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The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

SCHEDULE 2

FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES AND ACTIVITIES

Article 3(1)

PART 1

~~SECTION C OF ANNEX I TO THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE~~

Financial instruments

1.

Transferable securities;

2.

Money-market instruments;

3.

Units in collective investment undertakings;

4.

Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

5.

Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (other than by reason of a default or other termination event);

6.

Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a [UK](#) regulated market, ~~an~~ [UK](#) MTF, or ~~an~~ [UK](#) OTF (as defined by Article 2(1)(13A), (14A) and (15A) respectively of the markets in financial instruments regulation), except for wholesale energy products traded on ~~an~~ [UK](#) OTF that must be physically settled;

7.

Option, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes or wholesale energy products traded on an EU OTF (as defined by Article 2(1)(15B) of the markets in financial instruments regulation) that must be physically settled, which have the characteristics of other derivative financial instruments;

8.

Derivative instruments for the transfer of credit risk;

9.

Financial contracts for differences;

10.

Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that 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, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a [UK](#) regulated market, [a UK](#) OTF, or ~~an~~ [UK](#) MTF (as defined by Article 2(1)(13A), (15A) and (14A) respectively of the markets in financial instruments regulation);

11.

Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

PART 2

ARTICLES 5 TO 8, 10 AND 11 OF THE COMMISSION REGULATION

Article 5

Wholesale energy products that must be physically settled

- (1) For the purposes of ~~Section C(6) of Annex I to Directive 2014/65/EU~~ [paragraphs 6 and 7 of Part 1 of Schedule 2 to this Order](#), a wholesale energy product must be physically settled where all the following conditions are satisfied:
- (a) it contains provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity; a balancing agreement with the Transmission System Operator in the area of electricity and gas shall be considered a proportionate arrangement where the parties to the agreement have to ensure physical delivery of electricity or gas.
 - (b) it establishes unconditional, unrestricted and enforceable obligations of the parties to the contract to deliver and take delivery of the underlying commodity;
 - (c) it does not allow either party to replace physical delivery with cash settlement;
 - (d) the obligations under the contract cannot be offset against obligations from other contracts between the parties concerned, without prejudice to the rights of the parties to the contract, to net their cash payment obligations.

For the purposes of point (d), operational netting in power and gas markets shall not be considered as offsetting of obligations under a contract against obligations from other contracts.

- (2) Operational netting shall be understood as any nomination of quantities of power and gas to be fed into a gridwork upon being so required by the rules or requests of a Transmission System Operator as defined in Article 2(4) of Directive 2009/72/EC of the European Parliament and of the Council for an entity performing an equivalent function to a Transmission System Operator at the national level. Any nomination of quantities based on operational netting shall not be at the discretion of the parties to the contract.

- (3) For the purposes of ~~Section C(6) of Annex I to Directive 2014/65/EU~~ [paragraphs 6 and 7 of Part 1 of Schedule 2 to this Order](#), force majeure shall include any exceptional event or a set of circumstances which are outside the control of the parties to the contract, which the parties to the contract could not have reasonably foreseen or avoided by the exercise of appropriate and reasonable due diligence and which prevent one or both parties to the contract from fulfilling their contractual obligations.
- (4) For the purposes of ~~Section C(6) of Annex I to Directive 2014/65/EU~~ [paragraphs 6 and 7 of Part 1 of Schedule 2 to this Order](#) bona fide inability to settle shall include any event or set of circumstances, not qualifying as force majeure as referred to in paragraph 3, which are objectively and expressly defined in the contract terms, for one or both parties to the contract, acting in good faith, not to fulfil their contractual obligations.
- (5) The existence of force majeure or bona fide inability to settle provisions shall not prevent a contract from being considered as ‘physically settled’ for the purposes of ~~Section C(6) of Annex I to Directive 2014/65/EU~~ [paragraphs 6 and 7 of Part 1 of Schedule 2 to this Order](#).
- (6) The existence of default clauses providing that a party is entitled to financial compensation in the case of non- or defective performance of the contract shall not prevent the contract from being considered as ‘physically settled’ within the meaning of ~~Section C(6) of Annex I to Directive 2014/65/EU~~ [paragraphs 6 and 7 of Part 1 of Schedule 2 to this Order](#).
- (7) The delivery methods for the contracts being considered as ‘physically settled’ within the meaning of ~~Section C(6) of Annex I to Directive 2014/65/EU~~ [paragraphs 6 and 7 of Part 1 of Schedule 2 to this Order](#) shall include at least:
 - (a) physical delivery of the relevant commodities themselves;
 - (b) delivery of a document giving rights of an ownership nature to the relevant commodities or the relevant quantity of the commodities concerned;
 - (c) other methods of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them including notification, scheduling or nomination to the operator of an energy supply network, that entitles the recipient to the relevant quantity of the goods.

