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Additional Information

Level 1 Regulation
Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

Topic
Ancillary activity

Subject Matter
MiFID II Q&A on the Ancillary Activity Exemption

Question
Is the ancillary activity exemption under Article 2(1)(j)(ii) of MiFID II available to persons whose main business is the execution of client orders in physically settled wholesale energy products traded on an organised trading facility (C6 carve-out products)?

ESMA Answer

05-03-2024

Original language

<u>Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation</u>

No. The main business of a person seeking to operate under the ancillary activity exemption in accordance with Article 2(1)(j) of MiFID II must be a commercial activity based on, or involving, commodities. A person whose main business is the trading of C6 carve-out products is therefore not eligible to the ancillary activity exemption and cannot provide investment services in commodity derivatives, emission allowances or derivatives thereof to the clients of its main business without being authorised as an investment firm.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts