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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**EXITING THE EUROPEAN UNION**

**FINANCIAL SERVICES**

**The Markets in Financial Instruments (Amendment) (EU Exit)  
Regulations 2018**

*Made* - - - - - *\*\*\**

*Coming into force in accordance with regulation 1(2) and (3)*

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The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(c), make the following Regulations.

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraph 1 of Schedule 7 to the European Union (Withdrawal) Act 2018.

## PART 1

### General

#### Citation and commencement

**1.—(1)** These Regulations may be cited as the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

**(2)** This regulation, regulations 2, 3, 15(5), for the purpose only of inserting regulation 47B into the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(d), and regulation 20 come into force on the day after the day on which these Regulations are made.

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(a) S.I. 2012/1759.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183). Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006. The European Communities Act 1972 is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

(c) 2018 c.16.

(d) S.I. 2017/701.

(3) The other provisions in these Regulations come into force on exit day.

## PART 2

Amendment of secondary legislation: European Communities Act 1972

### **The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017**

2. After regulation 2 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, insert—

#### **“References to EU Regulations etc**

**2A.** Any reference in these Regulations to any EU Regulation, EU decision or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation, EU decision or EU tertiary legislation as it has effect on the day on which the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 are made.”

### **The Data Reporting Services Regulations 2017**

3. After regulation 2 of the Data Reporting Services Regulations 2017(a), insert—

#### **“References to EU Regulations etc**

**2A.** Any reference in these Regulations to any EU Regulation, EU decision or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation, EU decision or EU tertiary legislation as it has effect on the day on which the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 are made.”

## PART 3

Amendment of secondary legislation: European Union (Withdrawal) Act 2018

### CHAPTER 1

#### The Regulated Activities Order

### **Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001**

4.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b) is amended as follows.

(2) For the heading to Schedule 2, substitute “Financial Instruments and Investment services and activities”.

(3) In Part 1 of Schedule 2—

(a) omit the heading “Section C of Annex 1 to the Markets in Financial Instruments Directive”;

(b) in paragraph 6(c)—

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(a) S.I. 2017/699.

(b) S.I. 2001/544.

(c) Paragraph 6 was substituted (with the rest of Schedule 2) by S.I. 2006/3384, and further amended by S.I. 2017/488.

- (i) for “regulated market, an MTF or an OTF” substitute “UK regulated market, a UK MTF or a UK OTF (as defined by Article 2(1)(13A), (14A) and (15A) respectively of the markets in financial instruments regulation)”;
  - (ii) for “traded on an OTF” substitute “traded on a UK OTF”;
  - (c) in paragraph 7(a), after “commercial purposes” insert “or wholesale energy products traded on an EU OTF (as defined by Article 2(1)(15B) of the markets in financial instruments regulation)”;
  - (d) in paragraph 10, for “regulated market, OTF, or an MTF” substitute “a UK regulated market, a UK OTF, or a UK MTF (as defined by Article 2(1)(13A), (15A) and (14A) respectively of the markets in financial instruments regulation)”.
- (4) In Part 2 of Schedule 2(b)—
- (a) in Article 5—
    - (i) in the opening words of paragraph 1, for “Section C(6) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 6 of Part 1 of Schedule 2 to this Order”;
    - (ii) in paragraphs 3, 4, 5, 6 and 7, for “Section C(6) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 6 of Part 1 of Schedule 2 to this Order”;
  - (b) in Article 6, in paragraphs, 1, 2 and 3 for “Section C(6) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 6 of Part 1 of Schedule 2 to this Order”;
  - (c) in Article 7—
    - (i) in paragraph 1—
      - (aa) in the opening words, for “Section C(7) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 7 of Part 1 of Schedule 2 to this Order”;
      - (bb) for sub-paragraph (a)(i), substitute—
        - “(i) it is traded on a third country trading venue which is a regulated market, an MTF or an OTF (as defined by Article 2(1)(13), (14) and (15) respectively of the markets in financial instruments regulation);”;
      - (cc) in sub-paragraph (a)(ii), for “a regulated market, an MTF, an OTF”, substitute “a UK regulated market, a UK MTF, a UK OTF (as defined by Article 2(1)(13A), (14A) and (15A) respectively of the markets in financial instruments regulation);”;
      - (dd) in sub-paragraph (a)(iii), for “a regulated market, MTF, an OTF”, substitute “a UK regulated market, a UK MTF, a UK OTF”;
    - (ii) in paragraph 3—
      - (aa) in the opening words, for “Section C(10) of Annex 1 to Directive 2004/39/EC” substitute “paragraph 10 of Part 1 of Schedule 2 to this Order”;
      - (bb) in sub-paragraph (b), omit the words from “, or a third country” to the end of the sub-paragraph;
    - (iii) in paragraph 4, in the opening words—
      - (aa) for “Section C(7) of Annex I to Directive 2014/65/EU” substitute “paragraph 7 of Part 1 of Schedule 2 to this Order”;
      - (bb) for “Sections C(7) and (10) of that Annex” substitute “paragraphs 7 and 10 of Part 1 of Schedule 2 to this Order”;
    - (iv) in paragraph 4, in point (b), for “Article 2(4) of Directive 2009/72/EC” substitute “Article 5(8)”;
  - (d) in Article 8—

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(a) Paragraph 7 was substituted (with the rest of Schedule 2) by S.I. 2006/3384, and further amended by S.I. 2017/488.

(b) Part 2 of Schedule 2 was substituted by S.I. 2006/3384 and then by S.I. 2017/488.

- (i) in the heading, for “Section C(10) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 10 of Part 1 of Schedule 2”;
- (ii) in the opening words—
  - (aa) for “Section C(10) of Annex I to Directive 2014/65/EU” substitute “paragraph 10 of Part 1 of Schedule 2 to this Order”;
  - (bb) for “that Section”, both times it appears, substitute “that Part”;
- (iii) in point (d), for “Section C(4) of Annex I to Directive 2014/65/EU” substitute “paragraph 4 of Part 1 of Schedule 2 to this Order”;
- (iv) in point (e), for “units recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council” substitute “emission allowances referred to in paragraph 11 of Part 1 of Schedule 2 to this Order”;
- (e) in Article 10, in paragraph 1, for “Section C(4) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 4 of Part 1 of Schedule 2 to this Order”;
- (f) in Article 11—
  - (i) renumber the existing paragraph as paragraph 1;
  - (ii) in paragraph 1, as renumbered, omit “in accordance with Article 4(1)(17) of Directive 2014/65/EU,”;
  - (iii) after paragraph 1, insert—
 

“(2) For the purposes of this Article, “money market instruments” means those classes of instruments which are normally dealt with on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.”
- (5) After Part 3 of Schedule 2, insert—

## “PART 3A

### ANCILLARY SERVICES

**1.** Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash or collateral management and excluding providing and maintaining securities accounts at the top-tier level (“central maintenance service”) referred to in point (2) of Section A of the Annex to the Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories.

**2.** Granting credits or loans to an investor to allow the investor to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.

**3.** Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.

**4.** Foreign exchange services where these are connected to the provision of investment services.

**5.** Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.

**6.** Services relating to underwriting.

**7.** Investment services and activities included in Part 3 of this Schedule as well as ancillary services of the type included in this Part related to the underlying of the derivatives included in paragraphs 5, 6, 7 or 10 of Part 1 of this Schedule where these are connected to the provision of investment or ancillary services.”.

(6) In Part 4 of Schedule 2, in the opening paragraph, for the words from the beginning to “Directive 2014/65/EU”, substitute “For the purposes of the list of investment services and activities in Part 3 of this Schedule, “investment advice” means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments. For these purposes”.

(7) After Article 9, insert—

## “PART 5

### Interpretation

Any expression in this Schedule which is used in the markets in financial instruments regulation (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in the Regulation.”.

(8) For Schedule 3, substitute—

## “SCHEDULE 3

Article 3(1)

### Exemptions from the definition of “investment firm”

#### PART 1

1. The following persons are excluded from the definition of “investment firm”—
  - (a) the society incorporated by Lloyd’s Act 1871<sup>(a)</sup> known by the name of Lloyd’s;
  - (b) an authorised person with a Part 4A permission to carry on the regulated activity of—
    - (i) effecting or carrying out contracts of insurance under article 10;
    - (ii) insurance risk transformation under article 13A;
    - (iii) managing the underwriting capacity of a Lloyd’s syndicate under article 57, when carrying on those activities (and any other activities permitted by rules made by the FCA or the PRA under the Act);
  - (c) a person (“P”) providing investment services exclusively for P’s parent undertakings, for P’s subsidiaries or for other subsidiaries of P’s parent undertakings;
  - (d) a person providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
  - (e) a person dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons—
    - (i) are market makers;
    - (ii) are members of or participants in a regulated market or an MTF, on the one hand, or have direct electronic access to a trading venue, on the other hand, except for non-financial entities who execute transactions on a trading venue

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(a) 1871 c.xxi

which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;

- (iii) apply a high-frequency algorithmic trading technique; or
- (iv) deal on own account when executing client orders;
- (f) an operator (within the meaning of regulation 3(2) of the Greenhouse Gas Emissions Trading Scheme Regulations 2012(a)), subject to compliance obligations under those Regulations who, when dealing in emission allowances, does not execute client orders and does not provide any investment services or perform any investment activities other than dealing on own account, provided that the operator does not apply a high-frequency algorithmic trading technique;
- (g) a person providing investment services consisting exclusively in the administration of employee-participation schemes;
- (h) a person (“P”) providing investment services which only involve both the administration of employee-participation schemes and the provision of investment services exclusively for P’s parent undertakings, for P’s subsidiaries or for other subsidiaries of P’s parent undertakings;
- (i) the Treasury, the Bank of England and other public bodies charged with or intervening in the management of the public debt in the United Kingdom or members of the European System of Central Banks;
- (j) a collective investment undertaking, pension fund or a depositary or manager of such an undertaking or fund;
- (k) a person (“P”)—
  - (i) dealing on own account, including a market maker, in commodity derivatives or emission allowances or derivatives thereof, excluding a person who deals 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 P’s main business,provided that in each case the activity in (i) or (ii), considered both individually and on an aggregate basis, is an ancillary activity to P’s main business, when considered on a group basis, and where paragraph 2 applies;
- (l) a person who provides investment advice in the course of providing another professional activity which is not an investment service or activity provided that the provision of such advice is not specifically remunerated;
- (m) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;
- (n) agenti di cambio whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998;
- (o) subject to paragraph 3, transmission system operators within the meaning of Article 2(4) of Directive 2009/72/EC and Article 2(4) of Directive 2009/73/EC when carrying out their tasks under the law of the United Kingdom or part of the United Kingdom relied on by the United Kingdom immediately before exit day to implement Directive 2009/72/EC or 2009/73/EC, under Regulation (EC) No 714/2009, under Regulation (EC) No 715/2009 or under network codes or guidelines adopted pursuant to those Regulations, any persons acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations, and any operator or administrator of an energy balancing mechanism, pipeline network or

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(a) S.I. 2012/3038.



system to keep in balance the supplies and uses of energy when carrying out such tasks;

- (p) central securities depositories as defined in point (1) of Article 2(1) of Regulation (EU) 909/2014 on the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories, except as provided for in Article 73 of that Regulation.

**2.** This paragraph applies if—

- (a) P's main business is not—
  - (i) the provision of investment services;
  - (ii) banking activities requiring permission under Part 4A of the Act (or banking activities which would require such permission if they were carried on in the United Kingdom); or
  - (iii) acting as a market-maker in relation to commodity derivatives;
- (b) P does not apply a high-frequency algorithmic trading technique; and
- (c) P notifies the FCA under regulation 47 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 that P makes use of this exemption and reports to the FCA, upon request, the basis on which P considers that P's activity under points (i) and (ii) is ancillary to P's main business.

**3.** The exemption in paragraph 1(p)—

- (a) only applies to the persons engaged in the activities set out in that sub-paragraph where they perform investment activities or provide investment services relating to commodity derivatives in order to carry out those activities;
- (b) does not apply with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights.

**4.** References in this Schedule to “regulated markets”, “MTFs” and “trading venues” are to “UK regulated markets”, “UK MTFs” and “UK trading venues” within the meaning of Article 2(1)(13A), (14A) and (16A) respectively of the markets in financial instruments regulation.

**5.** Any expression used in this Part of this Schedule which is used in the markets in financial instruments regulation (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in the regulation.

## PART 2

### Provision of investment service in an incidental manner

**6.** For the purpose of the exemption in paragraph 1(e), an investment service shall be deemed to be provided in an incidental manner in the course of a professional activity where the following conditions are satisfied—

- (a) a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity;
- (b) the provision of investment services to the clients of the main professional activity does not aim to provide a systematic source of income to the person providing the professional activity; and
- (c) the persons providing the professional activity do not market or otherwise promote their ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.”.

## CHAPTER 2

### The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

#### **The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017**

5. The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(a) are amended in accordance with this Chapter.

#### **Introductory provisions**

6. In regulation 1—

- (a) in paragraph (2)(a), omit paragraph (v);
- (b) in paragraph (3)(b)(i), at the beginning insert “any United Kingdom legislation which was relied on by the United Kingdom before exit day to implement”.

#### **Interpretation**

7.—(1) In regulation 2(1)—

- (a) for the definition of “algorithmic trading”, substitute—

““algorithmic trading” means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;”
- (b) for the definition of “ancillary services”, substitute—

““ancillary services” means any of the services and activities listed in Part 3A of Schedule 2 to the Regulated Activities Order;”
- (c) insert after the definition of “ancillary services”—

““appropriate regulator” has the meaning given in section 55A of the Act;”
- (d) in the definition of “branch”, for “Article 4.1.30 (definitions) of the markets in financial instruments directive”, substitute “Article 2.1.20 of the markets in financial instruments regulation”;
- (e) in the definition of “client” for “Article 4.1.9 of the markets in financial instruments directive”, substitute “Article 2.1.7 of the markets in financial instruments regulation”;
- (f) in the definition of “commodity derivative” for “Article 4.1.50 of the markets in financial instruments directive”, substitute “Article 2.1.30 of the markets in financial instruments regulation”;
- (g) for the definition of “competent authority”, substitute—

““competent authority” means the authority designated by regulation 3;”
- (h) in the definition of “credit institution” for “Article 4.1.27 of the markets in financial instruments directive”, substitute “Article 2.1.19 of the markets in financial instruments regulation”;
- (i) for the definition of “derivative”, substitute—

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(a) S.I. 2017/701.

