms. Through these amendments, we do not intend to change the scope of the regulatory perimeter, which should stay broadly the same as that under current MiFID-based tests.

Measuring success

1.18 As the main aim of the changes is to simplify the AAE regime and reduce costs for firms, we will assess these outcomes by engaging with firms once the new regime is in place.

1.19 These changes are not intended to expand the regulatory perimeter beyond the MiFID-based tests, so we will engage with a sample of firms currently using the AAE despite the removal of the annual AAE notification requirement. We will also use our financial services register to assess whether there has been a change in the regulatory status of currently authorised firms. It is important to note that a firm may fall outside the regulatory perimeter for reasons other than those related to the AAE. Therefore, we would need to consider any change in a firm's regulatory status against a broader understanding of the firm and its group regulatory structure to the extent possible.

1.20 We will also continue to monitor market behaviour through the implementation of controls by trading venues under PS25/1, European Market Infrastructure Regulation (EMIR) data and position reporting. They support the monitoring of activity by firms, including those that are not authorised, and provide the tools to mitigate the risks that arise from large positions in commodity derivatives markets.

Summary of feedback and our response

1.21 Overall, respondents supported our proposed approach to simplify the AAT. However, they raised significant concerns about the proposal to include on-venue trades in the annual threshold test.

1.22 Respondents cautioned that including on-venue trades within the annual threshold test could inadvertently expand the regulatory perimeter and discourage non-financial firms from trading on UK venues – particularly during periods of volatility – due to the risk of breaching the threshold. They warned this could drive activity offshore, fragment liquidity, reduce transparency, and weaken the UK's position as a global hub for commodity trading.

1.23 Some respondents also highlighted that trading on UK exchanges is already subject to robust oversight and poses lower risks than OTC trading. Respondents argued that including exchange-traded transactions would capture firms whose activities are already regulated through measures such as position limits and central clearing. Several respondents further noted that, due to limited automated data access, separating physically settled on-venue contracts from cash-settled activity poses operational challenges, which could put UK non-financial firms and trading venues at a disadvantage relative to other jurisdictions where such activity is excluded.

1.24 Overall, industry strongly supports limiting the annual threshold test to OTC cash-settled derivatives, consistent with international practice. We are excluding on-venue trades from the annual threshold test calculation.

Equality and diversity considerations

1.25 We have considered the equality and diversity issues that may arise from the rules in this PS. Overall, we do not consider that the rules materially impact any of the groups with protected characteristics under the Equality Act 2010 (in Northern Ireland, the Equality Act is not enacted but other antidiscrimination legislation applies). Overall, we do not consider that the final rules materially impact any of the groups with protected characteristics under the Equality Act 2010.

Environmental, social & governance considerations

1.26 In developing this PS, we have considered the environmental, social and governance (ESG) implications of our rules and our duty under ss. 1B(5) and 3B(c) of the Financial Services and Markets Act (FSMA) to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008 and environmental targets under s. 5 of the Environment Act 2021.

1.27 Overall, the AAE is designed to be proportionate and targeted. It supports legitimate risk management while keeping within our regulatory obligations and climate responsibilities. Our rules should also support liquidity levels within the market for emission allowances, helping to maintain sound price formation and providing a broader market signal regarding the pricing of greenhouse gas emissions. Overall, we consider this to be aligned with meeting the duty set out above.

Expected effect on mutual societies

1.28 The FCA does not expect the rules in this paper to have a significantly different impact on mutual societies.

Next steps

1.29 The new AAE regime will take effect on 1 January 2027. The Treasury will retain Article 72J of the Regulated Activities Order (RAO) for a further 12 months, and revoke it from 1 January 2028, to provide firms with transitional relief.

What you need to do next

1.30 Firms currently using the AAE should familiarise themselves with our rules and guidance to ensure they understand the new conditions and are able to perform any one of the three independent tests under the AAT framework. Each test is an alternative route to qualifying for the exemption, and firms need only meet the conditions of one test to rely on the AAE.

What we will do next

1.31 We expect to speak to relevant market participants before and after the new rules take effect to support orderly implementation of the new regime.

Chapter 2

Background and current framework

Background

2.1 The current AAE regime has been in operation in the UK since MiFID II came into force in 2018. Firms can use the AAE where they carry out investment services or activities which are ancillary to their main business. The conditions that a firm must meet before it can assess whether its activities are ancillary are as follows:

- The firm does not execute orders on behalf of clients by dealing on their own account unless the client is a client or supplier of the group's main business.
- The firm does not use a high-frequency algorithmic trading technique.
- The main business of a firm's group is not the provision of investment services, services requiring authorisation as a bank, or acting as a market maker in commodity derivatives.

2.2 Once a firm determines that it meets the above conditions, it can proceed to perform the AAT. The detailed parameters and methodology for the AAT are set out in the UK version of Commission Delegated Regulation 2017/592 (referred to in the Handbook as RTS 20). The AAT has two components, both of which need to be met, for firms' activities to be deemed ancillary: the market share test and the main business test.

2.3 For both of the tests, intragroup transactions, hedging transactions, and transactions entered into under an agreement to provide liquidity on a trading venue are excluded from the calculations. The AAT must be carried out annually, during the first quarter of the year, using data from the previous three years. A firm that determines it can rely on the AAE would previously have made an annual notification to the FCA.

2.4 As part of the Capital Markets Recovery Package, the EU removed the market share test from its AAT in February 2022, as it could no longer operate effectively after the UK's departure from the EU, with several commodity derivative classes mainly traded in the UK. Retaining the test would have required many EU non-financial firms to become authorised investment firms.

2.5 After the EU's removal of the test, the European Securities and Markets Authority stopped publishing market data that UK firms had relied on. In March 2022, we confirmed that we would also not publish this data. This aligned with Article 72J of the RAO which enables the AAT to function in the absence of publicly available market data. We also amended our Perimeter Guidance and MiFID RTS 20 to clarify that firms were not required to undertake the market share test and could use historic market data when relying on the derogations from the main business test in Article 3(2) of MiFID RTS 20. We issued statements in January and December 2023 outlining how firms could apply the AAT for 2023–24 and 2024–25, respectively.

2.6 As part of the WMR, the Treasury sought to simplify the AAE regime without changing its scope and legislated in May 2023 to:

- remove the requirement for firms using the AAE to make an annual notification to us
- remove references in the RAO to RTS 20 with the intention that the AAT as formulated should no longer apply
- repeal the transitional arrangements set out in Article 72J of the RAO

2.7 The Treasury's changes retained the AAE description in the schedule of exemptions from the definition of investment firm in the RAO, including the overarching requirement that a firm's commodity derivatives activity be ancillary to its group's main activities. The Treasury provided for a qualitative AAT, intended to be supported by FCA guidance on its application.

