



8 April 2022

FIA response to the FCA's Quarterly Consultation Paper No 35

FIA welcomes the opportunity to provide feedback on the FCA Quarterly Consultation Paper No 35 ("QCP").

Response to Questions 2.1 and 2.2:

Overall, we support the proposals set out in Chapter 2 for the ancillary activities exemption and the suggested approach for dealing with the unavailability of recent regulator data for the market share test.

However, we have some concerns regarding the amendment of RTS 20, in particular Article 4 of the Annex in Appendix 3 of the QCP.

The QCP proposes to add the underlined wording:

"Article 4

Procedure for calculation

(1) The calculation of the size of the trading activities and capital referred to in Articles 2 and 3 shall be based on a simple average of the daily trading activities or estimated capital allocated to such trading activities, during three annual calculation periods that precede the date of calculation. The calculations shall be carried out annually in the first quarter of the calendar year that follows an annual calculation period. For the purposes of the derogation in article 3(2), the calculation of the size of trading activities may use information published by an EU institution or regulator for the last three annual calculation periods for which that information is available."

FIA Members agree with the added wording and paragraph 2.8 of the QCP, which states that *"firms may rely on the information published by an EU institution or regulator for the last 3 annual calculation periods for which that information is available. For the year 2022, for example, this will mean relying on the data available for the years 2018, 2019 and 2020."*

However, Article 4 now contains a discrepancy between the calculation periods used for the numerator and those for the denominator. For the numerator, a firm uses the three annual calculation periods preceding the date of calculation. For the year 2022, this would be data for 2019, 2020 and 2021.

Using different calculation periods for a firm's own trading size versus the EU and UK market size would not properly reflect a firm's market share during a period, especially if the numerator includes a period of extreme market volatility, such as 2021, but the denominator



does not. This discrepancy may result in a firm exceeding the threshold of the ancillary activities exemption, requiring authorisation as investment firm. Had the calculation periods been the same, the firm may have stayed within the threshold and would have been able to make use of the exemption.

Recommendation:

We recommend amending Article 4 so that both the numerator and the denominator use the same calculation periods, i.e. the three annual calculation periods for which ESMA data is still available.

We remain at FCA's disposal to discuss any elements of the response or to provide additional input as needed.

About FIA:

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA's mission is to:

- support open, transparent and competitive markets,
- protect and enhance the integrity of the financial system, and
- promote high standards of professional conduct.

As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.