- ““derivative” means a financial instrument referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order;”;
- (j) for the definition of “direct electronic access” substitute—
- ““direct electronic access” means an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access);”
- (k) in the definition of “emission allowance” for “point (11) of Section C of Annex 1 of the markets in financial instruments directive”, substitute “paragraph 11 of Part 1 of Schedule 2 to the Regulated Activities Order”;
- (l) omit the definition of “ESMA”;
- (m) for the definition of “financial instrument”, substitute—
- ““financial instrument” means those instruments specified in Part 1 of Schedule 2 to the Regulated Activities Order, read with Part 2 of that Schedule;”;
- (n) after the definition of “financial instrument”, insert—
- ““high-frequency algorithmic trading technique” means an algorithmic trading technique characterised by—
- (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry—
- (i) co-location;
- (ii) proximity hosting; or
- (iii) high-speed direct electronic access;
- (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and
- (c) high message intraday rates which constitute orders, quotes or cancellations;”;
- (o) in the definition of “investment activity”, for “Section A of Annex 1 of the markets in financial instruments directive”, substitute “Part 3 of Schedule 2 to the Regulated Activities Order”;
- (p) in the definition of “investment firm”, for “Article 4.1.1 of the markets in financial instruments directive”, substitute “Article 2.1A of the markets in financial instruments regulation”;
- (q) in the definition of “investment service”, for “Section A of Annex 1 of the markets in financial instruments directive”, substitute “Part 3 of Schedule 2 to the Regulated Activities Order”;
- (r) in the definition of “investment services and activities” for “Section A of Annex 1 of the markets in financial instruments directive”, substitute “Part 3 of Schedule 2 to the Regulated Activities Order”;
- (s) for the definition of “multilateral trading facility”, substitute—
- ““multilateral trading facility” or “MTF”, “UK multilateral trading facility” and “EU multilateral trading facility” have the meanings given in Article 2.1.14, 2.1.14A and 2.1.14B respectively of the markets in financial instruments regulation;”;
- (t) after the definition of “regulated activity” insert—
- ““Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a);

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(a) S.I. 2001/544.

“Regulation (EU) 2017/578” means Commission Delegated Regulation (EU) 2017/578 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes;

“Regulation (EU) 2017/589” means Commission Delegated Regulation (EU) 2017/589 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading;

“Regulation (EU) 2017/591” means Commission Delegated Regulation (EU) 2017/591 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives;

“SME growth market” means a MTF that is registered as an SME growth market in accordance with Part 5.10 of the Market Conduct sourcebook containing rules made by the FCA under the Act;”;

(u) for the definition of “regulated market” substitute—

““regulated market”, “UK regulated market” and “EU regulated market” have the meanings given in Article 2.1.13, 2.1.13A and 2.1.13B respectively of the markets in financial instruments regulation;”

(v) for the definition of “trading venue”, substitute—

““trading venue”, “UK trading venue” and “EU trading venue” have the meanings given in Article 2.1.16, 2.1.16A and 2.1.16B respectively of the markets in financial instruments regulation;”.

(2) After paragraph (2) of regulation 2, insert—

“(3) Unless the context otherwise requires, all references in these Regulations to—

- (a) a trading venue are to a UK trading venue;
- (b) a regulated market are to a UK regulated market;
- (c) an MTF are to a UK MTF;
- (d) an OTF are to a UK OTF; and
- (e) an EU regulated market, EU MTF or EU OTF include EU regulated markets, MTFs and OTFs in EEA countries.

(4) References in these Regulations to a “third country” (including in expressions including the words “third country”) are, except where the context otherwise requires, to be read as references to a country other than the United Kingdom.

(5) Any reference in these Regulations to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under the Act, as the sourcebook has effect on exit day.”

(3) In regulation 3—

(a) for paragraph (1), substitute—

“(1) The FCA is designated to carry out all the functions of a competent authority provided for in—

- (a) the Act;
- (b) the markets in financial instruments regulation; and
- (c) rules made under section 137A (the FCA general rules) of the Act or any other subordinate legislation conferring functions on the FCA made under the Act.”;

(b) in paragraph (2)(b), omit “and Schedule 3 to the Act”;

(c) in paragraph (4)—

- (i) at the end of sub-paragraph (d), insert “and”;
- (ii) omit sub-paragraph (e).

## Exempt and third country investment firms

- 8.—(1) Omit regulation 5.
- (2) In regulation 6—
- (a) in paragraph (3)(c)—
- (i) for paragraph (i), substitute—
- “(i) an investment firm which—
- (aa) has a Part 4A permission to carry on regulated activities relating to investment services and activities; or
- (bb) is authorised in accordance with the markets in financial instruments directive;”;
- (ii) for paragraph (ii), substitute—
- “(ii) a credit institution which—
- (aa) has a Part 4A permission to carry on the regulated activity of accepting deposits and falls within paragraph (3A); or
- (bb) is authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and investment firms;”;
- (iii) in paragraph (iv), after “the law of” insert “the United Kingdom or of”;
- (iv) in paragraph (v), after “dealt in on” insert “ a UK regulated market or”;
- (b) after paragraph (3), insert—
- “(3A) A credit institution falls within this paragraph if—
- (a) it has its head office in the United Kingdom; and
- (b) it is not a credit union within the meaning of the Credit Unions Act 1979<sup>(a)</sup> or the Credit Unions (Northern Ireland) Order 1985<sup>(b)</sup>, or a friendly society within the meaning of section 417(1) of the Act.”;
- (c) for paragraph (4), substitute—
- “(4) In paragraph (3), “investment company with fixed capital” means a company—
- (a) the exclusive object of which is to invest its funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving its shareholders the benefit of the results of the management of their assets; and
- (b) which offers its own shares for subscription by the public.”;
- (d) omit paragraph (5).
- (3) In regulation 8, for the words after paragraph (b) substitute—
- “but to whom the appropriate regulator has granted exemption from authorisation and operating conditions which usually apply to investment firms.”.
- (4) Omit regulations 9 and 10.
- (5) In regulation 11—
- (a) in the heading, for “ESMA” substitute “the FCA”;
- (b) renumber the existing paragraph as paragraph (1);
- (c) in paragraph (1) as renumbered, for “ESMA” substitute “the FCA”;
- (d) after paragraph (1) insert—
- “(2) For the purposes of this regulation, third country firms which are included on the register with ESMA immediately before exit day under Article 46.2 of the markets in

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(a) 1979 c.34.

(b) 1985 No.1205 (N.I. 12)

financial instruments regulation are to be treated after exit day as being registered with the FCA.”.

- (6) In regulation 12—
- (a) in the heading, for “ESMA” substitute “the FCA”;
  - (b) in paragraph (1)—
    - (i) in the opening words, for “with ESMA” substitute “with it”;
    - (ii) for sub-paragraph (b)(ii), substitute—
      - “(ii) on the basis of which—
      - (aa) the Commission has adopted a decision in relation to the country under paragraph 1 of Article 47 of the markets in financial instruments regulation before exit day; or
      - (bb) the Treasury have made regulations in relation to the country under that paragraph after exit day;”
  - (c) in paragraph (2)—
    - (i) for “as it does” substitute “as it applied”;
    - (ii) after the second reference to “FCA” insert “before exit day”;
  - (d) in paragraph (3)—
    - (i) in the opening words, for “with ESMA” substitute “with it”;
    - (ii) omit sub-paragraph (a);
  - (e) in paragraph (4)—
    - (i) in sub-paragraph (a)—
      - (aa) for “notices” substitute “notice”;
      - (bb) at the end, insert “and”;
    - (ii) omit sub-paragraph (c) and (d);
  - (f) omit paragraphs (5) and (6).
- (7) In regulation 14—
- (a) in paragraph (2)—
    - (i) in sub-paragraph (a)—
      - (aa) for “ESMA” substitute “the FCA”;
      - (bb) at the end, insert “or”;
    - (ii) in sub-paragraph (b), at the end, omit “or”;
    - (iii) omit sub-paragraph (c);
  - (b) in paragraph (3)(b)(i), for “decision” substitute “determination”;
  - (c) in paragraph (4)—
    - (i) for sub-paragraph (a), substitute—
      - “(a) “equivalence determination” means—
      - (i) a decision adopted by the Commission in relation to a country under paragraph 1 of Article 47 of the markets in financial instruments regulation before exit day which has not been withdrawn by a subsequent decision adopted by the Commission under that Article before exit day; or
      - (ii) regulations made by the Treasury in relation to a country under that paragraph after exit day which have not subsequently been revoked;”;
    - (ii) for sub-paragraph (b), substitute—
      - “(b) a country is subject to an equivalence determination if a period of more than three years has elapsed since—

- (i) the adoption of the decision by the Commission, beginning on the day after the date of the adoption of the decision; or
  - (ii) the making of the regulations by the Treasury, beginning on the day after the day on which the regulations were made;”.
- (8) In regulation 15—
  - (a) in the definition of “clients considered to be professionals”—
    - (i) for “Article 4.1.10 of the markets in financial instruments directive” substitute “Article 2(1)(8) of the markets in financial instruments regulation”;
    - (ii) for “Section I of Annex II to the directive” substitute “Part 2 of Schedule 1 to that regulation”;
  - (b) for the definition of “power of intervention”, substitute—
    - ““power of intervention” means the power of the regulator to impose any requirement in relation to the firm in respect of which the power is exercisable which the regulator could impose if—
    - (a) the firm’s permission was a Part 4A permission, within the meaning of the Act; and
    - (b) the regulator was entitled to exercise its power under section 55L(3) or 55M(3) of the Act;”;
  - (c) in the definition of “third country firm”, for “Article 4.1.57 of the markets in financial instruments directive” substitute “Article 2.1.42 of the markets in financial instruments regulation”;
  - (d) in the definition of “third country firm registered with ESMA”, for “ESMA” both times it appears, substitute “the FCA”;
  - (e) omit the definition of “third country firm with an EEA branch”.
- (9) In regulation 16(5)—
  - (a) for the definition of “group”, substitute—
    - ““group” means a parent undertaking and all its subsidiary undertakings, and for these purposes, “parent undertaking” and “subsidiary undertaking” have the same meanings as in section 420 of the Act;”
  - (b) in the definition of “the relevant methods”, for the words from “regulatory technical standards” to the end, substitute “Article 4 of Regulation (EU) 2017/591.”.
- (10) In regulation 17(5)—
  - (a) in the definition of “the relevant criteria and methods” for the words from “regulatory technical standards” to the end, substitute “Article 7 of Regulation (EU) 2017/591; and”;
  - (b) in the definition of “the relevant procedure” for the words from “regulatory technical standards” to the end, substitute “Article 8 of Regulation (EU) 2017/591.”.
- (11) In regulation 19—
  - (a) in the heading, for “ESMA methodology” substitute “Regulation (EU) 2017/591”
  - (b) in paragraph (1), for “the ESMA methodology” substitute “Regulation (EU) 2017/591”.
- (12) Omit regulations 20 to 22 and 24.
- (13) In regulation 25—
  - (a) in paragraph (1), for “the ESMA methodology mentioned in regulation 19(1) (“a more restrictive position limit”)” substitute “Regulation (EU) 2017/591”;
  - (b) omit paragraphs (5) to (7).
- (14) In regulation 26—
  - (a) in the heading, omit “or other competent authorities in the EEA”;
  - (b) omit paragraph (2).

- (15) In regulation 28—
- (a) in paragraph (1), for “the markets in financial instruments directive” substitute “these Regulations”;
  - (b) in paragraph (2), omit “or an EEA position limit relating to the commodity derivative”.
- (16) Omit regulation 28A.
- (17) In regulation 29—
- (a) in paragraph (1), for the words from “regulatory technical standards” to the end of the paragraph, substitute “Article 6 of Regulation (EU) 2017/591.”;
  - (b) in paragraph (2)—
    - (i) omit the definition of “EEA position limit”;
    - (ii) omit the definition of “the ESMA methodology”;
    - (iii) in the definition of “position” for the words from “regulatory technical standards” to the end of the definition, substitute “Articles 3 and 4 of Regulation (EU) 2017/591.”;
    - (iv) in the definition of “significant volumes”(a) for the words from “regulatory technical standards” to the end of the definition, substitute “Article 5 of Regulation (EU) 2017/591”.

### **Algorithmic trading**

**9.**—(1) Regulation 30 is amended as follows.

(2) In paragraph (1)—

- (a) in paragraph (a), for “M’s home Member State is” substitute “M is established in”;
- (b) for sub-paragraph (b), substitute—
  - “(b) M falls within paragraph (1A); and”;
- (c) in sub-paragraph (c), for “for the purposes of the directive” substitute “to carry on a regulated activity which is any of the investment services and activities”.

(3) After paragraph (1), insert—

“(1A) M falls within this paragraph if M is—

- (a) the society incorporated by Lloyd’s Act 1871(b) known by the name of Lloyd’s;
- (b) an authorised person with a Part 4A permission to carry on the regulated activity of—
  - (i) effecting or carrying out contracts of insurance under article 10 of the Regulated Activities Order;
  - (ii) insurance risk transformation under article 13A of the Regulated Activities Order;
  - (iii) managing the underwriting capacity of a Lloyd’s syndicate under article 57 of the Regulated Activities Order,
 when carrying on those activities (and any other activities permitted by rules made by the FCA or the PRA under the Act);
- (c) an operator (within the meaning of regulation 3(2) of the Greenhouse Gas Emissions Trading Scheme Regulations 2012(c)), subject to compliance obligations under those Regulations who when dealing in emission allowances does not execute client orders and does not provide any investment services or perform any investment activities other than dealing on own account, provided that the operator does not apply a high-frequency algorithmic trading technique;

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(a) The definition of “significant volumes” was inserted by S.I. 2017/1255.

(b) 1871 c.xxi.

(c) S.I.2012/3038.



- (d) a collective investment undertaking, pension fund or a depository or manager of such an undertaking;
- (e) a person (“P”)—
  - (i) dealing on own account, including a market maker, in commodity derivatives or emission allowances or derivatives thereof, excluding a person who deals 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 P’s main business,
 provided that in each case the activity in paragraph (i) or (ii), considered both individually and on an aggregate basis, is an ancillary activity to P’s main business, when considered on a group basis, and paragraph (1B) applies.

(1B) This paragraph applies if—

- (a) P’s main business is not—
  - (i) the provision of investment services;
  - (ii) banking activities requiring permission under Part 4A of the Act (or banking activities which would require such permission if they were carried on in the United Kingdom); or
  - (iii) acting as a market-maker in relation to commodity derivatives;
- (b) P does not apply a high-frequency algorithmic trading technique; and
- (c) P notifies the FCA under regulation 47 that P is carrying out the activity described in paragraph (1A)(e)(i) and (ii) as an ancillary activity to P’s main business and reports to the FCA upon request the basis on which P considers that this activity is ancillary to P’s main business.”.

(4) In paragraph (6), after “United Kingdom” insert “or in an EEA state”.

(5) Omit paragraph (7).

(6) In paragraph (9), omit “(as defined by Article 4.1.40 (definitions) of the markets in financial instruments directive)”.

(7) In paragraph (12)—

- (a) in the definition of “approved form”, for the words “regulatory technical standards” to the end of the definition, substitute “Article 28 of Regulation (EU) 2017/589;”;
- (b) in the definition of “exceptional circumstances”, for the words “regulatory technical standards” to the end of the definition, substitute “Article 3 of Regulation (EU) 2017/578;”;
- (c) in the definition of “the specified circumstances”, for the words “regulatory technical standards” to the end of the definition, substitute “Article 1 of Regulation (EU) 2017/578; and”;
- (d) in the definition of “the specified content”, for the words “regulatory technical standards” to the end of the definition, substitute “Article 2 of Regulation (EU) 2017/578.”.

(8) In regulation 31, omit paragraph (3).