2.8 We consulted in CP23/27 on guidance which aimed to clarify how firms should apply the AAT. Respondents expressed concerns regarding the lack of legal certainty in relying on guidance instead of rules, as well as a strong preference for introducing a test to assess the significance of a firm's activities through a threshold test (the 'de minimis test').

2.9 As a result, the Treasury delayed the start of the new AAE framework until 1 January 2027 but did not delay the removal of the annual notification requirement. Firms are therefore no longer required to systematically notify us annually of their use of the exemption. PS25/1 confirmed that the current regime, including RTS 20, would continue to apply until a permanent solution is agreed.

2.10 In July 2025, the Treasury proposed legislation enabling us to set rules defining the conditions under which firms can rely on the AAE. CP25/19 sets out our proposals to create a simpler regime that addresses industry feedback and aligns with the WMR's objectives.

Current AAT Regime

2.11 Currently firms can use the AAE if their commodity derivatives trading is ancillary to their main business, assessed through the market share test and main business test outlined below.

Market share test

2.12 The market share test is designed to limit unauthorised firms from taking speculative positions that have a significant impact on a particular class of commodity derivatives. This test determines the materiality of a firm's trading activity by using asset class specific thresholds (ranging from 3% for gas and oil to 20% for emission allowances and their derivatives). It compares the size of a firm's trading against the overall market trading in the UK and European Economic Area (EEA). A firm fails the AAT if its trading activity is above any of these thresholds.

Main business test

2.13 The main business test determines if a firm's activities involving commodity derivatives are ancillary to its main business. For this test, firms can choose between two methods – the trading test and the capital employed test – each calibrated to reflect the firm's business model. The trading test measures a firm's speculative trading in commodity derivatives as a percentage of its group's total trading. A firm's speculative trading is generally expected to be below 10% of the group's total trading activity, though firms exceeding this threshold may still meet conditions of the test if they satisfy stricter market share limits. This allows smaller firms to remain exempt without having to perform disproportionately burdensome calculations.

2.14 The second method available under the main business test is the capital employed test, which caters for firms whose large trading volumes support their commercial activities. It accounts for firms with significant capital investments, such as infrastructure or production facilities, whose trading may appear large but reflects their main business. The test compares the firm's estimated capital when dealing in commodity derivatives with the group's total capital (total assets minus current debt), using the same 10% threshold as that under the trading test.

2.15 The two main issues with the current AAT are that firms must perform both the market share and main business tests, even when their market share is minimal, which imposes unnecessary costs on smaller firms and does not reflect their potential market harm. In addition, the market share test requires a complex, three-year rolling average of total market activity across trading venues and OTC markets, creating uncertainty for firms about their continued eligibility for the exemption.

Chapter 3

Summary of feedback and responses

3.1 In this chapter we outline our proposals in CP25/19, and summarise feedback. We group the feedback received and our response according to the following themes:

- Introduction of 3 independent tests including a new annual threshold test
- Scope of the annual threshold test
- Trading and capital employed tests
- Interaction between exemptions under onshored MiFID and the RAO
- Other secondary technical issues relating to our proposals in CP25/19.

Our proposal

3.2 In CP25/19, we proposed an approach that enables firms to benefit from the AAT with a high degree of legal certainty. We also said that through our proposals, we do not aim to change the regulatory perimeter to bring more firms into authorisation than is the case under current MiFID-based tests. We proposed to establish 3 separate and independent tests to assess whether a firm can use the AAE as follows:

a. A new annual threshold test (the de minimis test), which will allow firms to be exempt from authorisation if they undertake commodity derivatives trading on a relatively small scale. It replaces the current market share test.
b. The existing trading test (currently part of the main business test) with some modifications.
c. The existing capital employed tests (currently also part of the main business test) with some modifications.

3.3 We said that firms would need to meet the conditions set out in any of the 3 tests on an annual basis to be able to use the AAE.

Annual threshold test

3.4 We proposed to introduce an annual threshold test based on whether a firm's outstanding notional exposure in commodity derivatives, including OTC derivatives, is below a fixed monetary threshold. For derivatives traded on UK trading venues (Recognised Investment Exchanges, Organised Trading Facilities and Multilateral Trading Facilities), we said that we would consider including this activity. However, we also said that our decision was dependent on evidence-based feedback and whether it could give rise to unintended consequences.

3.5 Our CP also sought views on how the calculation should work in the event that we decided that trading activities on UK trading venues should be included in the annual threshold test. We consulted on two possible approaches:

- **Approach 1:** we would include transactions on UK trading venues but establish a higher £5bn threshold (compared to £3bn) to reflect the broader scope.
- **Approach 2:** we would include transactions on UK trading venues with the exception of those where the counterparty or executing broker is UK-authorised. Under this approach we proposed setting the threshold at £3bn.

3.6 We proposed that firms calculate their positions against the annual threshold on a net basis. They should use the average month-end outstanding notional values in cash-settled commodity derivatives over the previous 12 months. This would exclude derivatives traded on Recognised Overseas Investment Exchanges and third country trading venues, as well as intragroup transactions, hedging transactions and transactions under a liquidity provision agreement on a trading venue. The calculation would follow the netting method used in RTS 20 for the capital employed test, using the 3 calculation periods preceding the calculation date, with the average of the annual values over this period compared against the threshold.

3.7 Recognising that the threshold may need adjusting in future, we invited views on whether to include a mechanism in the rules to allow dynamic updates or to rely on the standard consultation process to review it.

Trading test and capital employed test

3.8 In our CP, we proposed to retain the current methodology of RTS 20 for calculating the trading and capital employed tests but to increase the thresholds for both to 50%, aligning with the aim that the exemption remains available to firms whose activities are predominantly commercial.

3.9 We proposed that calculations be based on activity traded in the UK, with both tests comparing this against group activity. For the trading test, the group's activities would include OTC trading activity and trading conducted on UK trading venues for UK-based entities, and trading conducted on UK trading venues for non-UK based entities. For the capital employed test, group capital employed would be assessed on a worldwide basis, not limited to the UK. We also proposed that the calculation for both tests continue to be carried out annually, using a 3-year rolling average.

3.10 We also proposed guidance for calculating notional exposures in pound sterling (GBP) where currency conversion is needed. We said that firms would be expected to use a reputable source such as the Bank of England rate, applied consistently to convert month-end values over the previous 12 months.

