

Title: The Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023 Other departments or agencies: N/A Contact for enquiries: Cassie McGoldrick	De minimis assessment
	Date: 06/02/2023
	Type of regulation: Domestic
	Date measure comes into force: 01/01/2025
Cost of Preferred (or more likely) Option Unquantified net savings to business	Equivalent Annual Net Direct Cost to Business per year Unquantified, but below £5m

<p>1. What is the problem under consideration? Why is government intervention necessary?</p> <p>Together with planned Financial Conduct Authority (FCA) changes, this instrument makes amendments to retained European Union (EU) legislation and related legislation to streamline the process for determining when firms who trade commodities as an ancillary activity need to be authorised as an investment firm. These small amendments intend to alleviate regulatory burdens on industry.</p>
<p>2. What are the policy objectives and the intended effects?</p> <p>Specific measures in this instrument remove certain exemptions from legislation to allow the FCA to simplify the process for determining when firms that trade commodity derivatives as an ancillary activity need to be authorised as an investment firm. They also remove a burdensome requirement for firms who trade commodity derivatives as an ancillary activity to submit annual notifications to the FCA to obtain an exemption from being authorised as an investment firm.</p>
<p>3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option</p> <p><u>Alternative 1: ‘preferred’ approach</u></p> <p>Together with planned FCA changes, this instrument aims to alleviate costly burdens on firms. Currently, to determine if the activities of a firm trading commodity derivatives are primarily for investment purposes or if they support the firm’s commercial business (and therefore do not need to be authorised as an investment firm), firms have to perform complex calculations and process substantial volumes of historical trading data, before notifying the FCA of the outcome of the assessment on an annual basis. Despite firms expending significant resources complying with the quantitative tests, since they were introduced in 2018 no firms have exceeded the threshold of speculative trading activity. Therefore, no unregulated firms have been required to obtain regulated status. This instrument will remove the need for firms to submit an annual notification to the FCA of their exemption from the position limits regime. The FCA will also simplify the calculations needed for firms to determine whether they are exempt or not.</p> <p><u>Alternative 2: do nothing / no legislative changes</u></p> <p>Revoking or amending these obligations requires a combination of legislative changes and FCA changes to the relevant requirements. If legislation is not put in place, firms will still be required to submit an annual notification of exemption to the FCA. Whilst the FCA would still be able to make simplifications to the calculations to determine whether a firm is exempt from the commodity</p>

derivatives position limits regime, the burdens and costs attached to the annual notification would still remain.

Detailed policy proposals:

The instrument removes the requirement set in legislation, for firms to inform the FCA of their exemption from the need to be authorised when trading commodity derivatives as an ancillary activity to their main commercial business. As a consequence of removing this obligation on firms, the FCA will publish guidance on how to determine firms engaged in commodity derivatives trading activities need to be authorised.

Maintaining this obligation as it currently stands would impose continuing costs on both firms and the FCA. Feedback from firms and trade associations suggests that the burden imposed on them by the current form of the ancillary activities test, particularly the annual notification requirement, imposes a significant cost in this area. The FCA has identified that the yearly cost of monitoring firms, as required by these obligations, is high as they need to maintain the system and face staff costs but they have been unable to provide us with an exact figure.

4. Please justify why the net impacts (i.e., net costs or benefits) to business will be less than £5 million a year.

In 2022, 147 firms notified the FCA that they had undertaken the ancillary activities test and were not in scope but not all firms notify the FCA. Therefore, we cannot provide a figure for all the firms that will be affected.

While we do not have a full monetised quantitative assessment of the impact of this measure, engagement that we have had with trade associations and the FCA suggest that the amendments made by this instrument will save firms money, as they will remove burdens and will not impose any additional requirements or administrative burdens on businesses. Firms are currently required to maintain complex systems to track data, carry out calculations and dispatch signed reports to the FCA to determine if they need to be authorised. We do not have specific figures on the potential savings to firms but savings are likely to come from two key areas: (1) the reduced staff time required by a simplified determination of commodity derivative activity and (2) the removal of the annual notification requirement which will reduce processes for both firms and the FCA.

Whilst we do not have full quantitative data about benefits (and, mindful of the costs to business of seeking further data, we have decided to not pursue this further), the industry has told us that they incur significant costs due to the complexity of the calculations and the need to notify the FCA on an annual basis. However, we believe that the cost to each of the 147 firms who notified the FCA last year is less than £34k each year, and hence the impact of this measure is below the £5m de minimis threshold.

We expect the principal cost to affected business to be familiarisation costs. Market participants likely to be impacted by these proposals include non-financial entities trading in commodity derivatives (for example, energy, food, metal and airline companies who use commodity markets to hedge risk but are not authorised persons) and firms performing advisory services (such as accountancy firms and law firms). It is not possible to estimate a figure for the familiarisation costs of all firms in this category based on the information available.



5. Please confirm whether your measure could be subject to call-in by BRE (Better Regulation Executive) under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

- a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**
No.
- b) **Disproportionate burdens on small businesses**
No.
- c) **Significant gross effects despite small net impacts**
No.
- d) **Significant wider social, environmental, financial or economic impacts**
No.
- e) **Significant novel or contentious elements**
No.

Sign-off for de minimis assessment: SCS

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of Securities and Markets Team

Signed: ***Tom Duggan***

Date: 06/02/2023

SCS of Better Regulation Unit

Signed: ***Linda Timson***

Date: 06/02/2023

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

(Name, Ministerial role)

Signed: ***Andrew Griffith, Economic Secretary to the Treasury***

Date: 06/02/2023