Article 6

Energy derivative contracts relating to oil and coal and wholesale energy products

- (1) For the purposes of ~~Section C~~(paragraph 6) of ~~Annex I to Directive 2014/65/EU~~Part 1 of Schedule 2 to this Order, energy derivative contracts relating to oil shall be contracts with mineral oil, of any description and petroleum gases, whether in liquid or vapour form, including products, components and derivatives of oil and oil transport fuels, including those with biofuel additives, as an underlying.
- (2) For the purposes of ~~Section C~~(paragraph 6) of ~~Annex I to Directive 2014/65/EU~~Part 1 of Schedule 2 to this Order, energy derivative contracts relating to coal shall be contracts with coal, defined as a black or dark-brown combustible mineral substance consisting of carbonised vegetable matter, used as a fuel, as an underlying.
- (3) For the purposes of ~~Section C(6) of Annex I to Directive 2014/65/EU~~paragraphs 6 and 7 of Schedule 2 to this Order derivative contracts that have the characteristics of wholesale energy products as defined in Article 2(4) of Regulation (EU) 1227/2011 of the European Parliament and Council shall be derivatives with electricity or natural gas as an underlying, in accordance with points (b) and (d) of Article 2(4) of that Regulation.

Article 7

Other derivative financial instruments

- (1) For the purposes of ~~Section C~~(paragraph 7) of ~~Annex I to Directive 2014/65/EU~~Part 1 of Schedule 2 to this Order, a contract which is not a spot contract in accordance with paragraph 2 and which is not for commercial purposes as laid down in paragraph 4 shall be considered as having the characteristics of other derivative financial instruments where it satisfies the following conditions:
 - (a) it meets one of the following criteria:
 - (i) it is traded on a third country trading venue ~~that performs a similar function to~~which is a regulated market, an MTF or an OTF (as defined by Article 2(1)(13), (14) and (15) respectively of the markets in financial instruments regulation);
 - (ii) it is expressly stated to be traded on, or is subject to the rules of, a UK regulated market, ~~an~~ UK MTF, ~~an~~ UK OTF (as defined by Article 2(1)(13A), (14A) and (15A) respectively of the markets in financial instruments regulation); or such a third country trading venue;
 - (iii) it is equivalent to a contract traded on a UK regulated market, a UK MTF, ~~an~~ UK OTF or such a third country trading venue, with regards to the price, the lot, the delivery date and other contractual terms;
 - (b) it is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

- (2) A spot contract for the purposes of paragraph 1 shall be a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:
- (a) 2 trading days;
 - (b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period referred to in paragraph 2.

- (3) For the purposes of ~~Section C(10) of Annex I to Directive 2004/39/EU~~ [paragraph 10 of Part 1 of Schedule 2 to this Order](#), a derivative contract relating to an underlying referred to in that Section or in Article 8 of this Regulation shall be considered to have the characteristics of other derivative financial instruments where one of the following conditions is satisfied:
- (a) it is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;
 - (b) it is traded on a regulated market, an MTF, an OTF, ~~or a third country trading venue that performs a similar function to a regulated market, MTF or an OTF~~;
 - (c) the conditions laid down in paragraph 1 are satisfied in relation to that contract.
- (4) A contract shall be considered to be for commercial purposes for the purposes of ~~Section C(paragraph 7) of Annex I to Directive 2014/65/EU~~ [Part 1 of Schedule 2 to this Order](#), and as not having the characteristics of other derivative financial instruments for the purposes of ~~Sections C(paragraphs 7) and (10) of that Annex~~ [Part 1 of Schedule 2 to this Order](#), where the following conditions are both met:
- (a) it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network,
 - (b) it is necessary to keep in balance the supplies and uses of energy at a given time, including the case when the reserve capacity contracted by an electricity transmission system operator as defined in Article 2(4) of Directive 2009/72/EC is being transferred from one prequalified balancing service provider to another prequalified balancing service provider with the consent of the relevant transmission system operator.