3.11 In CP25/19 we asked:

Question 1: Do you agree with the approach outlined above to allow firms to choose one of the following tests: i) annual threshold test ii) trading test iii) capital employed test? If not, please explain why.

Question 2: Do you consider that trading conducted on a trading venue should be included in the annual threshold test? Please provide your rationale.

Question 3: If the annual threshold test incorporates trading conducted on a trading venue, which option do you prefer from paragraph 3.37 and 3.38 (of CP25/19), approach 1 or 2? Further, do you agree with the level of the threshold proposed in respect of each option in paragraph 3.52 (of CP25/19)? If not, please explain why.

Question 4: Regarding the annual threshold, do you agree with the following proposals: a. currency of the threshold and, b. the methodology (outside of trades conducted on a UK trading venue) for calculating a firms net notional exposure? If not, please explain why.

Question 5: Are there circumstances in which the annual threshold might need to be quickly amended, even with the inclusion of a reasonable risk margin (based on internal data analysis)? If yes, please why.

Question 6: Should our rules include a mechanism that adjusts the annual threshold due to certain factors, such as inflation? If so, please suggest on what basis this could be achieved and how frequently reviews and updates might be needed.

Question 7: Do you agree with the proposal to retain the calculation methodology of the trading test and to raise the threshold? If not, please explain why.

Question 8: Do you agree with the proposal to retain the calculation methodology for the capital-employed test and to raise the threshold? If not, please explain why.

Summary of feedback and our response

General approach and inclusion of a new annual threshold test

3.12 We received broad agreement on the proposal to offer 3 alternative tests, including the new annual threshold test.

3.13 Respondents welcomed the flexibility provided by 3 alternative tests, noting that this approach allows firms to apply the one most appropriate to their business model and risk profile. They agreed that the annual threshold test benefits smaller to medium-sized firms, the capital employed test reflects the substantial physical infrastructure of firms with significant real-economy assets, and the trading test accommodates firms with limited physical assets by assessing trading activity in the context of their overall business.

3.14 Two respondents recommended that the FCA clarify in its final guidance that the 3 tests are alternative routes to the AAE, meaning firms only need to meet one test – at their discretion – to qualify for the AAE. They added that applying more than one test should remain optional and that the choice of test should depend on each firm's structure and activities.

Our response

Based on the feedback received, we intend to proceed with the approach outlined in paragraph 3.2, by establishing 3 separate and independent tests to determine whether a firm can use the AAE. We have added guidance to MAR 10A.2.3G to clarify that a firm only needs to meet the conditions of one of the three tests to qualify for the exemption.

Scope of the annual threshold test

Inclusion of derivatives traded on trading venues

3.15 Most respondents said that trading conducted on a trading venue should not be included in the annual threshold test and strongly advocated limiting the annual threshold test to OTC cash-settled derivatives, consistent with international practices.

3.16 Respondents warned that including exchange-traded derivatives in the annual threshold test could expand the regulatory perimeter in a way that significantly disadvantages UK-based non-financial firms – who play a key role in the liquidity and functioning of both exchange-traded and physical commodity markets – and UK trading venues, compared to their international peers. They also noted that calculating exposure for UK-venue trades would require new systems, increasing operational and compliance costs and potentially discouraging use of UK trading venues.

3.17 Many UK commodity firms conduct most of their trading on UK trading venues, which supports the competitiveness and liquidity of domestic markets. Including this activity in the threshold calculation could distort the regulatory status of UK firms relative to international peers and reduce overall market competitiveness and growth. Additionally, non-financial firms could avoid authorisation by shifting activity offshore. Together, these factors could reduce liquidity, increase volatility, weaken price discovery, and undermine the robustness of key UK benchmarks.

3.18 Some respondents said that the inclusion of derivatives traded on trading venues would be inconsistent with other parts of the UK's regulatory framework – particularly the Overseas Persons Exclusion (OPE) – which allows overseas firms to carry out certain regulated activities in the UK without FCA authorisation.

Existing regulatory protections for exchange-traded markets

3.19 Several respondents emphasised that trading on UK exchanges is already governed by a strong and comprehensive regulatory framework designed to safeguard market integrity. This framework includes supervision, surveillance, position limits (strengthened by reforms in PS25/1), transparency requirements, and risk management through central clearing.

3.20 Respondents noted that exchange-traded activity is generally more transparent than OTC trading, and that the same rules apply to all participants, including non-financial firms. They consider existing controls sufficient to monitor and manage large speculative positions effectively and argued that including exchange-traded derivatives in the annual threshold test – potentially forcing non-financial firms to obtain authorisation – could reduce market liquidity without providing meaningful regulatory benefits. It was argued that centrally cleared exchange-traded derivatives present less risk than OTC trades and should therefore be excluded from the threshold calculation.

Our response

We explained in our CP that our decision about including trading venue activity in the calculations under the annual threshold test would be guided by whether either of the proposed approaches in paragraph 3.5 above support participation and growth on UK trading venues while avoiding unintended consequences. We noted that our final position would depend on evidence-based feedback.

Given the consultation feedback and the importance of staying aligned with other major jurisdictions to avoid unintended consequences, we consider that excluding exchange-traded derivatives from the annual threshold test is the best approach.

We recognise that relevant trading venues and CCPs provide a strong layer of oversight to all entities dealing in commodity derivatives, regardless of whether they are authorised or not. We also note that the regulatory framework will be further strengthened from July 2026 under the reformed UK commodity derivatives regulatory framework (PS25/1).

Consequently, approaches 1 and 2 at paragraph 3.5 are no longer relevant. There is also no longer a need to provide guidance on the meaning of 'traded in the UK' in relation to trading venues, since the annual threshold test now applies solely to OTC activity. For completeness, we note that approach 1 was generally preferred for its simplicity, as approach 2 would require firms to restructure trading arrangements or counterparties. This support was conditional on raising the threshold to at least £5bn to align with global standards. Respondents also noted that without a definitive list of contracts in scope, it was difficult to assess the appropriateness of the proposed thresholds or model their impact, especially as market volatility and rising commodity prices over time could make it difficult for firms to stay below the threshold.

Scope and treatment of cash settled and physically settled contracts

3.21 Several respondents raised concerns about including contracts 'which must be settled in cash or may be settled in cash at the option of one of the parties' within the annual threshold test. While this wording mirrors the EU's approach, in the EU it applies only to OTC derivatives, which are typically cash-settled. OTC contracts that cannot be cash-settled are generally not considered a financial instrument under EMIR (except OTC emissions allowance forwards).

