

1. APPLICABLE LEGISLATION

CNMV has included in its Electronic Office (“Sede electronica”) a new service so that entities can submit notifications regarding the exemption, provided in Article 2.1.j) of MiFID II, from the obligation to have authorisation as an investment firm for entities that deal in commodity derivatives.

The aforementioned article establishes that MiFID II will not apply to persons:

- (i) dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof, excluding persons who deal 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 main business;

provided that:

- for each of those cases individually and on an aggregate basis this is an ancillary activity to their 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,
- 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;

This document establishes the notification procedure for entities that want to avail of this exemption (AA exemption notification) and the standard form, available on the CNMV website, which must be used.

2. REQUIREMENTS FOR USE OF THE SERVICE

CNMV has established, in the -Sede Electrónica, a service for the receipt of exemption notifications by ancillary activity. Access to this new service will require prior registration of the user in CNMV’s Sede Electrónica by following the steps set out below:

- Those requesting access to the service must complete an initial [form](#) by following the instructions and validations included in it. It will be necessary to provide an e-mail address that will be used for communications made in relation to the request. On the form it must be indicated whether the entity is registered for the CIFRADOC/CNMV service and, if so, the corresponding user by whom the notification is to be submitted must be entered, so that CNMV can enable the procedure for that user. At this stage of the procedure it is not necessary to attach any documentation.

- After completing the form properly, the user will have to enter a security code (CAPTCHA-type), and then submit the form through CNMV's Sede Electrónica.
- If all the data entered are correct, the notifying entity will receive by e-mail a "validation code" which must be entered on the subsequent form. Conversely, if on this first screen there is a problem (the user has not filled in an obligatory field or has completed a field incorrectly – e.g. the field format) the registration will be rejected and access will have to be requested once again.
- After entering the validation code, CNMV will receive the user's registration and carry out the checks regarding the identity (entity, contact person, contact phone number and corporate e-mail address) of the person who has registered on the previous screen. This verification will usually be carried out by phone.
- If the verification is satisfactory, the notifying entity will receive an e-mail in which it will be informed of its registration on the system. The procedure will be enabled if the entity is registered for CIFRADO/CNMV or, if it is not, it will be assigned access credentials (a username and password), which must be used later to submit the AA exemption notification form.

3. RECEIPT BY CNMV OF AA EXEMPTION NOTIFICATIONS THROUGH THE ELECTRONIC OFFICE

To submit AA notifications it will be necessary to access a second form through the Sede Electrónica, in the "Zona CIFRADO", by entering the appropriate details in "[Log in with](#)":

- Electronic certificate, if the entity is registered for the CIFRADO/CNMV service, in which case it will be accessible in the list of procedures.
- Username and password, if the entity has been registered correctly and has received the credentials by e-mail (username and password), as explained in the previous point.

On this form, most of the fields will be previously filled in, based on the data collected upon the entity's registration and will be displayed on the screen, not being possible to modify them. The only field to be filled in will be the year for which the exemption is being notified.

The AA exemption notification must be accompanied by a letter from the management board that certifies that the entity has decided to make use of the AA exemption and has designated the person identified as the contact person in the first form to carry out the procedures online before CNMV. This certification must be specific to the corresponding year. To attach this certification, the "Browse" option shall be used.

If the checks carried out by CNMV are satisfactory, the entity will receive a confirmation e-mail and the Register Entry number assigned by CNMV to that Notification.

If the Notification does not pass the checks, the entity will receive an e-mail explaining the reasons for the rejection. In this case, the Notification will be considered as not having been received and must be completed again.

Once the confirmation is received, the entity may avail of the exemption.