

**TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS)  
(ANCILLARY EXEMPTION) INSTRUMENT 2022**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) paragraph 19 of Schedule 3 to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012; and
  - (2) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138P (Technical standards);
    - (b) section 138Q (Standards instruments);
    - (c) section 138S (Application of Chapters 1 and 2); and
    - (d) section 137T (General supplementary powers).
- B. The rule-making powers listed above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

**Pre-conditions to making**

- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.
- D. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

**Interpretation**

- E. In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.

**Modifications**

- F. Commission Delegated Regulation (EU) 2017/592 of 1 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 is amended in accordance with the Annex to this instrument.

**Commencement**

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

**Citation**

- H. This instrument may be cited as the Technical Standards (Markets in Financial Instruments) (Ancillary Exemption) Instrument 2022.

By order of the Board  
26 May 2022

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

## Annex

**Commission Delegated Regulation (EU) 2017/592 of 1 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**

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### Article 1

#### Application of thresholds

An ‘article 2.1(j) activity’, as referred to in article 72J(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 shall be considered to be ancillary to the main business of the group if those activities ~~meet the conditions set out in Article 2 and~~ constitute a minority of activities at group level in accordance with Article 3.

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### Article 3

#### Main business threshold

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- (8) The calculation of the estimated capital shall not include positions resulting from transactions referred to in points (a), (b) and (c) of subparagraph 5 of Article 2(4) of Directive 2014/65/EU – that is:
- (a) intra-group transactions as referred to in article 3 of Regulation (EU) No 648/2012 that serve group-wide liquidity or risk management purposes;
  - (b) transactions in derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity;
  - (c) 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 Union law or with national laws, regulations and administrative provisions, or by trading venues.

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*Article 4***Procedure for calculation**

- (1) The calculation of the size of the trading activities and capital referred to in Articles 2 and 3 shall be based on a simple average of the daily trading activities or estimated capital allocated to such trading activities, during three annual calculation periods that precede the date of calculation. The calculations shall be carried out annually in the first quarter of the calendar year that follows an annual calculation period.

For the purpose of the derogation in article 3(2), the calculation of the size of trading activities may:

- (a) use information published by an EU institution or regulator for the last 3 annual calculation periods for which that information is available; and
- (b) refer to the daily trading activities which correspond to the periods in article 4(1)(a) or the 3 annual calculation periods that precede the date of calculation.

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