



HM Treasury

Ancillary Activities Exemption

Policy Note

July 2025

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Chapter 1

Context

1.1 The UK is home to some of the largest and most significant commodity derivative markets in the world. They serve the risk management needs of a diverse group of market participants, facilitate the physical trading of commodities, and the prices discovered on them are used as global reference prices. The government is committed to building on the UK's strong foundations in this sector, and the Treasury is taking forward an ambitious programme of reforms to boost the competitiveness of wholesale markets whilst upholding the highest regulatory standards.

1.2 As part of the Wholesale Markets Review (WMR), the Treasury committed to revoking the existing ancillary activities test (AAT) and replacing it with a new, simplified version. Alongside new rules that the Financial Conduct Authority (FCA) are consulting on, this statutory instrument (SI) seeks to deliver on this commitment by amending the ancillary activities exemption (AAE) to delegate these firm-facing requirements to the expert regulator, the FCA. This will give the FCA a power to make rules in relation to a new AAT and to allow it to set the annual threshold for activity below which a person can also use the AAE.

1.3 Elements of the existing AAT, including Commission Delegated Regulation (EU) 2017/592¹ and Article 72J of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO),² will be revoked in a separate commencement instrument. The new ancillary activities regime will come into force on 1 January 2027.

1.4 The government is publishing a near-final version of the SI, alongside this accompanying explanatory policy note, for technical comments and feedback. This consultation is being timed to coincide with the FCA's consultation on its draft rules. The government therefore welcomes any technical comments on the draft SI by **28 August 2025**.

¹ <https://www.legislation.gov.uk/eur/2017/592/contents>

² <https://www.legislation.gov.uk/ukSI/2001/544/article/72J>

Chapter 2

Purpose

2.1 This note sets out the policy background for the draft SI, a summary of the policy intent and how the draft SI seeks to achieve this, stakeholders likely to be impacted and how to provide comments. This note is intended to be read alongside the draft SI and the FCA's draft rules.

2.2 This publication is the near-final version of the SI. The instrument is being published for technical checks, such as any significant errors or oversights in the legal drafting that would mean that the SI would not achieve the desired outcomes explained in this note, or that would lead to significant unintended consequences.

2.3 Whilst the policy approach in these published documents is settled, the drafting approach, and other technical aspects of the proposal, may change before the final instrument is laid before Parliament.

Chapter 3

Policy Background

3.1 Directive 2014/65/EU (The Markets in Financial Instruments Directive II, MiFID II)³ provides an exemption from authorisation for firms who deal in commodity derivatives, emissions allowances, or derivatives of those instruments as ancillary activity to their main business. This exemption is known as the Ancillary Activities Exemption (AAE), and firms are required to perform the Ancillary Activities Test (AAT) to demonstrate their eligibility for the exemption. The AAE is found in Article 2.1(j) of MiFID II and was transposed into domestic law by paragraph 1(k), Part 1 of Schedule 3 of the RAO.⁴

3.2 The legal basis for the AAT is found in Article 2(4) of MiFID II⁵ and given further effect by Commission Delegated Regulation (EU) 2017/592, which is assimilated law. The FCA and industry generally refer to this as MiFID RTS 20. It sets out the quantitative criteria that firms using the AAE must use to determine whether their trading in commodity derivatives, emission allowances, or derivatives of those instruments falls within the exemption.

3.3 In addition, Article 72J of the RAO provides a transitional regime which caters to firms who cannot perform the market share test (one of the quantitative tests set out in RTS 20) because of a lack of publicly available data on the overall size of the market.

Why are we making this legislative change?

3.4 Feedback to the WMR found that the quantitative criteria set out in RTS 20 was particularly burdensome, requiring firms to perform complex calculations. For this reason, the WMR committed to revoking the existing AAT and replacing it with a simpler and more proportionate assessment.

3.5 At present, the FCA can make technical standards amending the AAT using assimilated law powers set out in paragraph 19, Part 2, Schedule 3 of Regulation (EU) No 600/2014 (MiFIR)⁶ and provide guidance on the test. However, the basis of the AAT is in legislation with the criteria for its application set out in RTS 20, meaning that the FCA

³ <https://www.legislation.gov.uk/eudr/2014/65/contents>

⁴ <https://www.legislation.gov.uk/ukSI/2001/544/schedule/3>

⁵ <https://www.legislation.gov.uk/eudr/2014/65/article/2>

⁶ <https://www.legislation.gov.uk/eur/2014/600/annex/3>

cannot currently determine the tests that firms need to perform to use the exemption. This draft SI would grant the FCA rulemaking powers to implement a new regime to reflect the feedback to the WMR.

What are we looking to achieve?

3.6 The Treasury intends to give the FCA a power to set a) rules in relation to the AAT and b) a new annual threshold for activity below which a person can also use the AAE. It is right to delegate these firm-facing requirements to the FCA who can directly apply their day-to-day experience of supervising financial services firms to set the criteria. It also provides the FCA with the flexibility to update the criteria or the threshold to respond to changes in market circumstances where appropriate.

3.7 As part of giving the FCA rulemaking powers to implement a new regime, the Treasury also intends to revoke the current legislative regime via a separate commencement instrument (commencing revocations under the Financial Services and Markets Act 2023).⁷ This includes revoking Article 72J, which was designed to remove the need for firms to perform the market share test if they were unable to access the relevant data from an official source. This will not be required under the new regime. However, to support firms in transitioning to the new FCA regime, we intend to retain Article 72J for an additional 12 months and commence the revocation of Article 72J on 1 January 2028.

What powers are we using to make this change?

3.8 Section 22(1) and (5) of and paragraph 25 of Schedule 2 to The Financial Services and Markets Act 2000 (FSMA 2000)⁸ allow the Treasury to confer rule-making powers on the FCA in relation to regulated activities.

⁷ <https://www.legislation.gov.uk/ukpga/2023/29/contents>

⁸ <https://www.legislation.gov.uk/ukpga/2000/8/schedule/2>

Chapter 4

Summary of Statutory Instrument

4.1 This draft SI makes amendments to Part 1 of Schedule 3 to the RAO which changes the scope of the AAE. This will allow it to be defined either on the basis of a firm's ancillary activity or an annual threshold and will give the FCA a rule-making power to determine the new AAT and an annual threshold. It also makes consequential amendments to the RAO that relate to the FCA's new power to make rules.

Amendments to Schedule 3, Part 1 of the RAO

4.2 Article 2 of the draft SI inserts two new paragraphs (1A and 2A) into Schedule 3 to the RAO. Paragraph 1A sets out two options for accessing the exemption described in paragraph 1(k). The first of these is a test establishing when activity is considered ancillary to the main business of the group. The second is on the annual threshold, i.e. the level of trading that a firm performs in commodity derivatives, emissions allowances, and derivatives thereof each year. It therefore gives the FCA greater flexibility to design the new regime, including allowing for an annual threshold to be incorporated into the assessment of whether a firm can rely on the AAE.

4.3 Paragraph 2A enables the FCA to make rules specifying the criteria that will be used to determine when activities satisfy one of the two options set out in paragraph 1A. It therefore gives the FCA a rule-making power with respect to the AAT and an annual threshold.

4.4 Article 2 also substitutes the phrase "satisfies either condition in paragraph 1A and paragraph 2 applies" into paragraph 1(k) in place of "considered both individually". This creates a link between the bases for exemption set out in paragraph 1A and the AAE, which is contained in paragraph 1(k).

Consequential Amendments relating to the revocation of Commission Delegated Regulation (EU) 2017/592

4.5 Article 3 amends regulation 47 of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017⁹ to extend the FCA's ability to direct how, where applicable, information

⁹ <https://www.legislation.gov.uk/ukSI/2017/701/contents>

is provided to it by firms about their calculations relating to both ancillary activities and annual threshold cases.

4.6 Article 4 makes consequential amendments to the RAO that are necessitated by the FCA's new rule-making power. Specifically, it omits references to Commission Delegated Regulation (EU) 2017/592 from the RAO. This is because the FCA's rules will replace the criteria that were set out in this piece of assimilated law.

Chapter 5

How to respond to this consultation

Comment on this draft SI

5.1 As set out in chapter 2 above, the Treasury is seeking technical comments on this draft SI. Comments should be focused on any changes that need to be made to achieve the policy intent set out in chapter 3 of this note.

5.2 Any comments should be provided to Capital.Markets@hmtreasury.gov.uk by 28 August 2025.

Chapter 6

Next steps

- 6.1 The FCA has launched a consultation on the new rules it intends to make in relation to the AAT that will run until 28 August 2025.
- 6.2 Subject to feedback on the draft SI and parliamentary time allowing, the Treasury intends to lay this instrument before Parliament in Autumn 2025.
- 6.3 The Treasury intends to commence this SI before the FCA publishes its final rules.

Chapter 7

Further information

- 7.1 Read the [Wholesale Markets Review: Consultation Response](#)
- 7.2 Read the FCA's [CP 25/19: Ancillary Activities Test](#)

HM Treasury contacts

This document can be downloaded from www.gov.uk

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