### **Direct electronic access**

**10.**—(1) In regulation 32—

- (a) in paragraph (2)—
  - (i) in sub-paragraph (a), for “M’s home Member State is” substitute “M is established in”;
  - (ii) for sub-paragraph (b), substitute—
    - “(b) M falls within paragraph (1A) of regulation 30; and”;

- (iii) in sub-paragraph (c), for “for the purposes of the directive” substitute “to carry on a regulated activity which is any of the investment services and activities”;
  - (b) in paragraph (3), for “relevant United Kingdom national regime” substitute “law of the United Kingdom”;
  - (c) in paragraph (7), for “markets in financial instruments directive” substitute “UK law on markets in financial instruments”;
  - (d) in paragraph (8)—
    - (i) at the end of sub-paragraph (a), omit “and”;
    - (ii) omit sub-paragraph (b);
  - (e) in paragraph (10), for “relevant United Kingdom national regime” substitute “law of the United Kingdom”;
  - (f) after paragraph (10) insert—
    - “(11) References to “UK law on markets in financial instruments” are to the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2014/65/EU and its implementing measures—
      - (a) as they have effect on exit day, in the case of rules made by the FCA or by the PRA under the Act;
      - (b) as amended from time to time, in all other cases.”.
- (2) In regulation 33, omit paragraph (2).

#### **Acting as a general clearing member**

- 11.** In regulation 34, in paragraph (1)—
- (a) in sub-paragraph (a), for “M’s home Member State is” substitute “M is established in”;
  - (b) for sub-paragraph (b), substitute—
    - “(b) M falls within paragraph (1A) of regulation 30; and”;
  - (c) in sub-paragraph (c), for “for the purposes of the directive” substitute “to carry on a regulated activity which is any of the investment services and activities”.

#### **Synchronisation of business clocks**

- 12.** In regulation 35—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a), for “M’s home Member State is” substitute “M is established in”;
    - (ii) for sub-paragraph (b), substitute—
      - “(b) M falls within paragraph (1A) of regulation 30; and”;
    - (iii) in sub-paragraph (c), for “for the purposes of the directive” substitute “to carry on a regulated activity which is any of the investment services and activities”;
  - (b) in paragraph (2), for the words from “regulatory technical standards” to the end of the paragraph, substitute “Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks.”.

#### **Interpretation of Part 4**

- 13.** For regulation 37, substitute—
- “**37.** For the purposes of this Part, a person is established in the United Kingdom if the person has its registered office, or (if it has no registered office), its head office, in the United Kingdom.”.

## **Removal of persons from the management board**

**14.** In regulation 38, in paragraph (1), for the words from “functions under” to the end of the paragraph, substitute—

“functions under—

- (a) these Regulations;
- (b) the markets in financial instruments regulation;
- (c) EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) made under the markets in financial instruments directive which forms part of retained EU law ; or
- (d) the Act, which correspond to functions under the markets in financial instruments directive.”.

## **Miscellaneous FCA functions**

**15.**—(1) Omit regulations 41, 42 and 43.

(2) In regulation 44, omit paragraph (3).

(3) Omit regulations 45, 46.

(4) In regulation 47, in paragraph (1)—

(a) in sub-paragraph (a)—

(i) for “Article 2.1(j) (exemptions) of the markets in financial instruments directive” substitute “regulation 30(1A)(e)”;

(ii) for “Article 2.1(j) of that directive” substitute “that regulation”;

(b) in sub-paragraph (b)—

(i) for “the final point of Article 2.1(j) (exemptions) of the markets in financial instruments directive” substitute “the words after paragraph (ii) of sub-paragraph (e) of regulation 30(1A)”;

(ii) for “under that Article” substitute “described in paragraphs (i) and (ii) of that sub-paragraph”.

(5) After regulation 47, insert—

### **“Position management and publication of position reports**

**47A.**—(1) The FCA must maintain a database containing—

(a) the position limits established by the FCA under regulation 16; and

(b) the information the FCA receives from—

(i) market operators operating trading venues summarising the position management controls in effect in relation to trading venues under paragraph 7BA(3) of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (“the Recognition Requirements Regulations”)(a); and

(ii) firms operating MTF or OTF in the United Kingdom summarising the position management controls in effect in relation to trading venues under rule 10.3.3R of the Market Conduct sourcebook.

(2) The FCA must ensure that the database referred to in paragraph (1) is published on its website.

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(a) S.I. 2001/995. Paragraphs 7BA and 7BB were inserted by S.I. 2017/701.

(3) The FCA must publish all weekly reports it receives from market operators and firms operating trading venues in the United Kingdom under—

- (a) paragraph 7BB(5) of the Schedule to the Recognition Requirements Regulations;
- (b) rule 10.4.3 of the Market Conduct sourcebook.

(4) For the purpose of this regulation, “market operator” has the meaning given in Article 2(1)(10) of the markets in financial instruments regulation.

### **Statements of Policy**

**47B.**—(1) The FCA must prepare and issue a statement of its policy in relation to the exercise of—

- (a) the following functions in the markets in financial instruments regulation—
  - (i) suspending the use of waivers under Article 5(3B);
  - (ii) withdrawing a waiver under Article 9(3);
  - (iii) suspending the obligations referred to in Article 8 under Article 9(4A);
  - (iv) suspending the obligations referred to in Article 10 under Article 11(2A);
  - (v) determining the class to which financial instruments belong under Article 14.6A;
  - (vi) suspending the obligations referred to in Article 21(1) under Article 21(4A);and
- (b) its functions under Article 5(1A) of Commission Delegated Regulation 2017/567/EU supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions.

(2) No statement may be issued under paragraph (1) or amended without the approval of the Treasury.

(3) The Treasury may refuse to approve a statement of policy or amended statement of policy if it appears to the Treasury that—

- (a) the issue of that statement would prejudice any current or proposed negotiations for an international agreement between the United Kingdom and one or more other countries, international organisations or institutions; or
- (b) they may direct the FCA not to issue the statement of policy under section 410 (international standards) of the Financial Services and Markets Act 2000.

(4) For the purposes of paragraph (3), “international organisations” includes the European Union.

(5) The Treasury must notify the FCA in writing whether or not they approve a statement of policy within four weeks from the day on which that statement is submitted to the Treasury for approval (“the relevant period”).

(6) Provision of a draft statement of policy to the Treasury for consultation does not amount to submission of the statement for approval.

(7) If the Treasury do not give notice under paragraph (5) before the end of the relevant period, the Treasury is deemed to have approved the statement of policy.

(8) The FCA must publish any statement of policy issued under this Article in the way appearing to the FCA to be best calculated to bring it to the attention of the public.”.

### **Administration and Enforcement of Parts 3, 4 and 5**

**16.**—(1) In paragraph 1 of Schedule 1, for the definition of “senior management” substitute—

““senior management” means natural persons who exercise executive functions within an investment firm, a market operator or a data reporting services provider and who are

responsible, and accountable to the management body, for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel.”.

- (2) In paragraph 2—
- (a) for the heading, substitute “retained EU law”;
  - (b) in sub-paragraph (1)(a), for “directly applicable EU regulation” substitute “retained EU law”;
  - (c) in sub-paragraph (2), for “directly applicable EU regulation” substitute “retained EU law”.
- (3) In paragraph 6—
- (a) in sub-paragraph (1)—
    - (i) at the end of paragraph (a), insert “and”;
    - (ii) at the end of paragraph (b), omit “and”;
    - (iii) omit paragraph (c);
  - (b) in sub-paragraph (2)—
    - (i) at the end of paragraph (a), omit “and”;
    - (ii) omit paragraph (b).

## CHAPTER 3

### The Data Reporting Services Regulations 2017

#### **The Data Reporting Services Regulations 2017**

17. The Data Reporting Services Regulations 2017(a) are amended in accordance with this Chapter.

#### **Introductory provisions**

- 18.—(1) In regulation 2(1)—
- (a) in the definition of “APA” after “regulation 10” insert “or 12A”;
  - (b) in the definition of “ARM”—
    - (i) after “regulation 10” insert “or 12A”;
    - (ii) for “competent authorities or to ESMA” substitute “the competent authority”;
  - (c) after the definition of “authorised person” insert—
    - ““Commission Delegated Regulation (EU) 2017/565” means Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
    - “Commission Delegated Regulation (EU) 2017/571” means Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers;”;
  - (d) for the definition of “credit institution”, substitute—
    - ““credit institution” has the meaning given in Article 2.1.19 of the markets in financial instruments regulation;”;

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(a) S.I. 2017/699.

- (e) in the definition of “CTP” after “regulation 10” insert “or 12A”;
  - (f) in the definition of “data reporting service”, in sub-paragraph (b), for “competent authorities or to ESMA” substitute “the competent authority”;
  - (g) omit the definition of “ESMA”;
  - (h) in the definition of “financial instrument”, for “Article 4.1.15 of the markets in financial instruments directive”, substitute “Article 2.1.9 of the markets in financial instruments regulation”;
  - (i) omit the definition of “home Member State”;
  - (j) for the definition of “investment firm”, substitute—
    - ““investment firm” has the meaning given in Article 2.1A of the markets in financial instruments regulation;”;
  - (k) for the definition of “multilateral trading facility”, substitute—
    - ““multilateral trading facility” means a “UK multilateral trading facility” within the meaning given in Article 2.1.14A of the markets in financial instruments regulation;”;
  - (l) for the definition of “organised trading facility”, substitute—
    - ““organised trading facility” means a “UK organised trading facility” within the meaning given in Article 2.1.15A of the markets in financial instruments regulation;”;
  - (m) for the definition of “regulated market”, substitute—
    - ““regulated market” means a “UK regulated market” within the meaning of Article 2.1.13A of the markets in financial instruments regulation;”;
  - (n) for definition of “senior management” substitute—
    - ““senior management” means natural persons who exercise executive functions within an investment firm, a market operator or a data reporting services provider and who are responsible, and accountable to the management body, for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;”;
  - (o) in the definition of “systematic internaliser”, for “Article 4.1.20 in the markets in financial instruments directive” substitute “Article 2.1.12 of the markets in financial instruments regulation”;
  - (p) in the definition of “trading venue”, for “Article 4.1.24 of the markets in financial instruments directive” substitute “Article 2.1.16 of the markets in financial instruments regulation”.
- (2) In regulation 2(2), for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

### **Authorisation of data reporting services**

#### **19.—(1) In regulation 5—**

- (a) in paragraph (1)(b), (c) and (d), for “Article 59.2 of the markets in financial instruments directive that the firm complies with Title V of that directive”, substitute “regulation 8 that the firm complies with these Regulations”;
- (b) for sub-paragraph (e), substitute—
  - “(e) a person who is authorised in Gibraltar in accordance with the law of Gibraltar relied on by Gibraltar before exit day to implement Title V of the markets in financial instruments directive, as that law is amended from time to time.”.

(2) In regulation 6, in paragraph (1)(b) for “Title V of the markets in financial instruments directive it has verified in accordance with Article 59.2 of that directive” substitute “these Regulations it has verified in accordance with regulation 8”.

(3) In regulation 7, in paragraph (5), at the end insert “which form part of retained EU law, or any technical standards made by the FCA under paragraph 34 of Schedule 3 to the markets in financial instruments regulation”.

(4) In the heading to regulation 8, for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

(5) In regulation 8—

(a) in paragraph (1)—

(i) omit “in accordance with Article 59.2 of the markets in financial instruments directive”;

(ii) for “Title V of that directive as it applies” substitute “these Regulations, as they apply”;

(b) in paragraph (2), in the opening words, for “Title V of the markets in financial instruments directive” substitute “these Regulations”;

(c) in paragraph (3), for “Title V of the markets in financial instruments directive” substitute “these Regulations”;

(d) omit paragraph (8);

(e) in paragraph (9), in sub-paragraph (a) of the modified version of regulation 11(1), for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

(6) In regulation 9, in paragraph (1)(b), for “European Union” substitute “United Kingdom”.

(7) In regulation 10, omit paragraph (11).

(8) In regulation 11, in paragraph (1)(h)—

(a) in the opening words, for “the provisions of”, substitute “requirements imposed by or under”;

(b) omit paragraph (ii).

## **Temporary authorisation**

20. After regulation 12, insert—

### **“Deemed authorisation to provide a data reporting service**

**12A.**—(1) A person to whom this regulation applies is to be treated, for the period determined in accordance with regulation 12C, as if that person is authorised to provide a data reporting service under these Regulations.

(2) This regulation applies to a person—

(a) who immediately before exit day—

(i) is established in an EEA state other than the United Kingdom;

(ii) is authorised in that EEA state in accordance with Title V of the markets in financial instruments directive or is permitted to provide a data reporting service in accordance with Article 59.2 of that directive; and

(b) who has taken the steps set out in paragraph (3).

(3) The steps referred to in this paragraph are that the person has, on or after the day on which this regulation comes into force and no later than 30 working days before the day on which exit day occurs, notified the FCA that the person wishes to be treated in accordance with paragraph (1) by—

(a) making an application for authorisation to provide a data reporting service under these Regulations; or

(b) making a statement to that effect and tendering the fee (if any) prescribed under paragraph 23 of Schedule 1ZA to the Act.

(4) For the purposes of paragraph (3)(b), the statement must—

- (a) be made in such manner, and during such period, as the FCA may direct; and
- (b) contain, or be accompanied by, such other information as the FCA may direct.

(5) The FCA's powers under these Regulations are exercisable in respect of a person to whom this regulation applies as they are in respect of a person who is authorised to provide a data reporting service under these Regulations, in particular in relation to the variation or cancellation of an authorisation to provide such a service.

- (6) The power to give directions under this regulation includes the power—
- (a) to give different directions in relation to different statements or categories of statements;
  - (b) to vary or revoke previous directions.

### **Regulator response**

**12B.**—(1) Within 28 days beginning with the date of receipt of a notification made in accordance with regulation 12A(3)(a), the FCA must—

- (a) if it considers that the requirements of regulation 7 have been satisfied, confirm in writing to the person making the application that it constitutes a valid notification;
- (b) if it considers that those requirements are not satisfied, confirm in writing to the person making the application—
  - (i) that it does not constitute a valid application, and
  - (ii) the details of any requirements that have not been satisfied.

(2) Within 28 days beginning with the date of receipt of a notification made in accordance with regulation 12A(3)(b), the FCA must—

- (a) if it considers that the steps in regulation 12A(3) have been taken (in accordance with any direction), confirm in writing to the person making the statement that it constitutes a valid notification;
- (b) subject to paragraph (3), if it considers that the steps in regulation 12A(3) have not been taken (in accordance with any direction), confirm in writing to the person making the statement that—
  - (i) the notification was not valid; and
  - (ii) as applicable, the steps that have not been taken, or the directions that have not been complied with.

(3) Within 28 days beginning with the day of receipt of a notification made in accordance with regulation 12A(3)(b), the FCA may, if—

- (a) it considers that a direction given in accordance with regulation 12A(4) has not been complied with; and
- (b) it would not be possible or practicable for the applicant to comply with the direction in time,

waive the requirement to comply with the direction and confirm in writing to the person submitting the statement that it nevertheless constitutes a valid notification.

### **Period during which regulation 12A is to apply**

**12C.**—(1) For the purpose of regulation 12A(1), the period is one that begins with exit day and ends—

- (a) after one year beginning with the day on which exit day occurs, or
- (b) if earlier, with a day determined as follows.

(2) Paragraph (3) applies to a person who has applied for authorisation to provide a data reporting service under these Regulations on or after the date on which this regulation comes into force, and not withdrawn that application.