Article 8

Derivatives under ~~Section C~~(paragraph 10) of ~~Annex I to Directive 2014/65/EU~~Part 1 of Schedule 2

In addition to derivative contracts expressly referred to in ~~Section C(10) of Annex I to Directive 2014/65/EU~~paragraph 10 of Part 1 of Schedule 2 to this Order, a derivative contract shall be subject to the provisions in that ~~Section~~Part where it meets the criteria set out in that ~~Section~~Part and in Article 7(3) of this Regulation and it relates to any of the following:

- (a) telecommunications bandwidth;
- (b) commodity storage capacity;
- (c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;
- (d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except if the contract is already with the scope of ~~Section C~~(paragraph 4) of ~~Annex I to Directive 2014/65/EU~~Part 1 of Schedule 2 to this Order;
- (e) a geological, environmental or other physical variable, except if the contract is relating to any ~~units recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council~~emission allowances referred to in paragraph 11 of Part 1 of Schedule 2 to this Order;
- (f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
- (g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;
- (h) an index or measure based on actuarial statistics.

Article 10

Characteristics of other derivative contracts relating to currencies

- (1) For the purposes of ~~Section C~~(paragraph 4) of ~~Annex I to Directive 2014/65/EU~~Part 1 of Schedule 2 to this Order, other derivative contracts relating to a currency shall not be a financial instrument where the contract is one of the following:
 - (a) a spot contract within the meaning of paragraph 2 of this Article,

- (b) a means of payment that:
 - (i) must be settled physically otherwise than by reason of a default or other termination event;
 - (ii) is entered into by at least a person which is not a financial counterparty within the meaning of Article 2(8) of Regulation (EU) No. 648/2012 of the European Parliament and of the Council;
 - (iii) is entered into in order to facilitate payment for identifiable goods, services or direct investment; and
 - (iv) is not traded on a trading venue.
- (2) A spot contract for the purposes of paragraph 1 shall be a contract for the exchange of one currency against another currency, under the terms of which delivery is scheduled to be made within the longer of the following periods:
 - (a) 2 trading days in respect of any pair of the major currencies set out in paragraph 3;
 - (b) for any pair of currencies where at least one currency is not a major currency, the longer of 2 trading days or the period generally accepted in the market for that currency pair as the standard delivery period;
 - (c) where the contract for the exchange of those currencies is used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, the period generally accepted in the market for the settlement of that transferable security or a unit in a collective investment undertaking as the standard delivery period or 5 trading days, whichever is shorter.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the currency is to be postponed and not to be performed within the period set out in the first subparagraph.

- (3) The major currencies for the purposes of paragraph 2 shall only include the US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish zloty and Romanian leu.
- (4) For the purposes of paragraph 2, a trading day shall mean any day of normal trading in the jurisdiction of both the currencies that are exchanged pursuant to the contract for the exchange of those currencies and in the jurisdiction of a third currency where any of the following conditions are met:
 - (a) the exchange of those currencies involves converting them through that third currency for the purposes of liquidity;

- (b) the standard delivery period for the exchange of those currencies references the jurisdiction of that third currency.

Article 11

Money-market instruments

(1) Money-market instruments ~~in accordance with Article 4(1)(17) of Directive 2014/65/EU~~, shall include treasury bills, certificates of deposits, commercial papers and other instruments with substantively equivalent features where they have the following characteristics:

- (a) they have a value that can be determined at any time;
- (b) they are not derivatives;
- (c) they have a maturity at issuance of 397 days or less.

(2) For the purposes of this Article, “money market instruments” means those classes of instruments which are normally dealt with on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

PART 3

SECTION A OF ANNEX I TO THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

Investment services and activities

1.

Reception and transmission of orders in relation to one or more financial instruments.

2.

Execution of orders on behalf of clients.

3.

Dealing on own account.

4.

Portfolio management.

5.

Investment advice.

6.

Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.

7.

Placing of financial instruments without a firm commitment basis.

8.

Operation of an MTF.

9.

Operation of an OTF.

PART 3A

ANCILLARY SERVICES

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash or collateral management and excluding providing and maintaining securities accounts at the top-tier level (“central maintenance service”) referred to in point (2) of Section A of the Annex to the Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories.
2. Granting credits or loans to an investor to allow the investor to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.
3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.
4. Foreign exchange services where these are connected to the provision of investment services.
5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.
6. Services relating to underwriting.
7. Investment services and activities included in Part 3 of this Schedule as well as ancillary services of the type included in this Part related to the underlying of the

derivatives included in paragraphs 5, 6, 7 or 10 of Part 1 of this Schedule where these are connected to the provision of investment or ancillary services.

PART 4

ARTICLE 9 OF THE COMMISSION REGULATION

Article 9

Investment advice

For the purposes of the ~~definition of ‘list of investment services and activities in Part 3 of this Schedule, ‘investment advice’ in Article 4(1)(4) of Directive 2014/65/EU’~~ means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments. For these purposes, a personal recommendation shall be considered a recommendation that is made to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor.