3.22 However, some physically deliverable exchange-traded contracts include optional cash settlement features. Including these in the test could unintentionally capture commercial, risk-reducing activity. From an operational perspective, existing systems operated by non-financial commodity firms are not designed to distinguish settlement type. Implementing such a capability would require costly new systems and processes, as settlement data may not be readily accessible in a structured or automated way.

3.23 Respondents warned that this disadvantages UK non-financial firms and trading venues compared to jurisdictions where such contracts are excluded. They recommended restricting the test to OTC derivatives or only those contracts required to be cash-settled (rather than those that may be) by amending draft MAR 10A3.1.R(4) and clarify that only contracts specifically required to be cash-settled be included.

3.24 Respondents also welcomed confirmation that spot and physically settled emission allowance contracts be excluded from the annual threshold test, noting they are primarily used for compliance rather than speculation. Including them would impose an unnecessary burden on firms engaged in decarbonisation and emissions reduction, contrary to the UK's environmental and competitiveness goals.

Our response

We note that the exclusion of exchange-traded derivatives from the annual threshold test means that most of the concerns raised about the treatment of cash settled and physically settled contracts – such as the ability to distinguish between them – are no longer relevant.

However, regarding the suggestion to amend draft MAR 10A.3.1R(4) from 'must include' to 'comprise' or 'are limited to', we do not consider the current wording to be unclear or ambiguous. For the avoidance of doubt, this may include physically settled contracts that provide an option for cash settlement.

In response to the feedback requesting confirmation that spot and physically settled emission allowance contracts are excluded from the threshold test, we note that the AAE is relevant to firms trading commodity derivatives, emission allowances or derivatives of emission allowances, as set out in Chapter 1. Accordingly, this test – along with other available tests – applies to the same financial instruments. To clarify, the term 'emission allowances' is defined in the Handbook and includes derivatives of emission allowances. Further, the treatment of these financial instruments is set out in longstanding perimeter guidance in PERG 13.4.

Currency of the annual threshold test

3.25 Most respondents agree that using GBP as the currency for the annual threshold test is the most appropriate approach, reflecting the UK regulatory context and the fact that many UK firms operate primarily in GBP. A minority of respondents noted that many commodity trades are conducted in United States dollars (USD) and some in Euros (EUR), and advocated using those currencies when setting the annual threshold.

3.26 Respondents also argued that firms might benefit from clear, standardised guidance on how to convert foreign currency trades. Suggestions included specifying:

- the benchmark for exchange rates (e.g. Bank of England, ECB, or other)
- frequency of conversion (e.g. end-of-period spot, monthly average, annual average)
- whether firms may adopt their own consistent policy or must use FCA prescribed rates.

Annual threshold test calculation methodology (excluding UK venue trades)

3.27 Most respondents support the proposed methodology (per draft MAR 10A.4.1R) for calculating net outstanding exposure, including netting consistent with that used for the capital employed test.

Annual threshold amendments

3.28 Most respondents agreed that exceptional market events, such as geopolitical crises or pandemics, might warrant reviewing the annual threshold, but rapid or automatic adjustments should be avoided to maintain regulatory certainty. They emphasised a transparent, rules-based process with public consultation rather than a process that allows for ad hoc emergency adjustments. Periodic reviews through consultation were generally preferred over frequent updates linked to broad indices like the Consumer Price Index (CPI), which may not reflect commodity-specific price movements and could misstate market changes.

3.29 Respondents supported maintaining a fixed threshold with the option for targeted consultative reviews as offering the best balance between legal certainty, simplicity and adaptability. The three-year averaging period in the threshold calculation was noted as smoothing short-term volatility, reducing the need for frequent adjustments. Some respondents favoured an upward-only, rules-based adjustment using a defined index to maintain stability and prevent firms from being unintentionally captured by the regulatory perimeter, while others noted that the FCA's rule-making powers allow thresholds to be amended flexibly as needed.

3.30 One respondent suggested that the FCA, in coordination with the Office of Gas and Electricity Markets (Ofgem), monitor price movements in the underlying commodity of each class of OTC derivatives (e.g. power, gas, coal, oil, metal, soft commodities). This approach was compared to the 2022 energy crisis, during which sharp energy price increases led the EU to raise the commodity derivatives EMIR clearing threshold to EUR 4bn.

Our response

In line with the feedback on the methodology and currency of the annual threshold test, the test will be in GBP, using the proposed methodology. Under this approach, a firm's net outstanding notional exposure in OTC cash-settled commodity derivatives (whether required to be cash-settled or capable of being cash-settled), excluding exchange-traded derivatives, must be below a fixed monetary threshold of £3bn. This is calculated as the average of the aggregated month-end outstanding notional values over the previous 12 months, providing a straightforward and familiar method for firms to apply.

Regarding requests for clearer guidance on currency conversion and the frequency of conversion, we consider the guidance proposed in draft 10A.4.2 G to be sufficiently clear. To confirm:

- Firms should use the Bank of England rate or another reputable source, such as the ECB rate.
- For the frequency of conversion, where firms are required to calculate the average of aggregated month-end outstanding notional values, the relevant month-end rate should be applied for each of the previous 12 months when calculating average outstanding notional values.

Further, in light of the feedback received, we are not implementing a mechanism that would lead to automatic adjustments to the annual threshold test. We consider the most appropriate way to adjust the threshold is through a public consultation. The established FSMA rule-making framework enables us to revisit thresholds, where necessary, in a flexible way, having regard to stakeholder input and changing circumstances.

Trading test and capital employed test

3.31 Most respondents supported the proposal to retain the current calculation methodology (as set out in MiFID RTS 20) and the thresholds of 50% for both the trading test and the capital employed test. Respondents noted that the methodologies are well understood, embedded in firms' internal systems, and support operational continuity. They also welcomed the proposed increase in the thresholds to 50%, viewing the changes as a proportionate measure that reflects inflation.

3.32 Respondents highlighted that while the capital employed test is not the most commonly used test, it remains a valuable alternative for certain business models – particularly those with substantial physical assets (e.g. wind farms or power plants) and separation between trading and non-trading activities.

Scope and consistency between the trading and the capital employed tests

3.33 A few respondents raised concerns that, although the methodology is being retained, the scope of the trading test appears to have shifted. In particular, it is argued that the proposed drafting limits both the numerator (firm-level UK trading) and denominator (group-level UK trading) to UK activity only. Respondents expressed the concern that this could lower the threshold for globally active firms and weakens the assessment of whether UK activity is ancillary to a firm's group business. As a result, firms with limited UK operations may no longer qualify for the exemption under this test, even if they have substantial global activity. This could encourage some firms to relocate trading activities outside the UK. In contrast, the capital employed test maintains its global scope, creating inconsistency and complexity between the two tests.

3.34 To address these concerns, respondents recommended:

- Aligning with the MiFID RTS 20 methodology to support continuity and predictability (including reconsideration of paragraph 3.57 of CP25/19).
- Maintaining a global approach for both tests to ensure consistency.
- Ensuring the final rules reflect the stated policy intent and preserve legal certainty.

Periodic adjustment of the thresholds

3.35 One respondent suggested introducing a framework for periodic review to ensure the thresholds remain proportionate over time. They proposed that such a review operate on an upward-only basis to avoid unintentionally tightening the regulatory perimeter.

Our response

Based on the feedback received, we will implement the modifications we proposed to the trading test and capital employed test – that is, retaining the current methodology and raising the thresholds to 50%.

We acknowledge the suggestion to introduce a framework for periodic adjustment of the thresholds, however, to ensure certainty for firms using the tests, we will consult the market before making any changes.

In response to feedback about the location basis of group activities under the trading test, we acknowledge that our proposal differs from the current RTS 20, which – consistent with PERG 13 Q45 – still captures EEA-wide commodities trading as though the UK were still part of the EU. However, following EU exit, it is no longer appropriate for the denominator to include EEA activity. The denominator can now logically only reflect UK activity or global activity, and a global denominator would significantly broaden the test. We are therefore implementing the proposed approach, under which group activity must be assessed by reference to UK activity, and which remains consistent with the EU framework.

This approach differs from the capital employed test, which continues to be calculated on a worldwide basis because it concerns total assets rather than trading activity, where the location is directly relevant. Group-level aggregation will continue to include excluded positions (such as hedging transactions), and firms may rely on the other available tests where appropriate. Overall, assessing group activity on a UK basis for the trading test is expected to have limited impact, particularly given the availability of alternative tests and the exclusion of exchange-traded derivatives from the annual threshold test.

Interaction between onshored MiFID and the Regulated Activities Order

Alignment with Schedule 3 to the RAO

3.36 Respondents were concerned that our approach of restating elements of the RAO in the FCA's draft rules, and using FCA Glossary definitions instead of RAO wording, could create confusion and legal uncertainty. They suggested quoting the RAO directly or consolidating relevant material in one place.

3.37 Two respondents also objected to including the requirement in draft MAR 10A.1.3R that ancillary activity must be 'carried on from an establishment in the United Kingdom'. They noted that this phrase does not appear in the RAO and could unnecessarily narrow the regime, potentially preventing overseas firms from relying on exemptions. They recommended simplifying the drafting by making it clear that the rules apply to any person seeking to rely on the AAE as set out in paragraph 1(k) of Schedule 3 to the RAO and removing provisions that do not add to the Schedule 3 text.

RAO exclusions and MiFID exemptions

3.38 One respondent argued that the current double layer of RAO exclusions and MiFID exemptions creates a complex and confusing regulatory regime. They proposed to remove the MiFID override (Article 4(4) of the RAO), which ensures UK regulation aligns with MiFID and prevents firms from avoiding authorisation through UK-only exclusions if MiFID would still require it. The respondent recommended we clearly state our position on this issue and collaborate with the Treasury to consider amending Article 4(4) of the RAO to make it clearer and more user-friendly, for example by referencing the ability to rely on a MiFID exemption, rather than the complex definition of 'investment firm' under MiFID.

3.39 Another respondent argued that the UK's Designated Activities Regime (DAR) provides a parallel, simpler framework for certain non-financial activities. They suggest allowing firms to self-declare as 'non-MiFID' and bring relevant activities within the DAR via the 'with or through' exclusion of Article 15 of the RAO. This would replace the Oil Market Participant and Energy Market Participant regimes. The 'with or through' exclusion allows a firm dealing in investments as principal to avoid authorisation if it only deals with authorised or exempt persons, or through persons acting as arrangers or intermediaries. Therefore, subject to certain conditions, if a firm's counterparties are authorised/exempt, or its trades are arranged by authorised/exempt persons, it can rely on this exclusion and is not considered to be carrying out a regulated activity requiring authorisation. Firms deemed significant in terms of transparency, data, conduct, or systemic importance could then be required to comply with relevant legislation, such as MiFID and EMIR, maintaining market integrity and flexibility while avoiding over-regulation.

Our response

To provide alignment with the wording in the RAO, we are updating MAR 10A.1.3R so it matches the wording in the RAO, by referring directly to paragraph 1(k) of Schedule 3, and removing the phrase 'is carried on from an establishment in the United Kingdom,' which was regarded as potentially narrowing the current test and scope.

As to the feedback relating to the definitions with the RAO and Glossary, the general aim of the Glossary and Handbook is to present material in a common form that supports users' comprehension and accessibility. We refer to paragraph 5 of Schedule 3 to the RAO: 'Any expression used in this Part of this Schedule which is used in the markets in financial instruments regulation has the same meaning as in the regulation.' Our approach is consistent with the RAO. The Handbook Glossary definitions of 'commodity derivative', 'dealing on own account' and 'investment service' bring together the intertwining strands of MiFIR and the RAO, when it comes to the relevant definitions for the purposes of the AAE.

We acknowledge the suggestions to use the DAR and remove overlaps between pre-MiFID RAO exclusions and the AAE. However, as noted in CP25/19, our consultation reflects the commitment to deliver a new AAT regime by January 2027, under the powers granted to the FCA by the

Treasury to make rules in relation to a new AAT and an annual threshold, as set out in the Treasury's Ancillary Activities Exemption Policy Note. Our immediate priority was to deliver a simplified AAT. Broader reforms to the regulatory perimeter, such as changes to the MiFID override or use of the DAR, may be considered in the future but are not part of this PS.

Other feedback

3.40 Here we summarise feedback and give our response to technical and legal issues that sit across all questions in CP25/19.

Excluded positions

3.41 One respondent pointed out that the FCA's definition of 'excluded position' includes 'contracts where the person within the group that is a party to any of them is an FCA-authorised firm.' They observed that excluded positions apply across all 3 of the available tests. Under the proposed drafting, this would mean that contracts entered into by 'P' (the entity seeking to rely on the AAE) with an FCA-authorised firm within the group would be excluded, while contracts with group entities authorised by another regulatory authority would not. The respondent therefore asked for clarity on the policy and regulatory rationale for limiting excluded positions to intragroup contracts involving FCA-authorised firms, rather than extending this to include intragroup contracts with entities authorised by any regulatory authority.