(3) Where this paragraph applies—

- (a) if the application is granted, the period ends with the day before the date stated in the written notice (issued in accordance with regulation 10(6));
- (b) if the application is refused, the period ends with the day before the day stated in the decision notice (issued in accordance with regulation 10(9)(c)).

(4) Paragraph (5) applies to a person who has not applied for authorisation to provide a data reporting service under these Regulations on or after the date on which this regulation comes into force (or has made such an application but withdrawn it without submitting another).

(5) Where this paragraph applies, the period ends with the day before the day on which the decision notice (issued in accordance with regulation 11) takes effect.”.

### **Operating requirements**

**21.**—(1) In regulation 14, in paragraph (7)—

(a) for sub-paragraph (a) substitute—

“(a) Commission Delegated Regulation (EU) 2017/571(a); and”;

(b) for sub-paragraph (b), substitute—

“(b) Commission Delegated Regulation (EU) 2017/565(b).”.

(2) In regulation 15—

(a) in paragraph (9), at the end insert “which form part of retained EU law, or which are set out in technical standards made by the FCA under paragraph 38 of Schedule 3 to the markets in financial instruments regulation”;

(b) in paragraph (12), for paragraphs (a) and (b), substitute—

“(a) Chapters II and III of Commission Delegated Regulation (EU) 2017/571; and

(b) Chapter VI of Commission Delegated Regulation (EU) 2017/565.”.

(3) In regulation 16, in paragraph (5), for “regulatory technical standards adopted by the European Commission under Article 66.5 of the markets in financial instruments directive” substitute “Chapter II of Commission Delegated Regulation (EU) 2017/571”.

### **Administration and enforcement**

**22.** In regulation 17, in paragraph (1), for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

### **Miscellaneous**

**23.**—(1) Omit regulation 46.

(2) In regulation 48, omit paragraph (2).

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(a) OJ L 87. 31.3.2017, p.126.

(b) OJ L 87, 31.3.2017, p.1.

## PART 4

### Amendment of EU Regulations

#### CHAPTER 1

##### Amendment of Markets in Financial Instruments Regulation

###### Markets in Financial Instruments Regulation

24. Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 is amended in accordance with this Part.

###### Subject matter and scope

25.—(1) Article 1 is amended as follows.

(2) In paragraph 1—

(a) omit point (d);

(b) in point (e)—

(i) omit “, ESMA and EBA”;

(ii) for “of ESMA” substitute “of the competent authority”;

(c) in point (f), for “Commission” substitute “Treasury”.

(3) For paragraph 2, substitute—

“2. This Regulation applies to—

(a) investment firms and credit institutions which have their head office in the United Kingdom which—

(i) (subject to paragraphs 2A and 2C) have permission under Part 4A of FSMA to carry on regulated activities relating to investment services and activities in the United Kingdom, when those firms or institutions are providing investment services or performing investment activities; and

(ii) would require authorisation under Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments<sup>(a)</sup> (in the case of investment firms) or Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms<sup>(b)</sup> (in the case of credit institutions) (as those directives applied in the European Union immediately before exit day) if they had their head offices in an EEA state; and

(b) market operators which have their registered office or head office in the United Kingdom, including any UK trading venues they operate.

2A. Subject to paragraph 2B, Titles II, III, IV, V, Article 38, and Title VII and EU tertiary legislation (within the meaning of section 20(1) of the European Union (Withdrawal) Act 2018<sup>(c)</sup>) made under those provisions also apply to investment firms and credit institutions which have temporary permission to carry on such activities under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

2B. Articles 20, 21, 26 and 27 only apply to a firm referred to in paragraph 2A in relation to business of that firm which is carried on through a branch in the United Kingdom.

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(a) OJ L173, 12.6.2014, p.349.

(b) OJ L176, 27.6.2013, p.338.

(c) 2018 c.16.

2C. This Regulation does not apply to any firm which has permission under Part 4A of FSMA to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

2D. Subject to paragraph 2E, if—

- (a) a firm referred to in paragraph 2A complies with a requirement in this Regulation as it applies in the EEA (“the EEA requirement”) in relation to the services it provides in the United Kingdom; and
  - (b) the EEA requirement has equivalent effect to a requirement in this Regulation as it applies in the United Kingdom (“the UK requirement”),
- the firm is to be treated as complying with the UK requirement.

2E. Paragraph 2D does not apply in relation to requirements in Article 23, Title IV, Article 28, Article 29 (so far as that Article applies to CCPs), Article 30, Article 31 or Title VI.”.

(4) In paragraph 5—

- (a) for “Union” substitute “United Kingdom”;
- (b) for “Commission” substitute “Treasury”;
- (c) omit “with or without a branch”.

(5) After paragraph 5, insert—

“5za. For the purposes of paragraph 1(f) and 5, references to applicable equivalence decisions by the Treasury include references to applicable decisions made by the Commission as they applied immediately before exit day.”.

(6) In paragraph 6—

- (a) after “(ESCB)” insert “, the Debt Management Office or the Bank of England (“a relevant organisation”);
- (b) for “member of the ESCB” substitute “relevant organisation”.

(7) In paragraph 7, for “member of the ESCB” substitute “relevant organisation”.

(8) In paragraph 8—

- (a) in the first subparagraph, for “ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards to specify” substitute “The Bank of England may, after consultation with the FCA, make technical standards specifying”;
- (b) omit the second and third subparagraphs.

(9) In paragraph 9—

- (a) for the first subparagraph, substitute—

“9. The Treasury may, by regulations extend the scope of paragraph 6 to other central banks.”;

- (b) omit the second and third sub-paragraphs.

## Definitions

26.—(1) Article 2 is amended as follows.

(2) In paragraph 1—

- (a) for points (1) to (16), substitute—

“(1) “investment firm” has the meaning given in paragraph 1A;

(2) “investment services and activities” means any of the services and activities listed in Part 3 of Schedule 2 to the Regulated Activities Order, relating to any of the instruments listed in Part 1 of Schedule 2 to that Order;

(3) “ancillary services” means any of the services listed in Part 3A of Schedule 2 to the Regulated Activities Order;

(4) “execution of orders on behalf of clients” means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients and includes the conclusion of agreements to sell financial instruments issued by an investment firm or a credit institution at the moment of their issuance;

(5) “dealing on own account” means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;

(6) “market maker” means a natural or legal person holding themselves out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person’s proprietary capital at prices defined by that person;

(7) “client” means any natural or legal person to whom an investment firm provides investment or ancillary services;

(8) “professional client” means a client who—

(a) meets the criteria in Schedule 1 to this Regulation; or

(b) is a local public authority or municipality—

(i) which has requested to be treated as a professional client; and

(ii) in relation to which the investment firm has complied with the applicable requirements set out in Chapter 3.5 of the Conduct of Business sourcebook;

(9) “financial instrument” means an instrument specified in Part 1 of Schedule 2 to the Regulated Activities Order;

(10) “market operator” means a person who manages or operates the business of a regulated market, and may be the regulated market itself;

(11) “multilateral system” means any system or facility in which multiple third party buying and selling trading interests in financial instruments are able to interact in the system;

(12) “systematic internaliser” means an investment firm which—

(a) on an organised, frequent, systematic and substantial basis, deals on own account when executing client orders outside a UK regulated market, UK MTF or UK OTF without operating a multilateral system; and

(b) either—

(i) satisfies the criteria set out in Article 12, 13, 14, 15 or 16 of Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, assessed in accordance with Article 17 of that Regulation; or

(ii) has chosen to opt in to the systematic internaliser regime;

(12A) for the purposes of point (12)—

(a) the frequent and systematic basis is to be measured by the number of OTC trades in the financial instrument carried out by the investment firm on own account when executing client orders; and

(b) the substantial basis is to be measured either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the relevant area (within the meaning of Article 14(5A)) in a specific financial instrument;

(13) “regulated market” means a multilateral system operated or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments (in the system and in accordance with

its non-discretionary rules) in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems;

(13A) “UK regulated market” means a regulated market which is a recognised investment exchange under section 285 of FSMA, but not an overseas investment exchange within the meaning of section 313(1) of that Act;

(13B) “EU regulated market” means a regulated market which is authorised and functions regularly and in accordance with Title III of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments(a);

(14) “multilateral trading facility” or “MTF” means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract;

(14A) “UK multilateral trading facility” or “UK MTF” means a multilateral system, operated by a UK investment firm or market operator, which—

- (a) brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract; and
- (b) complies, as applicable, with—
  - (i) Paragraph 9A of the Schedule to the Recognition Requirements Regulations(b);
  - (ii) the EU regulations specified in Schedule 2 to this Regulation;
  - (iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to MTFs,

and for the purposes of this definition, an investment firm or market operator is a UK investment firm or market operator if it has its head office in the United Kingdom;

(14B) “EU multilateral trading facility” or “EU MTF” means a multilateral system, operated by an investment firm or a market operator which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract in accordance with Title II of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments;

(15) “organised trading facility” or “OTF” means a multilateral system—

- (a) which is not a regulated market or an MTF; and
- (b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract;

(15A) “UK organised trading facility” or “UK OTF” means a multilateral system—

- (a) which is not a regulated market or an MTF; and
- (b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract, and complies, as applicable, with—
  - (i) Paragraph 9A of the Schedule to the Recognition Requirements Regulations;
  - (ii) the EU regulations specified in Schedule 2 to this Regulation;
  - (iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to OTFs;

(15B) “EU organised trading facility” or “EU OTF” means a multilateral system—

- (a) which is not a regulated market or an MTF; and

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(a) OJ L173, 12.6.2014, p.349.

(b) S.I. 2001/995. Paragraph 9A was inserted by S.I. 2006/3386.

- (b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments;
- (16) “trading venue” means a regulated market, an MTF or an OTF;
- (16A) “UK trading venue” means a UK regulated market, a UK MTF or a UK OTF;
- (16B) “EU trading venue” means an EU regulated market, an EU MTF or an EU OTF;”;
- (b) for points (18) to (26) substitute—
  - “(18) “competent authority” means the authority designated by regulation 3 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, or by regulation 17 of the Data Reporting Services Regulations 2017(a);
  - (19) “credit institution” means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;
  - (20) “branch” means a place of business other than the head office which is a part of an investment firm, which has no legal personality and which provides investment services or activities and which may also perform ancillary services for which the investment firm has permission under Part 4A of FSMA or otherwise, or is authorised in its home jurisdiction;
  - (21) A person (“A”) has “close links” with another person (“CL”) if—
    - (a) CL is a parent undertaking of A;
    - (b) CL is a subsidiary undertaking of A;
    - (c) CL is a parent undertaking of a subsidiary undertaking of A;
    - (d) CL is a subsidiary undertaking of a parent undertaking of A;
    - (e) CL owns or controls 20% or more of the voting rights or capital of A; or
    - (f) A owns or controls 20% or more of the voting rights or capital of CL,
 and for the purposes of this paragraph “parent undertaking” and “subsidiary undertaking” have the meanings given in section 1162 of the Companies Act 2006(b), taken with Schedule 7 to that Act;
  - (22) “management body”, in relation to an investment firm, market operator or data reporting services provider, means—
    - (a) the board of directors, or if there is no such board, the equivalent body responsible for the management of the firm, operator or provider; or
    - (b) any other person who effectively directs the business of the firm, operator or provider;
  - (23) “structured deposit” means a deposit (see point (23A)), which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as—
    - (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;
    - (b) a financial instrument or combination of financial instruments;
    - (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
    - (d) a foreign exchange rate or combination of foreign exchange rates;
  - (23A) “deposit” means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where—

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(a) S.I. 2017/699.  
 (b) 2006 c.46.

- (a) its existence can only be proven by a financial instrument, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which existed in a Member State of the European Union on 2 July 2014;
- (b) its principal is not repayable at par; or
- (c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party;

(24) “transferable securities” means those classes of securities which are negotiable on the capital market (with the exception of instruments of payment) such as—

- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
- (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
- (c) any other securities giving the right to acquire or sell any such securities or giving rise to a cash settlement determined by reference to such securities, currencies, interest rates or yields, commodities or other indices or measures;

(25) “depositary receipts” means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;

(25A) “money market instruments” means those classes of instruments which are normally dealt with on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;

(26) “exchange-traded fund” or “ETF” means a fund of which at least one unit or share class is traded throughout the day on at least one trading venue and with at least one market maker which takes action to ensure that the price of its units or shares on the trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value;”;

- (c) for points (29) and (30), substitute—

“(29) “derivatives” means those financial instruments defined in point (24)(c) or referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order;

(30) “commodity derivatives” means those financial instruments—

- (a) defined in point (24)(c);
- (b) which relate to a commodity or an underlying referred to in paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order; or
- (c) which are referred to in paragraph 5, 6, 7 or 10 of Part 1 of Schedule 2 to that Order;”;

- (d) for points (34) to (36), substitute—

“(34) “approved publication arrangement” or “APA” means a person authorised under regulation 10 or 12A of the Data Reporting Services Regulations 2017<sup>(a)</sup> to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of this Regulation;

(35) “consolidated tape provider” or “CTP” means a person authorised under regulation 10 or 12A of the Data Reporting Services Regulations 2017 to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of this Regulation from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

(36) “approved reporting mechanism” or “ARM” means a person authorised under regulation 10 or 12A of the Data Reporting Services Regulations 2017 to provide the

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(a) S.I. 2017/699.

service of reporting details of transactions to competent authorities on behalf of investment firms;”;

(e) omit points (37), (38) and (39);

(f) for point (42), substitute—

“(42) “third country firm” means a firm—

(a) which is a credit institution providing investment services or performing investment activities or an investment firm; and

(b) whose registered office or (if it has no registered office) its head office is located in a third country;”;

(g) for point (46), substitute—

“(46) “sovereign debt” means a debt instrument issued by a sovereign issuer;

(46A) “sovereign issuer” means any of the following which issue debt instruments—

(a) the United Kingdom, including a government department, an agency, or a special purpose vehicle of the United Kingdom;

(b) a State other than the United Kingdom, including a government department, an agency or a special purpose vehicle of the State;

(c) in the case of a federal State, a member of the federation;

(d) a special purpose vehicle for several States;

(e) an international financial institution established by two or more States which has the purpose of mobilising funding and providing financial assistance for the benefit of those of its members that are experiencing or threatened by severe financing problems;

(f) the European Union;

(g) the European Investment Bank;

(h) the International Finance Corporation;

(i) the International Monetary Fund;”;

(h) after point (50), insert—

“(51) “the FCA” means the Financial Conduct Authority;

(52) “the PRA” means the Prudential Regulation Authority;

(53) the “Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**a**);

(54) “FSMA” means the Financial Services and Markets Act 2000(**b**);

(55) “the Recognition Requirements Regulations” mean the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001(**c**);

(56) the “Markets in Financial Instruments Regulations 2017” means the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(**d**);

(57) “Regulation (EU) 2017/565” means Commission Delegated Regulation 2017/565/EU supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;

(58) “Regulation (EU) 2017/567” means Commission Delegated Regulation 2017/567/EU supplementing Regulation 600/2014/EU of the European Parliament and of

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(a) S.I. 2001/544.

(b) 2000 c.8

(c) S.I. 2001/995.

(d) S.I. 2017/701.



the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions;

(59) “Regulation (EU) 2017/575” means Commission Delegated Regulation 2017/575/EU supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions;

(60) “Regulation (EU) 2017/576” means Commission Delegated Regulation 2017/576/EU supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution;

(61) “Directive 2014/65/EU” means Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU(a);

(62) unless the context otherwise requires, all references in this Regulation—

- (a) to a trading venue are to a UK trading venue;
- (b) to a regulated market are to a UK regulated market;
- (c) to an MTF are to a UK MTF;
- (d) to an OTF are to a UK OTF; and
- (e) to an EU regulated market, EU MTF or EU OTF include EU regulated markets, MTFs and OTFs in EEA countries;

(63) references to a “third country” (including in expressions including the words “third country”) are, except where the context otherwise requires, to be read as references to a country other than the United Kingdom;

(64) any reference in this Regulation to a sourcebook or manual is to a sourcebook or manual in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under FSMA as the sourcebook or manual has effect on exit day;

(65) any reference to the PRA rulebook is to the rulebook published by the PRA containing rules made by that Authority under FSMA as the rulebook has effect on exit day.

(3) After paragraph 1, insert—

“1A.—(1) Subject to point (2), for the purpose of this Regulation, “investment firm” means a person (“P”) whose regular occupation or business is the provision of one or more investment services to third parties or the performance of one or more investment activities on a professional basis.

(2) If P is not a legal person, P is not an investment firm unless—

- (a) P’s status ensures a level of protection for third party interests equivalent to that afforded by legal persons;
- (b) P is subject to prudential supervision appropriate to P’s legal form which is equivalent to that given to legal persons; and
- (c) where P provides services involving the holding of third party funds or transferable securities—
  - (i) the ownership rights of third parties in instruments and funds held by P are safeguarded, especially in the event of—
    - (aa) the insolvency of P’s firm or its proprietors; or
    - (bb) seizure, set off or any other action taken by creditors of P’s firm or its proprietors;

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(a) OJ L173, 12.6.2014, p.349.

- (ii) P's firm is subject to rules designed to monitor the firm's solvency and that of its proprietors;
- (iii) the annual accounts of P's firm are audited by one or more persons authorised under the law applying to the firm to audit accounts; and
- (iv) where P is the only proprietor of the firm, P has made provision for the protection of investors if P's firm ceases business following P's death or incapacity or any other such event.

(3) A person who is an authorised person with permission under Part 4A of FSMA to carry on a regulated activity which is any of the investment services and activities in the United Kingdom satisfies the conditions set out in paragraph (2)."

(4) In paragraph 2, for the words from "The Commission" to "Article 50 to" substitute "The Treasury may by regulations".

### **Transparency for trading venues**

**27.**—(1) In Article 4—

- (a) in paragraph 1, for "Competent authorities shall be able to" substitute "The FCA may";
- (b) in paragraph 3—
  - (i) in the first subparagraph, in point (c)—
    - (aa) for "or Directive 2014/65/EU" substitute ", Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that directive, the Markets in Financial Instruments Regulations 2017 or rules or relevant technical standards made by the FCA";
    - (bb) for "competent authority" substitute "FCA";
    - (cc) insert at the end "(and for these purposes, "relevant technical standards" mean technical standards made by the FCA under this Regulation)";
  - (ii) in the second sub-paragraph, for "a competent authority" and "that competent authority" in each case substitute "the FCA";
- (c) for paragraph 4, substitute—
 

"4. The FCA must monitor the application of any waivers granted under paragraph 1 and publish an annual report on how they are applied in practice.";
- (d) in paragraph 5—
  - (i) in the first subparagraph—
    - (aa) for "A competent authority" substitute "The FCA";
    - (bb) omit ", either on its own initiative or upon request by another competent authority,";
  - (ii) omit the second subparagraph;
- (e) in paragraph 6—
  - (i) in the first subparagraph, for "ESMA shall develop draft regulatory" substitute "The FCA may make";
  - (ii) omit the second and third subparagraphs;
- (f) omit paragraph 7.

(2) In Article 5—

- (a) in paragraph 1—
  - (i) in points (a) and (b), for "across the Union", both times it occurs, substitute "across the relevant area";

- (ii) in point (b), for “overall Union trading” substitute “overall trading in the relevant area”;
- (b) in paragraph 2—
  - (i) at the beginning, insert “Subject to paragraph 3A”;
  - (ii) for “has exceeded” substitute “appears to the FCA to have exceeded”;
  - (iii) for “the competent authority that authorised the use of those waivers by that venue” substitute “the FCA”;
  - (iv) for “ESMA” substitute “the FCA”;
- (c) in paragraph 3—
  - (i) at the beginning, insert “Subject to paragraph 3A”;
  - (ii) after “across the Union” the first time it occurs, substitute “across the relevant area”;
  - (iii) for “has exceeded” substitute “appears to the FCA to have exceeded”;
  - (iv) for “all competent authorities” substitute “the FCA”;
  - (v) for “the Union” the second time it occurs, substitute “the United Kingdom”;
- (d) after paragraph 3, insert—

“3A. Paragraphs 2 and 3 do not apply during the period (“the transitional period”)—

- (a) of four years beginning with exit day; or
- (b) ending on the day directed by the Treasury, where this is earlier.

3B. During the transitional period, the FCA may suspend the use of a waiver provided for in Article 4(1)(a) and 4(1)(b)(i) for a period of up to six months to ensure that its use does not unduly harm price formation if the FCA considers it necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.

3C. The FCA may renew a suspension imposed under paragraph 3B at the end of the six-month period referred to in that paragraph if it considers that the conditions which led it to impose a suspension still exist at that date.

3D. In deciding whether to suspend the use of a waiver under paragraph 3B, or to renew a suspension under paragraph 3C, the FCA—

- (a) must also take into account—
  - (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA;
  - (ii) the thresholds applying under Article 5 of this Regulation as it has effect in the European Union; and
  - (iii) the most recent information published by ESMA under Article 5(4), 5(5) and 5(6) before exit day;
- (b) may take into account—
  - (i) any relevant information produced under Article 3, or under equivalent pre-trading transparency requirements in other jurisdictions, about the use of the waiver in the United Kingdom, or under equivalent waiver arrangements in any other country, in relation to the financial instrument; and
  - (ii) any relevant information available in relation to trading volumes in the financial instrument concerned, whether in the United Kingdom or in any other country.

3E. In deciding whether to issue a direction terminating the transitional period, the Treasury must take into account whether the FCA is able to carry out its functions relating

to transparency under this Regulation and its implementing measures (as amended under the European Union (Withdrawal) Act 2018)(a).”;

- (e) in paragraph 4—
  - (i) for “ESMA” substitute “After the transitional period, the FCA”;
  - (ii) for “five working days” substitute “ten working days”;
  - (iii) for “Union trading” substitute “trading in the relevant area”;
  - (iv) for “across the Union” substitute “across the relevant area”;
- (f) in paragraph 5—
  - (i) for “the Union” substitute “the relevant area”;
  - (ii) for “ESMA” substitute “the FCA”;
  - (iii) for “five working days” substitute “ten working days”;
- (g) in paragraph 6—
  - (i) for “Union trading”, both times it appears, substitute “trading in the relevant area”;
  - (ii) for “ESMA” substitute “the FCA”;
  - (iii) for “five working days” substitute “ten working days”;
- (h) in paragraph 8—
  - (i) omit the first sentence;
  - (ii) for “competent authorities”, substitute “the FCA”;
- (i) in paragraph 9—
  - (i) in the first subparagraph—
    - (aa) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
    - (bb) for “across the Union” substitute “across the relevant area”;
  - (ii) omit the second and third subparagraphs.
- (j) after paragraph 9, insert—

“10. For the purposes of this Article, “the relevant area” consists of the United Kingdom and those countries or regions specified by the FCA by direction in accordance with Article 50B.

11. The FCA may only give a direction under paragraph 10 specifying that a country or region is in the relevant area in relation to one or more financial instruments for the purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess the volume of trading in the financial instruments concerned in that country or region.”.

- (3) In Article 7—
  - (a) in paragraph 1—
    - (i) in the first subparagraph, for “Competent authorities” substitute “The FCA”;
    - (ii) in the second subparagraph, for “the competent authorities” substitute “the FCA”;
    - (iii) in the third subparagraph, in the first sentence, for “competent authority’s” substitute “FCA’s”;
    - (iv) in the third subparagraph, in the second sentence—
      - (aa) for “ESMA” substitute “The FCA”;
      - (bb) for the words from “shall submit” to the end, substitute “must publish an annual report on how they are applied in practice.”;
    - (v) omit the fourth subparagraph;

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(a) 2018 c.16.

- (b) in paragraph 2—
  - (i) in the opening words—
    - (aa) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
    - (bb) for “under Article 64 of Directive 2014/65/EU” substitute “under regulation 14 of the Data Reporting Services Regulations 2017<sup>(a)</sup>”;
  - (ii) omit the second and third sub-paragraphs.

(4) In Article 9—

- (a) in paragraph 1, for “Competent authorities” substitute “The FCA”;
- (b) omit paragraph 2;
- (c) in paragraph 2a, for “Competent authorities” substitute “The FCA”;
- (d) for paragraph 3, substitute—

“3. The FCA may withdraw a waiver granted under paragraph 1 if it observes that the waiver is being used in a way that deviates from its original purpose or if it considers that the waiver is being used to circumvent the requirements established in this Article.”;

- (e) in paragraph 4—
  - (i) in the first subparagraph—
    - (aa) insert at the beginning “As”;
    - (bb) for “may” substitute “the FCA may”;
    - (cc) after “specified threshold”, the first time it occurs, insert “or if paragraph 4A applies”;
    - (dd) for “relevant competent authority” substitute “FCA”;
  - (ii) in the second subparagraph, for “relevant competent authority” substitute “FCA”;
  - (iii) omit the third subparagraph;
- (f) after paragraph 4, insert—

“4A. During the transitional period referred to in Article 5(3A), the FCA may suspend the obligations referred to in Article 8 in relation to a financial instrument or class of financial instrument for a specified period if the FCA considers that it is necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.

4B. In deciding whether to suspend those obligations—

- (a) the FCA must also take into account—
  - (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and
  - (ii) the most recent specified threshold published before exit day on the basis of calculations under Article 16 of Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives<sup>(b)</sup>;
- (b) the FCA may also take into account any other relevant information available in relation to liquidity in the relevant class of financial instrument concerned, whether in the United Kingdom or in any other country.”;
- (g) in paragraph 5—
  - (i) in the opening words for “ESMA shall develop draft regulatory” substitute “The FCA may make”;

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(a) S.I. 2017/699.

(b) OJ L87, 31.3.2017, p.229.

- (ii) in point (a)—
  - (aa) for “Member States” substitute “the FCA”;
  - (bb) for “the Union” substitute “the relevant area”;
- (iii) in point (d), in the second subparagraph, for “ESMA shall” substitute “the FCA must”;
- (iv) omit the subparagraphs following point (e);
- (h) after paragraph 5, insert—

“5A. For the purposes of this Article, “the relevant area” consists of the United Kingdom and those countries or regions specified by the FCA by direction in accordance with Article 50B.

5B. The FCA may only give a direction under paragraph 5A specifying that a country or region is within the relevant area in relation to one or more financial instruments for the purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess the volume of trading in the financial instruments concerned in that country or region.”;

- (i) in paragraph 6—
  - (i) in the first subparagraph—
    - (aa) for “ESMA shall develop draft regulatory” substitute “the FCA may make”;
    - (bb) for “ESMA shall” the second time it occurs, substitute “the FCA must”;
  - (ii) omit the second and third subparagraphs.

(5) In Article 11—

- (a) in paragraph 1—
  - (i) in the first subparagraph, for “Competent authorities” substitute “The FCA”;
  - (ii) in the second subparagraph, for “the competent authorities” substitute “the FCA”;
  - (iii) in the third subparagraph—
    - (aa) for “competent authority’s” substitute “FCA’s”;
    - (bb) for the second sentence, substitute “The FCA must monitor the application of those arrangements for deferred trade-publication and must publish an annual report on how they are applied in practice.”;
- (b) in paragraph 2—
  - (i) in the first subparagraph—
    - (aa) insert at the beginning, “As”;
    - (bb) for “may” substitute “the FCA may”;
    - (cc) after “Article 9(5)(a)” insert “or if paragraph 2A applies”;
    - (dd) for “relevant competent authority” substitute “FCA”;
  - (ii) in the second subparagraph, for “relevant competent authority” substitute “FCA”;
  - (iii) omit the third subparagraph;
- (c) after paragraph 2, insert—

“2A. During the transitional period referred to in Article 5(3A), the FCA may suspend the obligations referred to in Article 10 in relation to a financial instrument or class of financial instrument for a specified period if the FCA considers that it is necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.

2B. In deciding whether to suspend those obligations—

- (a) the FCA must also take into account—

- (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and
  - (ii) the most recent specified threshold published before exit day on the basis of calculations under Article 13 of Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives<sup>(a)</sup>;
- (b) the FCA may also take into account any relevant information available in relation to liquidity in the relevant class of financial instrument concerned, whether in the United Kingdom or in any other country.”
- (d) in paragraph 3, for “Competent authorities” substitute “The FCA”;
- (e) in paragraph 4—
- (i) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
  - (ii) for “Article 64 of Directive 2014/65/EU” substitute “regulation 14 of the Data Reporting Services Regulations 2017<sup>(b)</sup>”;
  - (iii) omit the second and third subparagraphs.
- (6) In Article 12, in paragraph 2—
- (a) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
  - (b) omit the second and third subparagraphs.
- (7) In Article 13, in paragraph 2, for “The Commission shall adopt delegated acts in accordance with Article 50 clarifying” substitute “The Treasury may by regulations clarify”.

### **Transparency for systematic internalisers and investment firms trading OTC**

#### **28.—(1) In Article 14—**

- (a) in paragraph 5, for “Union” substitute “relevant area”;
- (b) after paragraph 5, insert—
  - “5A. For the purposes of this Article—
  - (a) “the relevant area” consists of the United Kingdom and those countries or regions specified by the FCA by direction in accordance with Article 50B;
  - (b) the FCA may only give a direction under point (a) specifying that a country or region is within the relevant area in relation to one or more financial instruments for the purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess total orders executed in the financial instruments concerned in that country or region.”;
- (c) in paragraph 6—
  - (i) insert at the beginning, “Unless paragraph 6A applies”;
  - (ii) for “The competent authority” substitute “The FCA”;
  - (iii) omit the words from “of the most relevant market” to “other similar financial instrument”;
  - (iv) for “that financial instrument” substitute “each share, depositary receipt, ETF, certificate and other similar financial instrument”;
  - (v) in the second sentence, for “and communicated to ESMA which shall publish the information” substitute “and published by the FCA”;

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<sup>(a)</sup> OJ L87, 31.3.2017, p.229.

<sup>(b)</sup> S.I. 2017/699.

(d) after paragraph 6, insert—

“6A. During the transitional period referred to in Article 5(3A), the FCA may determine the class of each share, depositary receipt, ETF, certificate and other similar financial instruments otherwise than on the basis of the arithmetic average value of the orders executed in the market in that instrument, if the FCA considers that it is necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.