That recommendation shall be presented as suitable for that person, or shall be based on a consideration of the circumstances of that person, and shall constitute a recommendation to take one of the following sets of steps:

- (a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;
- (b) to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

A recommendation shall not be considered a personal recommendation if it is issued exclusively to the public.

PART 5

Interpretation

Any expression in this Schedule which is used in the markets in financial instruments regulation (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in the Regulation.

SCHEDULE 3

~~ARTICLE 2 OF THE MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND RELATED SUBORDINATE LEGISLATION~~

Article 3(1)

Exemptions from the definition of “investment firm”

PART 1

~~Article 2 of the Markets in Financial Instruments Directive~~

1. The following persons are excluded from the definition of “investment firm”—

- (a) the society incorporated by Lloyd’s Act 1871 known by the name of Lloyd’s;
- (b) an authorised person with a Part 4A permission to carry on the regulated activity of—
 - (i) effecting or carrying out contracts of insurance under article 10;
 - (ii) insurance risk transformation under article 13A;
 - (iii) managing the underwriting capacity of a Lloyd’s syndicate under article 57,

when carrying on those activities (and any other activities permitted by rules made by the FCA or the PRA under the Act);

~~Article 2~~

~~Exemptions~~

~~1. This Directive shall not apply to:~~

- ~~(a) insurance undertakings or undertakings carrying out the reinsurance and retrocession activities referred to in Directive 2009/138/EC when carrying out the activities referred to in that Directive;~~

- (c) ~~(b) persons~~ a person (“P”) providing investment services exclusively for ~~their P’s~~ parent undertakings, for ~~their P’s~~ subsidiaries or for other subsidiaries of ~~their P’s~~ parent undertakings;
- (d) ~~(e) persons~~ a person providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
- (e) ~~(d) persons~~ a person dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons: ==
- (i) are market makers;
 - (ii) are members of or participants in a regulated market or an MTF, on the one hand, or have direct electronic access to a trading venue, on the other hand, except for non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;
 - (iii) apply a ~~high frequency~~ high-frequency algorithmic trading technique; or
 - (iv) deal on own account when executing client orders;

~~Persons exempt under points (a), (i) or (j) are not required to meet the conditions laid down in this point in order to be exempt.~~

- (f) ~~(e) operators with~~ an operator (within the meaning of regulation 3(2) of the Greenhouse Gas Emissions Trading Scheme Regulations 2012), subject to compliance obligations under ~~Directive 2003/87/EC~~ those Regulations who, when dealing in emission allowances, ~~do~~ does not execute client orders and ~~who do~~ does not provide any investment services or perform any investment activities other than dealing on own account, provided that ~~those persons do~~ the operator does not apply a ~~high frequency~~ high-frequency algorithmic trading technique;
- (g) ~~(f) persons~~ a person providing investment services consisting exclusively in the administration of ~~employee participation~~ employee-participation schemes;
- (h) ~~(g) persons~~ a person (“P”) providing investment services which only involve both the administration of ~~employee participation~~ employee-participation schemes and the provision of investment services exclusively for ~~their P’s~~

parent undertakings, for ~~their~~P's subsidiaries or for other subsidiaries of ~~their~~P's parent undertakings;

~~(h) the members of the ESCB and other national bodies performing similar functions in the Union, other public bodies charged with or intervening in the management of the public debt in the Union and international financial institutions established by two or more Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems;~~

(i) the Treasury, the Bank of England and other public bodies charged with or intervening in the management of the public debt in the United Kingdom or members of the European System of Central Banks;

~~(j) a collective investment undertakings and pension funds whether coordinated at Union level or not and the depositaries and managers of such undertakings~~undertaking, pension fund or a depositary or manager of such an undertaking or fund;

~~(k) persons;~~a person ("P")—

(i) dealing on own account, including a market ~~makers~~maker, in commodity derivatives or emission allowances or derivatives thereof, excluding ~~persons~~a person who ~~deal~~deals on own account when executing client orders; or

(ii) providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of ~~their~~P's main business;

provided that:

~~in — for each of those cases~~case the activity in (i) or (ii), considered both individually and on an aggregate basis ~~this~~, is an ancillary activity to theirP's main business, when considered on a group basis, and ~~that main business is not the provision of investment services within the meaning of this Directive or banking activities under Directive 2013/36/EU, or acting as a market maker in relation to commodity derivatives,~~where paragraph 2 applies;

