

**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.

<i>ancillary activity exclusion</i>	the exclusion from the definition of ‘investment firm’ in paragraph 1(k), when read with paragraph 1A(a), of Schedule 3 to the <i>Regulated Activities Order</i> .
<i>excluded positions</i>	positions from contracts resulting from: <ul style="list-style-type: none"> (a) intra-group transactions as referred in Article 3 of <i>EMIR</i> that serve group-wide liquidity or risk management purposes; (b) transactions in <i>commodity derivatives</i> or <i>emission allowances</i> which are objectively measurable as reducing risks directly relating to commercial activity or treasury financing activity: <ul style="list-style-type: none"> (i) in accordance with the criteria in <i>MAR</i> 10.2.7R(and <i>MAR</i> 10.2.10R; or (ii) which cover the risks arising from the potential indirect impact on the value of assets, services, inputs, products, <i>commodities</i> or liabilities referred to in (i), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk; (c) transactions in <i>commodity derivatives</i> and <i>emission allowances</i> entered into to fulfil obligations to provide liquidity on a <i>UK trading venue</i>, where such obligations are required by: <ul style="list-style-type: none"> (i) regulatory authorities in accordance with <i>UK law on markets in financial instruments</i>; or (ii) <i>UK trading venues</i>; and (d) contracts where the <i>person</i> within the <i>group</i> that is a party to any of them is an <i>FCA-authorised firm</i>.
<i>FCA-authorised firm</i>	an investment firm (within the meaning of section 424A of the <i>Act</i>) <i>authorised</i> to provide <i>investment services or activities</i> .

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~~, *MAR 10* and *MAR 10A* (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.~~

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.

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