6B. In determining the class of a financial instrument as referred to in paragraph 6A—

(a) the FCA must have regard to—

(i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and

(ii) the most recent classes determined for the financial instruments in question before exit day;

(b) the FCA may also take into account any relevant information available in relation to the value of the orders executed in relation to the financial instrument in question in the United Kingdom or in any other country.

6C. If the FCA does not determine the class of a financial instrument during the transitional period in accordance with paragraphs 6A and 6B, the class determined for that financial instrument (if any) before exit day must continue to apply.”;

(e) in paragraph 7—

(i) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “the FCA may make”;

(ii) omit the second and third subparagraphs.

(2) In Article 15—

(a) in paragraph 1, for the second subparagraph, substitute—

“Firms that meet the definition of systematic internaliser must notify the FCA in accordance with the rules of that authority.

The FCA must publish a list of the systematic internalisers in the United Kingdom for which it has received notifications.”;

(b) in paragraph 2, for “Article 27 of Directive 2014/65/EU” substitute “the rules in section 11.2A of the Conduct of Business sourcebook, Articles 64 to 66 of Regulation (EU) 2017/565, Regulation (EU) 2017/575 and Regulation (EU) 2017/576”;

(c) in paragraph 4, for “Article 28 of Directive 2014/65/EU” substitute “rules 11.3.1, 11.4.1, 11.4.4A and 11.4.5 of the Conduct of Business sourcebook, and Articles 67 to 70 of Regulation (EU) 2017/565”;

(d) in paragraph 5, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 50, clarifying”, substitute “The Treasury may by regulations clarify”.

(3) In Article 16, for “competent authorities” substitute “competent authority”.

(4) In Article 17—

(a) in paragraph 2, for “Article 28 of Directive 2014/65/EU” substitute “rules 11.3.1, 11.4.1, 11.4.4A and 11.4.5 of the Conduct of Business sourcebook, and Articles 67 to 70 of Regulation (EU) 2017/565”;

(b) in paragraph 3, in the opening words, for “the Commission shall adopt delegated acts in accordance with Article 50 specifying”, substitute “the Treasury may by regulations specify”.

(5) In Article 18—

(a) for paragraph 4, substitute—



“4. Firms which meet the definition of systematic internaliser must notify the FCA in accordance with the rules of that authority.

The FCA must publish a list of the systematic internalisers in the United Kingdom for which it has received notifications.”;

- (b) in paragraph 9, for “Article 27 of Directive 2014/65/EU” substitute “section 11.2A of the Conduct of Business sourcebook, Articles 64 to 66 of Regulation (EU) 2017/565, Regulation (EU) 2017/575 and Regulation (EU) 2017/576”.

(6) In Article 19—

- (a) in the heading, for “ESMA” substitute “the competent authority”;
- (b) in paragraph 1—
  - (i) in the first sentence, for “Competent authorities and ESMA” substitute “The competent authority”;
  - (ii) omit the second and third sentences;
- (c) in paragraph 2, for “The Commission shall adopt delegated acts in accordance with Article 50 specifying” substitute “The Treasury may by regulations specify”;
- (d) in paragraph 3, for “The Commission shall adopt delegated acts in accordance with Article 50, clarifying” substitute “The Treasury may by regulations specify”.

(7) In Article 20, in paragraph 3—

- (a) in the opening words, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
- (b) omit the second and third subparagraphs.

(8) In Article 21—

- (a) in paragraph 4, for “Competent authorities” substitute “The competent authority”;
- (b) after paragraph 4, insert—

“4A. During the transitional period referred to in Article 5(3A), the FCA may suspend the obligations referred to in Article 21(1) in relation to a specified class of financial instruments as described in paragraph 4 for a specified period otherwise than on the conditions laid down in Article 11 if the FCA considers that it is necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.

4B. In deciding whether to suspend those obligations—

- (a) the FCA must also take into account—
  - (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and
  - (ii) the most recent specified threshold published before exit day on the basis of calculations under Article 16 of Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives<sup>(a)</sup>;
- (b) the FCA may also take into account any other relevant information available in relation to liquidity in the relevant class of financial instrument concerned, whether in the United Kingdom or in any other country.”;
- (c) in paragraph 5—
  - (i) in the opening words—
    - (aa) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;

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(a) OJ L87, 31.3.2017.

- (bb) for “Article 64 of Directive 2014/65/EU” substitute “regulation 14 of the Data Reporting Services Regulations 2017”;
  - (ii) omit the second and third subparagraphs.
- (9) In Article 22—
- (a) in paragraph 1, for “competent authorities” substitute “the competent authority”;
  - (b) omit paragraph 3;
  - (c) in paragraph 4—
    - (i) in the first subparagraph, for “ESMA shall develop draft regulatory”, substitute “The FCA may make”;
    - (ii) omit the second and third subparagraphs.
- (10) In Article 23—
- (a) in paragraph 1, for “in accordance with Article 25(4)(a) of Directive 2014/65/EU” substitute “by the Commission in accordance with Article 25(4)(a) of Directive 2014/65/EU before exit day, or specified as equivalent in regulations made by the Treasury under paragraph 8 of Schedule 3(a) on or after exit day”;
  - (b) in paragraph 2—
    - (i) for “authorised as an MTF under Directive 2014/65/EU” substitute “has permission to operate a multilateral trading facility under Part 4A of FSMA”;
    - (ii) for “such authorisations” substitute “such permissions”;
  - (c) in paragraph 3—
    - (i) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
    - (ii) omit the second and third subparagraphs;
  - (d) insert after paragraph 3—
 

“4. The Treasury may only specify a third country trading venue as equivalent for the purposes of paragraph 1 if it is satisfied that the legal and supervisory framework of the third country in question ensures that a trading venue authorised in that country—

    - (a) complies with legally binding requirements equivalent to the requirements resulting from Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse, Title II of this Regulation, provisions of the law of the United Kingdom relied on by the United Kingdom before exit day to implement Title III of Directive 2014/65/EU and Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market**(b)**, as those provisions are amended from time to time; and
    - (b) is subject to effective supervision and enforcement in that third country.

5. For the purpose of paragraph 4, a third-country legal and supervisory framework may be considered equivalent where that framework fulfils at least the following conditions—

    - (a) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
    - (b) the markets have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
    - (c) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and

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(a) Schedule 3 is inserted to the Regulation by regulation 37 of these Regulations.  
 (b) OJ L390, 31.12.2004, p.38.

- (d) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.”.

### **Transaction reporting**

**29.**—(1) In Article 24, for the words from the beginning to “Regulation (EU) No 1095/2010”, substitute “The FCA”.

(2) In Article 25—

(a) in paragraph 1—

(i) for “Directive 2005/60/EC of the European Parliament and of the Council” substitute “the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(a)”;

(ii) omit the final sentence;

(b) in paragraph 2, omit the final sentence;

(c) in paragraph 3—

(i) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;

(ii) in the second subparagraph, omit “draft regulatory”;

(iii) omit the third and fourth subparagraphs.

(3) In Article 26—

(a) in paragraph 1, omit the second and third subparagraphs;

(b) in paragraph 2, for “trading venue” each time it occurs, substitute “UK or EU trading venue”;

(c) in paragraph 3, for “Article 57 of Directive 2014/65/EU” substitute “Part 3 of the Markets in Financial Instruments Regulations 2017”;

(d) in paragraph 6, omit the second subparagraph;

(e) in paragraph 7—

(i) in the third subparagraph, for “Article 66(4) of Directive 2014/65/EU” substitute “regulation 16(3)(d) of the Data Reporting Services Regulations”;

(ii) in the fifth subparagraph, for “The home Member State” both times it occurs, substitute “The FCA”;

(f) omit paragraph 8;

(g) in paragraph 9—

(i) in the first subparagraph—

(aa) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;

(bb) omit point (b);

(ii) omit the second and third subparagraphs;

(h) in paragraph 10—

(i) in the first sentence—

(aa) for “ESMA shall submit a report to the Commission” substitute “the FCA must publish a report”;

(bb) omit “received and exchanged between competent authorities”;

(ii) omit the second and third sentences.

(4) In Article 27—

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(a) S.I. 2017/692.

- (a) in paragraph 1—
  - (i) in the first subparagraph, for “competent authorities” substitute “the FCA”;
  - (ii) in the second subparagraph—
    - (aa) for “26(2)” substitute “26(2)(b) or (c)”;
    - (bb) for “its competent authority” substitute “the FCA”;
  - (iii) in the third subparagraph—
    - (aa) in the first sentence, for “competent authority” substitute “FCA”;
    - (bb) for the third sentence, substitute “This data is to be transmitted without delay to the FCA, which must publish it as soon as practicable on its website.”.
  - (iv) omit the fourth sentence;
- (b) in paragraph 2—
  - (i) in the opening words—
    - (aa) for “competent authorities” the first time it occurs, substitute “the FCA”;
    - (bb) for “ESMA and the competent authorities” substitute “the FCA”;
  - (ii) in point (a), for “ESMA and the competent authorities” substitute “the FCA”;
  - (iii) omit point (c);
- (c) in paragraph 3—
  - (i) in the first sub-paragraph—
    - (aa) in the opening words, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
    - (bb) in point (a), for “competent authorities and transmitting it to ESMA”, substitute “the FCA”;
    - (cc) in point (b), for “ESMA and the competent authorities” substitute “the FCA”;
  - (ii) omit the second and third sub-paragraphs.

## Derivatives

### 30.—(1) In Article 28—

- (a) in paragraph 1, for point (d), substitute—
 

“(d) third-country trading venues, provided that—

  - (i) either—
    - (aa) a decision has been adopted before exit day by the European Commission in accordance with paragraph 4 of this Article as it had effect in the European Union before exit day; or
    - (bb) the Treasury has made regulations in accordance with paragraph 4 of this Article as it applies in the United Kingdom on and after exit day; and
  - (ii) the third country provides for an effective equivalent system for recognition of UK trading venues to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.”;
- (b) in paragraph 2—
  - (i) in the first subparagraph, for “Union” each time it appears, substitute “United Kingdom”;
  - (ii) in the second subparagraph, for “ESMA shall” substitute “The competent authority must”;
- (c) in paragraph 4—
  - (i) in the first subparagraph—

- (aa) for “The Commission may, in accordance with the examination procedure referred to in Article 51(2) adopt decisions determining” substitute “The Treasury may by regulations specify”;
  - (bb) after “this Regulation,” insert “United Kingdom legislation which implemented or replaced”;
  - (ii) in the fourth subparagraph—
    - (aa) for “A decision of the Commission” substitute “Regulations made by the Treasury”;
    - (bb) for “the Commission’s decision” substitute “regulations made by the Treasury”;
  - (d) in paragraph 5—
    - (i) in the first subparagraph—
      - (aa) for “ESMA shall develop draft regulatory” substitute “the FCA may make”;
      - (bb) for “the Union” substitute “the United Kingdom”;
    - (ii) omit the second and third subparagraphs;
    - (iii) in the fourth sub-paragraph omit “regulatory”.
- (2) In Article 29, in paragraph 3—
- (a) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The appropriate regulator may make”;
  - (b) in the second subparagraph—
    - (i) for “ESMA” substitute “The appropriate regulator,”;
    - (ii) omit “regulatory”;
  - (c) omit the third and fourth subparagraphs;
  - (d) at the end insert—
 

“For the purposes of this paragraph, “appropriate regulator” means—

    - (a) the Bank of England, in relation to CCPs;
    - (b) the FCA in all other cases.

The FCA and the Bank of England must co-ordinate the exercise of their functions when making technical standards under this Article to ensure that the technical standards made under it are mutually compatible.”
- (3) In Article 30, in paragraph 2—
- (a) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The appropriate regulator may make”;
  - (b) omit the second and third subparagraphs;
  - (c) at the end insert—
 

“For the purposes of this paragraph, “appropriate regulator” means—

    - (a) the Bank of England, in relation to CCPs;
    - (b) the FCA in all other cases.

The FCA and the Bank of England must co-ordinate the exercise of their functions when making technical standards under this Article to ensure that the technical standards made under it are mutually compatible.”
- (4) In Article 31—
- (a) in paragraph 1—
    - (i) for “Article 27 of Directive 2014/65/EU” substitute “section 11.2A of the Conduct of Business sourcebook”

- (ii) for “Article 1(6) of Directive 2014/65/EU” substitute “rule 5AA.1.1 in the Market Conduct sourcebook”;
  - (b) in paragraph 3, in the second sentence, omit “or ESMA”;
  - (c) in paragraph 4, for “The Commission may adopt by means of delegated acts in accordance with Article 50, measures specifying” substitute “The Treasury may by regulations specify”.
- (5) In Article 32—
- (a) in paragraph 1—
    - (i) in the opening words, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
    - (ii) in point (b), omit “regulatory”;
    - (iii) omit the second, third, and fourth subparagraphs;
  - (b) in paragraph 3—
    - (i) omit “draft regulatory” both times it appears;
    - (ii) for “ESMA” each time it appears, substitute “the FCA”;
  - (c) in paragraph 4—
    - (i) for “ESMA”, both times it appears, substitute “the FCA”;
    - (ii) for “Commission”, both times it appears, substitute “Treasury”;
  - (d) in paragraph 5—
    - (i) for “ESMA” substitute “The FCA”;
    - (ii) for “submit to the Commission draft regulatory” substitute “make”;
    - (iii) omit “regulatory” the second time it appears;
    - (iv) omit the second sentence of the first subparagraph and the second subparagraph;
  - (e) in paragraph 6—
    - (i) in the first sub-paragraph, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
    - (ii) omit the second and third sub-paragraphs.
- (6) In Article 33—
- (a) omit paragraph 1;
  - (b) in paragraph 2—
    - (i) in the opening words of the first subparagraph, for “The Commission may adopt implementing acts declaring” substitute “The Treasury may by regulations specify”;
    - (ii) omit the second subparagraph;
  - (c) in paragraph 3, for “An implementing act” substitute “Regulations”;
  - (d) for paragraph 4, substitute—
 

“4. Where regulations made under paragraph 2 are revoked, transactions by counterparties shall automatically be subject again to all requirements contained in Articles 28 and 29 of this Regulation.”.
- (7) For Article 34, substitute—

*“Article 34*

**Register of derivatives subject to the trading obligation**

1. The FCA must publish and maintain on its website a register specifying—
  - (a) every derivative that appears to the FCA to be subject to the obligation to trade on the venues referred to in Article 28(1);
  - (b) the venues where the derivative is admitted to trading or traded;

(c) the dates from which the obligation takes effect.

2. The FCA may draw on such information as it considers appropriate to maintain the register, including information published in the register maintained by ESMA under this Article as it applies in the European Union.”.

### **Non-discriminatory clearing access for financial instruments**

**31.**—(1) In Article 35—

- (a) in paragraph 2, for “its relevant competent authority” substitute “the competent authority of the CCP”;
- (b) in paragraph 3, in the fourth sentence, omit “Where the trading venue is established in a different Member State to the CCP,”;
- (c) in paragraph 4, in the third subparagraph—
  - (i) for “ESMA” both times it appears, substitute “the FCA”;
  - (ii) for “Article 37 of Directive 2014/65/EU” substitute “paragraphs 7C, 7D, 21A and 31 of the Schedule to the Recognition Requirements Regulations(a)”;
- (d) in paragraph 5, in the second subparagraph, omit the second and third sentences;
- (e) in paragraph 6—
  - (i) in the first subparagraph, in the opening words, for “ESMA shall develop draft regulatory” substitute “The Bank of England may, having consulted the FCA, make”;
  - (ii) omit the second and third subparagraphs.

