



– Consultation Response –

UK's Financial Conduct Authority consultation on the Ancillary Activities Test (CP25/19)

Brussels, 28 August 2025 | Europex welcomes the opportunity to respond to the UK's Financial Conduct Authority consultation on the Ancillary Activities Test (CP25/19).

Introduction

We broadly support the FCA's objective of creating a clearer and more workable regime and appreciate the constructive direction of the proposals.

While we set out more detailed comments in response to the consultation questions, we would like to highlight:

- **Exclusion of on-venue trading:** Transactions executed on UK trading venues should not count towards the annual threshold test. Including them would reduce UK market attractiveness, duplicate existing safeguards, and create divergence from international practice.
- **Reduction of uncertainty:** Both in the annual threshold design, threshold adjustments to inflation and the trading and capital-employed test, we urge for a most straightforward approach and to avoid creating any legal uncertainty.

Question 1: Do you agree with the approach outlined above to allow firms to choose one of the following tests: i) annual threshold test ii) trading test iii) capital employed test? If not, please explain why.

We support the FCA's proposal to allow firms to qualify under any one of the three tests - annual threshold, trading test, or capital-employed test. This flexibility is essential to reflect the diversity of business models across energy and commodity markets and ensures the regime remains proportionate.

Taken together, the choice between these three options ensures the framework can adapt to different company structures, avoids rigid compliance mechanisms, and prevents unnecessary regulatory burdens on non-financial market participants.

Question 2: Do you consider that trading conducted on a trading venue should be included in the annual threshold test? Please provide your rationale.

We do not believe that trading conducted on UK trading venues should be included in the annual threshold test.

From a regulatory perspective, exchange-traded activity is already subject to robust safeguards - margining, settlement, conduct rules, position limits, and reporting obligations - which effectively mitigate market abuse and systemic risk. Adding it to the threshold test would duplicate existing controls while introducing unnecessary complexity.

Finally, we note that international practice, including in the EU and US, explicitly excludes exchange-traded derivatives from comparable thresholds. A divergent UK approach would therefore create misalignment with global standards and reduce the attractiveness of UK markets.

In summary, excluding on-venue trading from the annual threshold test is the most consistent way to support UK competitiveness, maintain alignment with international practice, and uphold the FCA's simplification objective. It would also protect legitimate commercial trading activity, ensure coherence with broader regulatory frameworks, and encourage continued participation in UK markets.

Question 3: If the annual threshold test incorporates trading conducted on a trading venue, which option do you prefer from paragraph 3.37 and 3.38, approach 1 or 2? Further, do you agree with the level of the threshold proposed in respect of each option in paragraphs 3.52? If not, please explain why.

Approach 1 would be the preferred option, as it is considered the simpler of the two. However, this is only so if trading activity on UK trading venues is excluded from the calculation. As currently drafted, both options have significant drawbacks and would require amendment before they could work in practice.

In addition, further clarification is needed, in particular through a clear definition or list of "cash-settled" products to provide legal certainty.

Approach 2 also has a significant drawback and, as currently proposed, does not appear to be workable. It risks steering trading behaviour based on regulatory status rather than commercial logic. The additional complexity introduced by this difference in scope may disadvantage UK commodity market participants and may ultimately discourage international firms (e.g., operating via EU or US entities) from using UK markets, to the detriment of UK market liquidity and competitiveness.

Question 4: Regarding the annual threshold, do you agree with the following proposals:

- a. currency of the threshold and,**
- b. the methodology (outside of trades conducted on a UK trading venue) for calculating a firms net notional exposure?**

a. Currency of the threshold

We support the use of GBP as the reference currency.

b. Netting methodology

We support the FCA's proposed netting approach. It is a clear and workable method, already familiar to market participants, and avoids unnecessary complexity.

Question 5: Are there circumstances in which the annual threshold might need to be quickly amended, even with the inclusion of a reasonable risk margin (based on internal data analysis)? If yes, please explain.

We recognise that exceptional market events may occasionally trigger a need to review the annual threshold. However, the FCA already has the necessary powers to amend thresholds through its rule-making authority. We strongly welcome the stated intention to exercise this power via public consultation rather than automatic formulas. This approach ensures both stability and transparency while preserving flexibility to respond to genuine structural developments when needed.

Question 6: Should our rules include a mechanism that adjusts the annual threshold due to certain factors, such as inflation? If so, please suggest on what basis this could be achieved and how frequently reviews and updates might be needed.

We do not support the introduction of an automatic mechanism to adjust the annual threshold. A fixed monetary threshold, with the possibility of targeted review through transparent consultation, offers the most proportionate and effective approach. This ensures legal certainty and operational stability for firms, while preserving the FCA's flexibility to respond to genuine market developments when necessary.

About

Europex is a not-for-profit association of European energy exchanges with 37 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

Contact

Europex – Association of European Energy Exchanges

Address: Rue Archimède 44, 1000 Brussels, Belgium

Phone: +32 2 512 34 10

Website: www.europex.org

Email: secretariat@europex.org

X: @Europex_energy

EU Transparency Register: 50679663522-75