

**PERIMETER GUIDANCE (COMMODITY DERIVATIVES EXEMPTION)
INSTRUMENT 2022**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (“the Act”).

Commencement

- B. This instrument comes into force on 27 May 2022.

Amendments to the Handbook

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

Amendments to material outside the Handbook

- D. The Perimeter Guidance manual (PERG) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Perimeter Guidance (Commodity Derivatives Exemption) Instrument 2022.

By order of the Board
26 May 2022

Annex A

Amendments to the Glossary of definitions

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

MiFID RTS 20 the *UK* version of Commission Delegated Regulation (EU) 2017/592 of December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business, which is part of *UK* law by virtue of the *EUWA*.

Annex B

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

2.9.29 ...

Persons seeking to use the exemption under Article 2.1(j) of the Markets in Financial Instruments Directive

2.9.30 G This exclusion applies to the activities of:

- (1) dealing in investments as principal;
- (2) dealing in investments as agent; and
- (3) arranging (bringing about) deals in investments.

It is available to a person who is not an authorised person and whose activity is one to which article 2(1)(j) of MiFID applies (see PERG 13 Q44). Where the person meets the conditions of the exemption relating to article 2(1)(j) but during a calendar year is not able to perform the market threshold test in article 2 of MiFID RTS 20 because the relevant data is not available from an EU institution or regulator, its activities are excluded from the activities in (1) to (3) above. Similarly, if the person has made an application for a Part 4A permission in relation to any of the activities in (1) to (3) above, to which article 2(1)(j) of MiFID applies, the exclusion applies for as long as that application has not been determined or withdrawn. In each case, a person seeking to rely on the article 2(1)(j) exemption must provide notice to the FCA in accordance with regulation 47 of the MiFI Regulations.

...

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

...

13.5 Exemptions from MiFID

...

Exemption for commodity derivatives business

...

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.

This answer does not give a full summary as the definition is too detailed for *PERG*. ~~Instead this answer summarises the broad approach.~~

~~There are two tests. The exemption only applies if you meet both tests. Both are based on commodities trading activities in the EEA.~~

~~The first test looks at the size of trading activities of members of your group in various asset classes. For each class, this is calculated by comparing their trading activities in that class with the overall trading activity in the EEA for that class.~~

~~The asset classes are made up of emission allowances and various types of commodity derivatives. The emission allowances asset class includes emission allowances to which the exemption for emission allowances in article 2.1(e) (see the table in the answer to Q35A) applies and any bidding under the UK auctioning regulations.~~

~~For this test to be met, the trading level of persons within your group needs to be below the maximum amount for each asset class. There is a different maximum amount for each class.~~

~~Certain privileged transactions are excluded from the calculation:~~

- ~~• intra group transactions that serve group wide liquidity or risk management purposes;~~
- ~~• transactions in derivatives that reduce risks directly relating to commercial activity or treasury financing activity in accordance with criteria set out in MiFID RTS 20 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business);~~
- ~~• transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a *trading venue*, where such obligations are required by:

 - ~~○ regulatory authorities in accordance with domestic law;~~
 - ~~○ national laws, regulations and administrative provisions; or~~
 - ~~○ those *trading venues*; and~~~~

- ~~transactions executed by a group member authorised under MiFID or the CRD or with a corresponding Part 4A permission.~~

The ~~second~~ 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 ~~second~~ 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.

...