
MIFID II ANCILLARY ACTIVITY TEST: EU PUBLISHES DELEGATED ACT IN THE OFFICIAL JOURNAL

Whilst the reliance of those trading Wholesale Energy Products ["WEPs"] under the PERG C6 exemptions of MiFID2 remains; the Delegated Act relating to the changes to be made to the MIFID II Ancillary Activity Test relating to the "[Quick Fix](#)" has been published in [the Official Journal](#).

The test determines whether the Ancillary Activity Exemption found in MIFID II Article 2(1)j can be applied. The exemption is used by market participants engaged in Investment Services relating to commodity derivatives where the activity is ancillary to their main business (with many conditions) at a group level.

The new version of the test permits the use of one of three calculations:

- A "De minimis" test that examines whether in scope activity in derivatives is over 3bn EUR (in a similar but not identical manner to the EMIR clearing threshold calculation).
- A "trading test" which looks at the proportion of in scope group level activity within non-regulated entities has over 50% of non "risk reducing" positions
- A "capital test".

There is no longer a requirement to notify the National Competent Authority of the use of the test.

In the UK, the [Wholesale Markets Review](#), which closed recently, proposes to change the test for market participants based in the UK. The review proposes changing the test to a qualitative one.