(2) In Article 36—

- (a) in paragraph 2, for “its relevant competent authority” substitute “the competent authority of the trading venue”;
- (b) in paragraph 3, in the fourth sentence, omit “Where the CCP is established in a different Member State to the trading venue”;
- (c) in paragraph 4, in the third subparagraph—
  - (i) for “ESMA” both times it appears, substitute “the FCA”;
  - (ii) for “Article 37 of Directive 2014/65/EU” substitute “paragraphs 7C, 7D, 21A and 31 of the Schedule to the Recognition Requirements Regulations”;
- (d) in paragraph 5—
  - (i) for the first sentence, substitute—

“This paragraph applies to trading venues which fell below the relevant threshold for exchange-traded derivatives in the calendar year preceding the entry into application of this Regulation and notified ESMA and its competent authority that they did not wish to be bound by this Article for exchange-traded derivatives included within that threshold.”;

    - (ii) in the second sentence, for “ESMA and its competent authority” substitute “the FCA”;
    - (iii) in the fourth sentence, for “ESMA” substitute “The FCA”;
- (e) in paragraph 6—
  - (i) in the first sub-paragraph—
    - (aa) in the opening words, for “ESMA shall develop draft regulatory”, substitute “The FCA may, having consulted the Bank of England, make”;
    - (bb) in point (d), for “ESMA” substitute “the FCA”;

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(a) S.I. 2001/995. Paragraphs 7C, 7D and 21A were inserted by S.I. 2006/3386.

- (ii) omit the second and third sub-paragraphs.
- (3) Omit Article 37.
- (4) In Article 38—
  - (a) in paragraph 1—
    - (i) for “Union” both times it occurs, substitute “United Kingdom”;
    - (ii) for “the Commission has adopted a decision” both times it appears, substitute “the Treasury has made regulations”;
  - (b) omit paragraph 2;
  - (c) in paragraph 3, in the first subparagraph—
    - (i) for “The Commission may, in accordance with the examination procedure referred to in Article 51, adopt decisions determining” substitute “The Treasury may by regulations determine”;
    - (ii) for “2” substitute “1”.

### **Supervisory measures on product intervention and positions**

- 32.—(1) In Article 39—
  - (a) omit paragraphs 1 and 2;
  - (b) in paragraph 3—
    - (i) for “Competent authorities” substitute “The FCA”;
    - (ii) for “their Member State” substitute “the United Kingdom”.
- (2) Omit Articles 40 and 41.
- (3) In Article 42—
  - (a) in paragraph 1—
    - (i) for “A competent authority” substitute “The FCA”;
    - (ii) for “that Member State” substitute “the United Kingdom”;
  - (b) in paragraph 2—
    - (i) in the first subparagraph—
      - (aa) in the opening words, for “A competent authority” substitute “The FCA”;
      - (bb) in point (a)(i), for “within at least one Member State” substitute “within the United Kingdom”;
      - (cc) in point (b), for “Union law” substitute “the law of the United Kingdom (or any part of the United Kingdom)”;
      - (dd) in point (c), at the end, insert “and”;
      - (ee) omit points (d) and (e);
      - (ff) in point (f), after “public bodies” insert “in the United Kingdom”;
    - (ii) in the second and third subparagraphs, for “competent authority” substitute “FCA”;
  - (c) for paragraph 3, substitute—
    - “3. Subject to paragraph 4, the FCA must not impose a prohibition or restriction under this Article unless not less than one month before the measure is due to take effect, it has published details of the decision to impose the prohibition or restriction on its website in accordance with paragraph 5.”;
  - (d) in paragraph 4—
    - (i) for “competent authority” each time it occurs, substitute “FCA”;
    - (ii) omit the words from “with no less than 24” to “EBA,”;
    - (iii) for “a one month notification period” substitute “waiting for one month”;



- (e) in paragraphs 5 and 6, for “competent authority” substitute “FCA”;
  - (f) in paragraph 7—
    - (i) for “The Commission shall adopt delegated acts in accordance with Article 50 specifying” substitute “The Treasury may by regulations specify”;
    - (ii) for “competent authorities” substitute “the FCA”;
    - (iii) for “at least one Member State” substitute “the United Kingdom”.
- (4) Omit Articles 43, 44 and 45.

**Provision of services and performance of activities by third-country firms following an equivalence decision**

- 33.—**(1) In Article 46—
- (a) in paragraph 1—
    - (i) for “established throughout the Union” substitute “in the United Kingdom”;
    - (ii) for “the meaning of Section I of Annex II to Directive 2014/65/EU”, substitute “Part 2 of Schedule 1 to this Regulation”;
    - (iii) for “ESMA” substitute “the FCA”;
  - (b) in paragraph 2—
    - (i) in the opening words—
      - (aa) for “ESMA” substitute “The FCA”;
      - (bb) for “throughout the Union” substitute “in the United Kingdom”;
    - (ii) in point (a), insert at the end “before exit day which has not been revoked before exit day, or the Treasury has adopted a decision in accordance with that Article after exit day,”;
    - (iii) in point (b), for “Union” substitute “United Kingdom”;
  - (c) omit paragraph 3;
  - (d) in paragraph 4—
    - (i) in the first subparagraph—
      - (aa) for “ESMA” substitute “the FCA”;
      - (bb) after “adoption”, insert “before exit day”;
      - (cc) after “determining”, insert “or the making of regulations under that Article by the Treasury specifying”;
    - (ii) in the second subparagraph, for “ESMA” each time it appears, substitute “the FCA”;
    - (iii) in the fourth subparagraph, for “ESMA” substitute “the FCA”;
    - (iv) omit the fifth subparagraph;
  - (e) in paragraph 5—
    - (i) for “Union” each time it appears, substitute “United Kingdom”;
    - (ii) omit “Member States shall ensure that”;
    - (iii) for “the meaning of Section I of Annex II to Directive 2014/65/EU”, both times it appears, substitute “Part 2 of Schedule 1 to this Regulation”;
  - (f) in paragraph 6—
    - (i) for “Union” substitute “United Kingdom”;
    - (ii) for “a Member State” substitute “the United Kingdom”;
  - (g) in paragraph 7—
    - (i) in the first sub-paragraph—
      - (aa) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;

- (bb) for “to ESMA” substitute “to the FCA”;
  - (ii) omit the second and third sub-paragraphs.
- (2) In Article 47—
- (a) in the heading, for “decision” substitute “determination”;
  - (b) in paragraph 1—
    - (i) for “The Commission may adopt a decision in accordance with the examination procedure referred to in Article 51(2) in relation to a third country stating that the legal and supervisory arrangements of that third country” substitute “The Treasury may by regulations specify that the legal and supervisory arrangements of a third country”;
    - (ii) after “this Regulation” insert “, in the law of the United Kingdom which was relied on by the United Kingdom before exit day to implement”;
  - (c) in paragraph 2—
    - (i) for “ESMA”, each time it occurs, substitute “the FCA”;
    - (ii) for “non-Union” substitute “non-United Kingdom”;
  - (d) omit paragraph 3;
  - (e) in paragraph 4, for “the Commission adopts a decision in accordance with the examination procedure referred to in Article 51(2) withdrawing its decision” substitute “the Treasury revokes regulations made”.
- (3) In Article 48—
- (a) for “ESMA” both times it appears, substitute “the FCA”;
  - (b) for “the Union” substitute “the United Kingdom”.
- (4) In Article 49—
- (a) in paragraph 1—
    - (i) for “ESMA” each time it appears, substitute “the FCA”;
    - (ii) for “Union” each time it appears, substitute “United Kingdom”;
    - (iii) in point (b), for “the Commission has adopted the Decision” substitute “the Treasury has made regulations”;
  - (b) in paragraph 2—
    - (i) for “ESMA” substitute “The FCA”;
    - (ii) for “the Commission” substitute “the Treasury”;
  - (c) in paragraph 3—
    - (i) for “Commission” substitute “Treasury”;
    - (ii) for “a decision in accordance with Article 47(1) has been adopted” substitute “regulations under Article 47(1) have been made”.

**Delegated and implementing acts**

**34.** For Title IX, substitute—

**“TITLE IX**

**REGULATIONS, DIRECTIONS AND TRANSFERRED FUNCTIONS**

*Article 50*

**Treasury Regulations**

1. Any power to make regulations conferred on the Treasury by this Regulation is exercisable by statutory instrument.

2. Such regulations may—
  - (a) make incidental, supplemental, consequential or transitional provision; and
  - (b) make different provision for different purposes.
3. Unless paragraph 5 applies, a statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
4. No regulations to which paragraph 5 applies may be made unless—
  - (a) a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House; or
  - (b) paragraph 6 applies.
5. This paragraph applies to any regulations made for the purposes set out in paragraphs 2 and 3 of Schedule 3 which contain a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed regulations would be that an activity which is not a regulated activity for the purposes of FSMA would become a regulated activity.
6. This paragraph applies if regulations to which paragraph 5 applies also contain a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.
7. If paragraph 6 applies, the regulations—
  - (a) must be laid before Parliament after being made; and
  - (b) cease to have effect at the end of the relevant period unless before the end of that period the regulations are approved by a resolution of each House of Parliament (but without affecting anything done under the regulations or the power to make new regulations).
8. The “relevant period” is a period of 28 days beginning with the day on which the regulations are made.
9. In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

*Article 50A*

**Treasury Directions**

1. Treasury directions under this Regulation may be varied or revoked.
2. A direction given by the Treasury must be laid before each House of Parliament and published in a way appearing to the Treasury to be best calculated to bring it to the attention of the public.

*Article 50B*

**FCA Directions**

1. A direction may only be given, amended or revoked by the FCA under Article 5, Article 9 or Article 14 (“an FCA direction”) with the approval of the Treasury.
2. An FCA direction—
  - (a) may specify different countries in relation to different financial instruments;
  - (b) must specify the date on which the direction comes into effect and the financial instruments or class of instruments to which it applies;
  - (c) may be amended or revoked.
3. The Treasury may refuse to approve an FCA direction if it appears to the Treasury that—

- (a) the giving of that direction would prejudice any current or proposed negotiations for an international agreement between the United Kingdom and one or more other countries, international organisations or institutions; or
  - (b) there are grounds under section 410 (international standards)(a) of FSMA to direct the FCA not to give that direction.
4. For the purposes of paragraph 3, “international organisations” includes the European Union.
  5. The Treasury must notify the FCA in writing whether or not they approve an FCA direction within four weeks from the day on which that direction is submitted to the Treasury for approval (“the relevant period”).
  6. If the Treasury do not give notice under paragraph 5 before the end of the relevant period the Treasury are deemed to have approved the direction.
  7. Provision of a draft direction to the Treasury for consultation does not amount to submission of the direction for approval.
  8. A copy of each FCA direction given under this Article must be must be laid before Parliament and published in a way appearing to the FCA to be best calculated to bring it to the attention of the public.

*Article 51*

**Transfer of MiFID functions**

1. The Treasury may make regulations for the purposes specified in Part 1 of Schedule 3 to this Regulation.
2. The FCA may make technical standards for the purposes set out in Part 2 of Schedule 3 to this Regulation.
3. The FCA may make technical standards for the purposes set out in Part 3 of Schedule 3 to this Regulation applying to authorised persons who are not PRA-authorised persons.
4. The PRA may make technical standards for the purposes set out in Part 3 of Schedule 3 to this Regulation applying to authorised persons who are PRA-authorised persons.
5. For the purposes of this Article—
  - “authorised persons” has the meaning given in section 31(2) of FSMA;
  - “PRA-authorised person” has the meaning given in section 2B(5) of FSMA.”.

**Final provisions**

- 35.**—(1) Omit Article 52.
- (2) In Article 54—
- (a) in paragraph 1—
    - (i) for “Member States” substitute “the United Kingdom”;
    - (ii) for “national regimes” substitute “FSMA”;
    - (iii) after “the Commission” insert “before exit day”;
    - (iv) after “Article 47” insert “or after the Treasury have made regulations under that Article after exit day”;
  - (b) omit paragraph 2.

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(a) Section 410 was amended by section 16 of the Financial Services Act 2012 (c.21) and S.I. 2017/1064.

(3) The omission of Article 54(2) does not affect any transitional period approved by a competent authority before exit day (and for these purposes, “competent authority” includes an authority designated by an EEA state in accordance with Article 67 of Directive 2014/65/EU).

(4) In Article 55, omit the fourth subparagraphs.

(5) Omit “This Regulation shall be binding in its entirety and directly applicable in all Member States” following Article 55.

## **Professional clients**

36. After Article 55, insert—

### “SCHEDULE 1

Article 2

## PROFESSIONAL CLIENTS FOR THE PURPOSES OF THIS REGULATION

### PART 1

#### Introduction

1. A professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.
2. In order to be considered to be a professional client, the client must comply with the criteria set out in Part 2 or Part 3 of this Schedule.

### PART 2

#### Categories of client who are considered to be professional clients

3. The following are professional clients in relation to all investment services and activities and financial instruments for the purposes of the Regulation—
  - (a) entities which are required to be authorised or regulated to operate in the financial markets (including all authorised entities carrying out the characteristic activities of the entities mentioned: entities which are authorised or regulated in the United Kingdom under FSMA, entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by another third country) and comprising—
    - (i) credit institutions;
    - (ii) investment firms;
    - (iii) other authorised or regulated financial institutions;
    - (iv) insurance companies;
    - (v) collective investment schemes and management companies of such schemes;
    - (vi) pension funds and management companies of such funds;
    - (vii) commodity and commodity derivatives dealers;
    - (viii) locals;
    - (ix) other institutional investors;
  - (b) large undertakings meeting two of the following size requirements on a company basis—
    - (i) the total on their balance sheet is 20 million euros or more;

- (ii) their net turnover is 40 million euros or more;
- (iii) they have own funds of 2 million euros or more;
- (c) national and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;
- (d) other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

4.—(1) An entity referred to in paragraph 3 may request non-professional treatment and investment firms may agree to provide a higher level of protection to that entity.

(2) Where the client of an investment firm is an undertaking referred to in paragraph 3, the investment firm must—

- (a) inform it prior to any provision of services that, on the basis of the information available to the investment firm, the client is considered to be a professional client, and will be treated as such unless the investment firm and the client agree otherwise;
- (b) inform the client that the client can request a variation of the terms of the agreement in order to secure a higher degree of protection.

(3) It is the responsibility of a client considered to be a professional client to ask for a higher level of protection if it thinks it is unable properly to assess or manage the risks involved.

(4) This higher level of protection will be provided when a client who is considered to be a professional client enters into a written agreement with the investment firm to the effect that it is not to be treated as a professional client for the purposes of the applicable conduct of business regime.

(5) The agreement must specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

## PART 3

### Clients who may be treated as professionals on request

5.—(1) Clients other than those mentioned in Part 2, including public sector bodies, local public authorities, municipalities and private individual investors, may also waive some or all of the protections afforded by the conduct of business rules.