Drafting issues, legal clarity, and perimeter implications

3.42 Some respondents raised concerns that the draft rules of MAR 10A.1.3R–10A.1.5R could unintentionally narrow the scope of the exemption. They noted that cross-references to draft MAR 10A.1.4R and MAR 10A.1.5R within MAR 10A.1.3R could be interpreted as requiring all conditions to be met at both entity and group level. Under the current framework, the test considers whether the relevant activities are ancillary to the group's main business. However, the proposed drafting appears to introduce ambiguity, suggesting that the test might apply at both the individual entity and group levels. This conflation risks creating operational and interpretive challenges for firms relying on the capital employed or trading tests.

3.43 To resolve these issues, respondents proposed aligning the drafting with the RAO and MiFID frameworks in a way that clearly distinguishes between group and entity-level conditions by:

- removing the proviso at the end of draft MAR 10A.1.3R
- deleting draft MAR 10A.1.4R (as these provisions are already covered in the Treasury's proposed legislative amendments to Schedule 3 to the RAO)

- amending draft MAR 10A.1.5R(1) as set out below:

  'P's main business when considered on a group basis is not:

  a. the provision of *investment services* (other than when the activity is one to which MAR 10A.1.4(2) applies);
  b. banking activities requiring *permission* under Part 4A of the *Act* (or banking activities which would require such *permission* if they were carried on in the *United Kingdom*); or
  c. acting as a *market maker* in relation to *commodity derivatives* (other than when such activity is one to which MAR 10A.1.4(2) applies)'.

- amending draft MAR 10A.1.4R(2) and replacing the reference to 'when considered on an individual basis' with a reference to MAR 10A.3.1, to read as follows:

  '(2) is below an annual threshold in accordance with the methodology in MAR 10A.3.1.'

Our response

In response to questions about the definition of excluded positions, we consider it appropriate to limit them to intragroup contracts involving FCA-authorised firms. This aligns with our direct supervisory remit and is consistent with approaches taken in other jurisdictions. FCA-authorised firms include third-country firms, such as those operating from UK branches, which are subject to, for example, the common platform standards in Senior Management Arrangements, Systems and Controls (SYSC) 1 Annex 1. Where a third-country firm carries on regulated activities in the UK and requires FSMA authorisation, we do not limit the types or structures of firms that may operate here. At the same time, the UK provides a broader OPE, available to all third-country firms conducting business in the UK, including those engaging in commodity derivatives. Limiting excluded positions to FCA-authorised intragroup contracts therefore provides legal clarity and supports effective supervision, while accommodating the diverse range of firms operating under UK regulation.

We considered the feedback on the potential legal ambiguity in the interpretation of our draft rules MAR 10A.1.3R–10A.1.5R which could result in narrowing the scope, and decided to amend accordingly. We have revisited our rules to align with the finalised Treasury legislation in Schedule 3 paragraph 2 RAO, including its clarification in respect of P's main business, when considered on a group basis.

Annex 1

List of respondents

We are obliged to include a list of the names of respondents to our consultation who have consented to the publication of their name. That list is as follows:

Centrica Energy

Commodity Markets Council Europe (CMCE)

Energy Traders Europe

European Venues and Intermediaries Association (EVIA)

Europex – Association of European Energy Exchanges

Futures Industry Association (FIA)

ICE Futures Europe

International Swaps and Derivatives Association (ISDA)

London Energy Brokers' Association (LEBA)

RWE Supply & Trading GmbH

The City of London Law Society (CLLS)

Annex 2

Cost Benefit Analysis

1. In CP25/19, we said that the costs of our proposals were expected to be of minimal significance, and therefore no CBA was required under FSMA. The only area where wider effects could have arisen were if trading conducted on a trading venue had been included in the annual threshold test, which we factored into our consultation's CBA considerations. Respondents provided no quantitative evidence-based feedback but suggested that including such trading could distort trading venue choice. Since exchange-traded derivatives have been excluded from the annual threshold test, this risk is removed. Consequently, we continue to believe that our rule changes will impose costs of minimal significance.

Annex 3

Abbreviations used in this paper

Abbreviation	Description
AAE	Ancillary Activities Exemption
AAT	Ancillary Activities Test
CCP	Central Clearing Counterparty
CP	Consultation Paper
CPI	Consumer Price Index
DAR	Designated Activities Regime
EEA	European Economic Area
EMIR	European Market Infrastructure Regulation
EUR	Euro
ESG	Environmental, Social and Governance
EU	European Union
FSMA	Financial Services and Markets Act
MAR	Market Conduct Sourcebook
MiFID	Markets in Financial Instruments Directive
MiFID II	The second Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
OFGEM	Office of Gas and Electricity Markets
OTC	Over-the-counter
OPE	Overseas Persons Exclusion
GBP	Pound sterling

Abbreviation	Description
PS	Policy Statement
RAO	Regulated Activities Order
RTS 20	UK version of Commission Delegated Regulation 2017/592
SICGO	Secondary international competitiveness and growth objective
SYSC	Senior Management Arrangements, Systems and Controls
UK	United Kingdom
USD	United States dollar
WMR	Wholesale Markets Review

Appendix 1

Made rules (legal instrument)

COMMODITY DERIVATIVES (ANCILLARY ACTIVITY EXEMPTION) INSTRUMENT 2025

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions in or under:

(1) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 ("the Act"); and

(2) paragraph 2A of Part 1 of Schedule 3 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 January 2027.

Interpretation

D. In this instrument, any reference to any provision of assimilated direct legislation is a reference to it as it forms part of assimilated law.

Amendments to the Handbook

E. The Glossary of definitions is amended in accordance with Annex A to this instrument.

F. The Market Conduct sourcebook (MAR) is amended in accordance with Annex B to this instrument.

Amendments to material outside the Handbook

G. The Perimeter Guidance manual (PERG) is amended in accordance with Annex C to this instrument.

Notes

H. In the Annexes to this instrument, the notes (indicated by "*Editor's note*:") are included for the convenience of readers, but do not form part of the legislative text.