~~— those persons do not apply a high frequency algorithmic trading technique;~~
and

~~— those persons notify annually the relevant competent authority that they make use of this exemption and upon request report to the competent authority the basis on which they consider that their activity under points (i) and (ii) is ancillary to their main business;~~

(l) (k) persons providing a person who provides investment advice in the course of providing another professional activity ~~not covered by this Directive~~which

is not an investment service or activity provided that the provision of such advice is not specifically remunerated;

- (m) ~~(l)~~ associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;
- (n) ~~(m)~~ ² 'agenti di cambio' whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998;
- (o) ~~(n)~~ subject to paragraph 3, transmission system operators ~~as defined in~~ within the meaning of Article 2(4) of Directive 2009/72/EC ~~or~~ and Article 2(4) of Directive 2009/73/EC when carrying out their tasks under ~~those Directives~~ the law of the United Kingdom or part of the United Kingdom relied on by the United Kingdom immediately before exit day to implement Directive 2009/72/EC or 2009/73/EC, under Regulation (EC) No 714/2009, under Regulation (EC) No 715/2009 or under network codes or guidelines adopted pursuant to those Regulations, any persons acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations, and any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks~~;~~;
- (p) central securities depositories as defined in point (1) of Article 2(1) of Regulation (EU) 909/2014 on the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories, except as provided for in Article 73 of that Regulation.

2. This paragraph applies if—

- (a) P's main business is not—
 - (i) the provision of investment services;
 - (ii) 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
 - (iii) acting as a market-maker in relation to commodity derivatives;
- (b) P does not apply a high-frequency algorithmic trading technique; and
- (c) P notifies the FCA under regulation 47 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 that P makes use of this exemption and reports to the FCA, upon request, the basis on which P considers that P's activity under points (i) and (ii) is ancillary to P's main business.

3. The exemption in paragraph 1(p)—

(a) ~~That exemption shall apply to only~~ applies to the persons engaged in the activities set out in ~~this point only~~ that sub-paragraph where they perform investment activities or provide investment services relating to commodity derivatives in order to carry out those activities. ~~That exemption shall;~~

(b) does not apply with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights;

~~(c) CSDs except as provided for in Article 73 of Regulation (EU) No 909/2014 of the European Parliament and of the Council.~~

4. References in this Schedule to “regulated markets”, “MTFs” and “trading venues” are to “UK regulated markets”, “UK MTFs” and “UK trading venues” within the meaning of Article 2(1)(13A), (14A) and (16A) respectively of the markets in financial instruments regulation.

5. Any expression used in this Part of this Schedule which is used in the markets in financial instruments regulation (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in the regulation.

~~2. The rights conferred by this Directive shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the ESCB performing their tasks as provided for by the TFEU and by Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank or performing equivalent functions under national provisions.~~

~~3. The Commission shall adopt delegated acts in accordance with Article 89 to clarify for the purposes of point (e) of paragraph 1 when an activity is provided in an incidental manner.~~

~~4. ESMA shall develop draft regulatory technical standards to specify, for the purposes of point (j) of paragraph 1, the criteria for establishing when an activity is to be considered to be ancillary to the main business at a group level.~~

~~Those criteria shall take into account at least the following elements:~~

~~(a) the need for ancillary activities to constitute a minority of activities at a group level;~~

~~(b) the size of their trading activity compared to the overall market trading activity in that asset class.~~

~~In determining the extent to which ancillary activities constitute a minority of activities at a group level ESMA may determine that the capital employed for carrying out the ancillary activity relative to the capital employed for carrying out the main business is to be~~

~~considered. However, that factor shall in no case be sufficient to demonstrate that the activity is ancillary to the main business of the group.~~

~~The activities referred to in this paragraph shall be considered at a group level.~~

~~The elements referred to in the second and third subparagraphs shall exclude:~~

- ~~(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.~~

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

PART 2

ARTICLE 4 OF THE COMMISSION REGULATION

Article 4

Provision of investment service in an incidental manner

6. For the purpose of the exemption in ~~point (e) of Article 2~~(paragraph 1(d) of Directive 2014/65/EU, an investment service shall be deemed to be provided in an incidental manner in the course of a professional activity where the following conditions are satisfied:==

- (a) a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity;
- (b) the provision of investment services to the clients of the main professional activity does not aim to provide a systematic source of income to the person providing the professional activity; and

- (c) the ~~person~~persons providing the professional activity ~~does~~do not market or otherwise promote ~~his~~their ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.

Summary report:	
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Intelligent Table Comparison: Active	
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Move To	2
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Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
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