Citation

I. This instrument may be cited as the Commodity Derivatives (Ancillary Activity Exemption) Instrument 2025.

By order of the Board
18 December 2025

Annex A

Amendments to the Glossary of Definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless stated otherwise.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

ancillary activity exclusion	the exclusion from the definition of 'investment firm' in paragraph 1(k), when read with paragraph 1A(a), of Schedule 3 to the *Regulated Activities Order*.
excluded positions	positions from contracts resulting from: (a) intra-group transactions as referred in Article 3 of *EMIR* that serve group-wide liquidity or risk management purposes; (b) transactions in *commodity derivatives* or *emission allowances* which are objectively measurable as reducing risks directly relating to commercial activity or treasury financing activity: (i) in accordance with the criteria in *MAR* 10.2.7R(and *MAR* 10.2.10R; or (ii) which cover the risks arising from the potential indirect impact on the value of assets, services, inputs, products, *commodities* or liabilities referred to in (i), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk; (c) transactions in *commodity derivatives* and *emission allowances* entered into to fulfil obligations to provide liquidity on a *UK trading venue*, where such obligations are required by: (i) regulatory authorities in accordance with *UK law on markets in financial instruments*; or (ii) *UK trading venues*; and (d) contracts where the *person* within the *group* that is a party to any of them is an *FCA-authorised firm*.
FCA-authorised firm	an investment firm (within the meaning of section 424A of the *Act*) *authorised* to provide *investment services or activities*.

relevant calculation period	a calculation period which begins on 1 January of a given year and ends on 31 December of that year.
short-term debt	debt with a maturity of less than 12 *months* as recorded in the consolidated financial statements of the *group* at the end of the *relevant calculation period*.

Amend the following as shown.

commodity …

(3) (in relation to the *UK* provisions which implemented or correspond to *MiFID* or *MiFIR* including *MAR* 10 and *MAR* 10A) any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity.

emission allowance …

(3) (in *MAR* 10 ~~(Commodity derivative position limits and controls and position reporting)~~, *MAR* 10A and *MAR* 11 ~~(Transparency rules for transparency instruments)~~) in addition to (1), any derivative of such an allowance, ~~whether~~ falling under ~~paragraph (4) or (10) of~~ Schedule 2 to the *Regulated Activities Order*.

market maker …

(2) (in *COBS*, *MAR* 10A and *MAR* 11) a *person* who holds themselves out on in the financial markets on a continuous basis as being willing to deal on own account by buying and selling *financial instruments* against that *person's* proprietary capital at prices defined by that *person*.

~~[Note: article 4(1)(7) of *MiFID*]~~

…

trading venue

(1) (except in *FINMAR* and *MAR* 10A) a *regulated market*, an *EU regulated market*, an *MTF* or an *OTF*.

(2) …

(3) (in *MAR* 10A) a *UK RIE*, an *EU regulated market*, a third country trading venue that performs a similar function to a *UK RIE*, an *MTF* or an *OTF*.

[*Editor's note*: the definition of 'UK trading venue' below takes into account the change introduced by the 'Commodity Derivatives (Position Limits, Position Management and Perimeter) Instrument 2025' (FCA 2025/4), which comes into force on 6 July 2026.]

UK trading venue	for the purposes of *MAR* 9 ~~and~~<u>,</u> *MAR* 10 <u>and *MAR* 10A</u> (and in accordance with article 2(1)(16A) *MiFIR*), a *UK RIE*, a *UK MTF* or *UK OTF*.

Annex B

Amendments to the Market Conduct sourcebook (MAR)

Insert the following new chapter, MAR 10A, after MAR 10 (Commodity derivative position limits and controls, and position reporting). The text is not underlined.

10A Ancillary activity exemption relating to trading of commodity derivatives

10A.1 Purpose and application

Purpose

10A.1.1 G The purpose of this chapter is to set out the criteria for determining:

(1) when an activity is considered to be ancillary to the main business of a firm at *group* level for the purposes of paragraph 1(k) of Schedule 3 to the *Regulated Activities Order*; and

(2) an annual threshold for establishing when a *person* is excluded from being an *investment firm*.

10A.1.2 G This chapter should be read in conjunction with *PERG* 13.5 Q44 to Q44C.

Application

10A.1.3 R This chapter applies to a *person* (P) to which paragraph 1(k) of Schedule 3 to the *Regulated Activities Order* applies.

10A.1.4 G (1) P is a *person* whose main business, when considered on a group basis, is not:

(a) the provision of *investment services* (other than when the activity is one to which *MAR* 10A.2.1R applies);

(b) banking activities requiring *permission* under Part 4A of the *Act* (or banking activities which would require such *permission* if they were carried on in the *United Kingdom*); or

(c) acting as a *market maker* in relation to *commodity derivatives*.

(2) P does not apply a *high-frequency algorithmic trading technique*.

(3) P reports to the *FCA* under regulation 47 of the *MiFI Regulations*, upon request, the basis on which P considers that its activity under paragraph 1(k) of Schedule 3 to the *Regulated Activities Order* is ancillary to its main business:

(a) when considered on a group basis, or

(b) below an annual threshold as determined in accordance with *FCA rules.*

10A.2 Annual threshold and ancillary activity exclusions

10A.2.1 R P is not an *investment firm* where the net outstanding notional exposure in *commodity derivatives* or *emission allowances*, for cash settlement, traded in the *United Kingdom*:

(1) calculated in accordance with *MAR* 10A.3.1R; and

(2) excluding *commodity derivatives* or *emission allowances* traded on a *trading venue*,

is below an annual threshold of £3 billion.

10A.2.2 R P's activities in the *United Kingdom* are ancillary to the main business at *group* level for the purposes of the *ancillary activity exclusion* where they comply with any of the following conditions:

(1) in accordance with *MAR* 10A.3.2R, the size of those activities accounts for 50% or less of the total size of the other trading activities of the *group*; or

(2) the estimated capital employed for carrying out those activities, calculated in accordance with *MAR* 10A.3.3R(1) to (5), accounts for not more than 50% of the capital employed at *group* level for carrying out the main business calculated in accordance with *MAR* 10A.3.3R(6).

10A.2.3 G The annual threshold and two ancillary activity tests in this section are separate from one another. P only has to satisfy one of the three tests in order to be able to rely on the exclusion in paragraph 1(k) of Schedule 3 to the *Regulated Activities Order*.

10A.3 Annual threshold and ancillary activity tests

Annual threshold test

10A.3.1 R (1) The net outstanding notional exposure must be calculated by averaging the aggregated month-end net outstanding notional values for the previous 12 *months* resulting from all contracts in *commodity derivatives* or *emission allowances* by a *person* within a *group*.

(2) The aggregation referred to in (1) must not include positions from contracts resulting from *excluded positions*.

(3) The net outstanding notional values in (1) must be calculated:

(a) on the basis of all contracts in *commodity derivatives* or *emission allowances* for cash settlement to which any *person* is a party during the *relevant calculation period*; and

(b) using the netting methodology of *MAR* 10A.3.3R(4).

(4) The contracts in *commodity derivatives* or *emission allowances* for cash settlement must include all such derivative contracts relating to *commodities* or *emission allowances* which must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event.

Trading test

10A.3.2 R (1) The size of the activities referred to in *MAR* 10.2.2R(1) undertaken by:

(a) P; and

(b) other *persons* in the *group*,

must be calculated by aggregating the gross notional value of all contracts in *commodity derivatives* and *emission allowances* to which that *person* is a party.

(2) The aggregation referred to in (1) must not include *excluded positions* in the case of P.

(3) The aggregation referred to in (1) must include *excluded positions* in the case of other *persons* in the *group*.

(4) The overall market trading activities referred to in (1) and (2) must be calculated by aggregating the gross notional value of all contracts traded in the *United Kingdom* that are:

(a) traded on a *UK trading venue*; or

(b) in the case of any other contract, are:

(i) not traded on a *trading venue*; and

(ii) entered into by a *person* in the *group* from an establishment in the *United Kingdom*.

Capital employed test

10A.3.3 R (1) The estimated capital employed for carrying out the activities referred to in *MAR* 10A.2.2R(2), is the sum of:

(a) 15% of each net position, long or short, multiplied by the price for the *commodity derivative* or *emission allowance*; and

(b) 3% of the gross position, long plus short, multiplied by the price for the *commodity derivative* or *emission allowance*.

(2) The positions in (1) must be calculated on the basis of all contracts traded in the *United Kingdom* in *commodity derivatives* or *emission*

allowances to which any *person* in the *group* is a party during the *relevant calculation period* and which:

(a) are traded on a *UK trading venue*; or

(b) in the case of any other contract are not traded on a *trading venue*.

(3) The calculation in (1) must not include *excluded positions*.

(4) For the purposes of (1)(a):

(a) the net position in a *commodity derivative* or an *emission allowance* must be determined by netting long and short positions:

(i) in each type of *commodity derivative* contract with a particular *commodity* as underlying in order to calculate the net position per type of contract with that *commodity* as underlying; or

(ii) in each type of *emission allowance* contract in order to calculate the net position in that *emission allowances* contract; and

(b) net positions in different types of contracts with the same *commodity* as underlying or different types of derivative contracts with the same *emission allowance* as underlying can be netted against each other.

(5) For the purposes of (1)(b):

(a) the gross position in a *commodity derivative* or an *emission allowance* must be determined by computing the sum of the absolute values of the net positions per type of contract with a particular *commodity* as the underlying, per *emission allowance* contract or per type of derivative contract with a particular *emission allowance* as the underlying; and

(b) net positions in different types of contracts with the same *commodity* as underlying or different types of derivative contracts with the same *emission allowance* as underlying cannot be netted against each other.

(6) The capital employed for carrying out the main business of a *group* is the sum of the total assets of the *group* minus its *short-term debt* as recorded in its consolidated financial statements of the *group* at the end of the *relevant calculation period*.

10A.3.4 G The capital employed for carrying out the main business of a *group*, to which *MAR* 10A.3.3R(6) applies, relates to the worldwide activities of *group* members, wherever located.

10A.4 Procedures for calculation

10A.4.1 R (1) The calculation for the purposes of the annual threshold test in *MAR* 10A.3.1R must:

(a) be determined by reference to the 3 *relevant calculation periods* preceding the date of calculation;

(b) compare the simple average of the resulting annual values with the threshold in *MAR* 10A.2.1R; and

(c) be carried out annually in the first quarter of the calendar year that follows an annual calculation period.

(2) The calculation for the purposes of the trading test in *MAR* 10A.3.2R must:

(a) be based on a simple average of the daily trading activities during the 3 *relevant calculation periods* preceding the date of calculation;

(b) compare the simple average of the resulting annual values with the threshold in *MAR* 10A.2.2R(1); and

(c) be carried out annually in the first quarter of the calendar year that follows an annual calculation period.

(3) The calculation for the purposes of the capital employed test in *MAR* 10A.3.3R must:

(a) be based on a simple average of the estimated capital allocated to daily trading activities during the 3 *relevant calculation periods* preceding the date of calculation;

(b) compare the simple average of the resulting annual values with the threshold in *MAR* 10A.2.2R(2); and

(c) be carried out annually in the first quarter of the calendar year that follows an annual calculation period.

10A.4.2 G (1) Where currency conversion is necessary, for example, when converting notional exposure to GBP for the purposes of the annual threshold test, firms should use the Bank of England rate or other similar widely used rates.

(2) Where the average of the aggregated *month*-end outstanding notional value is required to be calculated, the relevant month-end rate should be used for each of the previous 12 *months*.

10A.4.3 R A *person* does not breach *MAR* 10A.2.1R or *MAR* 10A.2.2R during the period in which it performs a calculation in accordance with *MAR* 10A.4.1R.

Annex C

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

13 Guidance on the scope of the UK provisions which implemented MiFID

…

13.5 Exemptions from MiFID

…

Exemption for commodity derivatives business

Q44. Who can rely on the exemption in ~~article 2.1(j)~~ paragraph 1(k) of Schedule 3 to the Regulated Activities Order?

You may be able to rely on the exemption if:

- you deal on own account in commodity derivatives or emission allowances or derivatives thereof; or
- provide other investment services in commodity derivatives or emission allowances or derivatives thereof to clients or suppliers of your main business (or if you are part of a group, the group's main business); or
- both.

…

The exemption will only apply if what you do is ancillary to your main business or if it falls below an annual threshold (see Q45 for more about this).

…

Q45. What is an ancillary activity for the purposes of the commodities exemption?

You can find the meaning of 'ancillary' for the purposes of the commodities exemption described in ~~the answer to Q44 in MiFID RTS 20 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business). You will need to consider whether your commodity derivatives business exceeds the main business threshold as stipulated in article 3 of MiFID RTS 20~~ *MAR* 10A.

~~This answer does not give a full summary as the definition is too detailed for *PERG*.~~

~~The test as stipulated by article 3 of MiFID RTS 20 has two calculation methods. If the result of either calculation is that you fall below the specified threshold, you meet the test.~~

- ~~One method is based on the size of group trading activities in commodity derivatives and emission allowances.~~
- ~~The second measure compares the estimated capital employed for carrying out commodity derivative and emission allowance activities with group capital.~~

~~Both methods are based on commodities trading activities in the EEA, as if the UK were still part of the EU.~~

<u>*MAR* 10A also contains the criteria relating to if your commodity derivatives or emission allowances business falls below an annual threshold, you are not to be treated as an investment firm.</u>

…

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