(2) Investment firms may treat any of those clients as professional clients provided the relevant criteria and procedure mentioned below are fulfilled, but those clients are not to be presumed to possess market knowledge and experience comparable to that of the categories listed in Part 2.

(3) A waiver under point (1) is only valid if the investment firm has undertaken an adequate assessment of the expertise, experience and knowledge of the client (“the assessment”), and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.

(4) The fitness test applied—

- (a) to managers and directors who have been approved for the purpose of section 59 of FSMA;
- (b) to managers and directors of entities which are—
  - (i) authorised persons within the meaning of section 31(2) of FSMA; or
  - (ii) recognised investment exchanges, recognised clearing houses or recognised central counterparties within the meaning of section 285 of FSMA,

may be relied on for the purposes of the assessment.

(5) In the case of small entities, the person subject to the assessment must be the person authorised to carry out transactions on behalf of the entity.

(6) The assessment may not be relied on for the purposes of point (3) unless at least two of the following criteria are satisfied—

- (a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
- (b) the size of the client's financial instrument portfolio, including cash deposits and financial instruments, exceeds 500,000 euros;
- (c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

## PART 4

### Procedure

6.—(1) A client satisfying the criteria in Part 3 may only be treated as a professional client if the following procedure is followed—

- (a) the client must state in writing to the investment firm that it wishes to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product;
- (b) the investment firm must give the client a clear written warning of the protections and investor compensation rights it may lose;
- (c) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

(2) Before deciding to accept any request from a client to be treated as a professional client, investment firms must take all reasonable steps to ensure that the client in question meets the relevant requirements stated in Part 3.

(3) Points (1) and (2) do not apply in relation to a client who has already been categorised as a professional client under parameters and procedures similar to those referred to in this Schedule.

(4) Investment firms must implement appropriate written internal policies and procedures to categorise clients.

(5) A professional client is responsible for keeping the investment firm informed about any change which could affect its current categorisation as a professional client.

(6) Should the investment firm become aware however that the client no longer fulfils the conditions which made that client eligible to be treated as a professional client, the investment firm must take appropriate action.

## SCHEDULE 2

Article 2

### Directive 2014/65/EU – EU Regulations made under Title II

1. Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

2. Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.
3. Commission Delegated Regulation (EU) 2017/569 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading.
4. Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions.
5. Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.
6. Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes.
7. Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading.
8. Commission Implementing Regulation (EU) 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communications and the publication of the suspension and removal of financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.
9. Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions.
10. Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms.
11. Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council.
12. Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm.”.

## **Transfer of Functions**

37.—(1) After Schedule 2, insert—



Transfer of Functions to the Treasury and Regulators

PART 1

Directive functions transferred to the Treasury

1. To clarify, for the purposes of section 327(4) of FSMA and of the Regulated Activities Order, when an activity is provided in an incidental manner**(a)**.
2. To specify—
  - (a) the derivative contracts referred to in paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order that have the characteristics of wholesale energy products that must be physically settled and energy derivative contracts referred to in that paragraph;
  - (b) the derivative contracts referred to in paragraph 7 of Part 1 of Schedule 2 to the Regulated Activities Order that have the characteristics of other derivative financial instruments;
  - (c) the derivative contracts referred to in paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an MTF or an OTF**(b)**;
  - (d) technical elements of the definitions laid down in Article 2, to adjust them to market developments, technological developments and experience of behaviour that is prohibited under Regulation (EU) 596/2014 of the European Parliament and of the Council on market abuse **(c)**.
3. To make further provision in relation to the criteria set out in section 186 of FSMA**(d)**.
4. To specify the concrete organisational requirements equivalent to those set out in paragraphs 2 to 10 of Article 16 of Directive 2014/65/EU laid down in rules made by the competent authority under FSMA to be imposed on investment firms and on branches of third-country firms which have permission under Part 4A of FSMA to carry on regulated activities consisting of different investment services or activities and ancillary services or combinations thereof**(e)**.
5. To define the steps that investment firms might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when providing various investment and ancillary services and combinations thereof**(f)**.
6. To establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm**(g)**.
- 7.—(1) To ensure that investment firms comply with the principles laid down in rules made by the competent authority under FSMA, equivalent to those in Article 24 of the Directive 2014/65/EU, when providing investment or ancillary services to their clients, including—

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- (a) The powers in this paragraph are transferred from Article 2(3) of the Markets in Financial Instruments Directive (“Directive 2014/65/EU”).
  - (b) The powers in paragraph 2(a) to (c) are transferred from Article 4(1)(2) of Directive 2014/65/EU.
  - (c) The powers in paragraph 2(d) are transferred from Article 4(2) of Directive 2014/65/EU.
  - (d) The powers in paragraph 3 are transferred from Article 13(1) of Directive 2014/65/EU.
  - (e) The powers in paragraph 4 are transferred from Article 16(12) of Directive 2014/65/EU.
  - (f) The powers in paragraph 5 are transferred from Article 23(4)(a) of Directive 2014/65/EU.
  - (g) The powers in paragraph 6 are transferred from Article 23(4)(b) of Directive 2014/65/EU.

- (a) the conditions with which information must comply in order to be fair, clear and not misleading;
- (b) details about the content and format of information to clients in relation to client categorisation, investment firms and their services, financial instruments, costs and charges;
- (c) the criteria for the assessment of a range of financial instruments available on the market;
- (d) the criteria to assess compliance of firms receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the client<sup>(a)</sup>.

(2) In formulating the requirements for information on financial instruments for the purposes of paragraph 7(1)(b), information on the structure of the product must be included, where applicable, taking into account any relevant standardized information required under retained EU law<sup>(b)</sup>.

(3) Any rules made for the purposes set out in point (1) must take into account—

- (a) the nature of the service(s) offered or provided to the client or potential client, taking into account the type, object, size and frequency of the transactions;
- (b) the nature and range of products being offered or considered including different types of financial instruments;
- (c) the retail or professional nature of the client or potential clients or, where relevant, their classification as eligible counterparties<sup>(c)</sup>.

8.—(1) To determine whether the legal and supervisory framework of a third country ensures that a regulated market authorised in that country complies with legally binding requirements which are equivalent to the requirements resulting from Regulation (EU) No 396/2014, from Title II of this Regulation, and from the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Title III of Directive 2004/65/EU and Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>(d)</sup>, and which are subject to effective supervision and enforcement in that third country.

(2) For the purposes of point (1), the legal and supervisory framework of a third country may be considered equivalent where the framework fulfils the following conditions—

- (a) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- (b) the markets have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
- (c) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and
- (d) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation<sup>(e)</sup>.

9.—(1) To ensure that investment firms comply with the principles laid down in rules made by the competent authority under FSMA, equivalent to the principles set out in paragraphs 2 to 6 of Article 25 of Directive 2014/65/EU when providing investment or ancillary services to their clients, including providing for the—

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(a) The powers in paragraph 7(1) are transferred from Article 24(13) (first subparagraph) of Directive 2014/65/EU.  
 (b) The powers in paragraph 7(2) are transferred from Article 24(13) (second subparagraph) of Directive 2014/65/EU.  
 (c) The powers in paragraph 7(3) are transferred from Article 24(14) of Directive 2014/65/EU.  
 (d) OJ L390, 31.12.2004, p.38.  
 (e) The powers in paragraph 8 are transferred from Article 25.4 of Directive 2014/65/EU.

- (a) information investment firms must obtain when assessing the suitability or appropriateness of the services and financial instruments for their clients;
- (b) criteria firms must use to assess non-complex financial instruments for the purposes of rule 10A.4.1(2)(f) of the Conduct of Business sourcebook;
- (c) content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided.

(2) Regulations made for the purposes set out in point (1) must take into account—

- (a) the nature of the service offered or provided to the client or potential client, having regard to the type, object, size and frequency of the transactions;
- (b) the nature of the products being offered or considered, including different types of financial instruments;
- (c) the retail or professional nature of the client or potential clients or, where appropriate, their classification as eligible counterparties<sup>(a)</sup>.

10. To make provision concerning—

- (a) the criteria for determining the relative importance of the different factors that may be taken into account by an investment firm executing an order for a client for determining the best possible result for their client, taking into account the size and type of order and the retail or professional nature of the client;
- (b) factors that may be taken into account by an investment firm when reviewing its execution arrangements and the circumstances under which changes to such arrangements may be appropriate, and in particular, the factors for determining which venues enable investment firms to obtain on a consistent basis the best possible result for executing client orders;
- (c) the nature and extent of the information to be provided to clients on their execution policies<sup>(b)</sup>.

11. To define—

- (a) the conditions and nature of the procedures and arrangements which result in the prompt, fair and expeditious execution of client orders and the situations in which or types of transaction for which investment firms may reasonably deviate from prompt execution so as to obtain more favourable terms for clients;
- (b) the different methods through which an investment firm can be deemed to have met its obligation to disclose not immediately executable client limit orders to the market<sup>(c)</sup>.

12. To specify—

- (a) the procedures to be followed by eligible counterparties requesting treatment as clients under rule 3.7.1 of the Conduct of Business sourcebook;
- (b) the procedures to be followed by investment firms for obtaining the confirmation from prospective eligible counterparties referred to in rule 3.6.6 of the Conduct of Business sourcebook;
- (c) the pre-determined proportionate requirements, including quantitative thresholds that would allow an undertaking to be considered to be an eligible counterparty for the purposes of rule 3.6.4A of the Conduct of Business sourcebook<sup>(d)</sup>.

13. To determine circumstances that trigger an information requirement, as referred to in—

- (a) rule 5.6.1 of the Market Conduct sourcebook<sup>(e)</sup>; or

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(a) The powers in paragraph 9 are transferred from Article 25(8) of Directive 2014/65/EU.

(b) The powers in paragraph 10 are transferred from Article 27(9) of Directive 2014/65/EU.

(c) The powers in paragraph 11 are transferred from Article 28(3) of Directive 2014/65/EU.

(d) The powers in paragraph 12 are transferred from Article 30(5) of Directive 2014/65/EU.

(e) The powers in paragraph 13(a) are transferred from Article 31(4) of Directive 2014/65/EU.

(b) rule 3.21.1 or 3.25.1 of the Recognised Investment Exchanges sourcebook(a).

14. To specify further the requirements laid down in rule 5.10.2 of the Market Conduct sourcebook, taking into account the need for the requirements to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market and that de-registrations do not occur nor must registrations be refused as a result of a merely temporary failure to meet the conditions set out in paragraph (1) of that rule(b).

15. To list situations constituting significant damage to investors' interests and the orderly functioning of the market for the purposes of sections 313CA and 313CB of FSMA(c), and paragraph 7E in the Schedule to the Recognition Requirements Regulations(d).

16. To specify the thresholds referred to in paragraph 7BB(2)(a) of the Recognition Requirements Regulations(e), having regard to the total number of open positions and their size and the total number of persons holding a position(f).

17. To clarify what constitutes a reasonable commercial basis—

(a) to make information public as referred to in regulation 14 of the Data Reporting Services Regulations 2017(g);

(b) to provide access to data streams as referred to in regulation 15 of those Regulations(h).

18. To establish the criteria under which the operations of a trading venue in a host Member State could be considered to be of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State(i).

## PART 2

### Powers to make technical standards transferred to the FCA

19.—(1) To specify the criteria for establishing when an activity is to be considered to be ancillary to the main business of a firm at group level for the purposes of paragraph 1(l) of Schedule 3 to the Regulated Activities Order.

(2) Any criteria specified under point (1) must take into account the following elements—

(a) the need for ancillary activities to constitute a minority of activities at a group level;

(b) the size of their trading activity compared to the overall market trading activity in that asset class.

(3) In determining the extent to which ancillary activities constitute a minority of activities at a group level the competent authority may determine that the capital employed for carrying out the ancillary activity relative to the capital employed for carrying out the main business is to be considered (though this factor is not sufficient to demonstrate that the activity is ancillary to the main business of the group).

(4) The activities referred to in this paragraph must be considered at a group level.

(5) No account is to be taken, for the purposes of points (2) and (3), of—

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(a) The powers in paragraph 13(b) are transferred from Article 54(4) of Directive 2014/65/EU.

(b) The powers in paragraph 14 are transferred from Article 33(8) of Directive 2014/65/EU.

(c) Sections 313CA and 313CB were inserted by S.I. 2017/701.

(d) Paragraph 7E was inserted by S.I. 2006/3386 and amended by S.I. 2017/701. The powers in paragraph 15 are transferred from Articles 32(4) and 52(4) of Directive 2014/65/EU.

(e) Paragraph 7BB was inserted by S.I. 2017/701.

(f) The powers in paragraph 16 are transferred from Articles 58(6) of Directive 2014/65/EU.

(g) The powers in paragraph 17(a) are transferred from Article 64(7) of Directive 2014/65/EU.

(h) The powers in paragraph 17(b) are transferred from Article 65(7) of Directive 2014/65/EU.

(i) The powers in paragraph 18 are transferred from Article 79(8) of Directive 2014/65/EU.

- (a) intra-group transactions as referred to in Article 3 of Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade depositories that serve group-wide liquidity or risk management purposes;
- (b) transactions in derivatives which are objectively measurable in reducing risks directly relating to the commercial activity or treasury financing activity;
- (c) transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue, where such obligations are required by regulatory authorities in accordance with domestic law, or by trading venues(a).

20. To determine—

- (a) the specific content, the format and the periodicity of data relating to the quality of execution to be published in accordance with paragraph 4C of the Schedule to the Recognition Requirement Regulations(b), taking into account the type of execution venue and the type of financial instrument concerned;
- (b) the content and the format of information to be published by investment firms in accordance with rule 11.2A.39 of the Conduct of Business sourcebook(c).

21. To specify further the cases in which the connection between a derivative as referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order relating to or referenced to a financial instrument suspended or removed from trading and the original financial instrument implies that the derivative is also to be suspended or removed from trading, in order to achieve the objective of the suspension or removal of the underlying financial instrument(d).

22. To determine the format and timing of communications and publications by an investment firm or market operator of an MTF or an OTF relating to its decisions to suspend or remove from trading a financial instrument and any related derivative(e).

23. To specify further—

- (a) the requirements to ensure trading systems of regulated markets are resilient and have adequate capacity;
- (b) the ratio referred to in rule 5.3A.2(7) and 5A.5.2(7) of the Market Conduct sourcebook, taking into account factors such as the value of unexecuted orders in relation to the value of executed transactions;
- (c) the controls concerning direct electronic access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access;
- (d) the requirements to ensure that co-location services and fee structures are fair and non-discriminatory and that fee structures do not create incentives for disorderly trading conditions or market abuse;
- (e) the determination of where a regulated market is material in terms of liquidity in that financial instrument;
- (f) the requirements to ensure that market making schemes are fair and non-discriminatory and to establish minimum market making obligations that regulated markets must provide for when designing a market making scheme and the conditions under which the requirement to have in place a market making scheme is not appropriate, taking into account the nature and scale of the trading on that regulated market, including whether the regulated market allows for or enables algorithmic trading to take place through its systems;

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(a) The powers in paragraph 19 are transferred from Article 2(4) of Directive 2014/65/EU.

(b) Paragraph 4C was inserted by S.I. 2017/701.

(c) The powers in paragraph 20 are transferred from Article 27(10) of Directive 2014/65/EU.

(d) The powers in paragraph 21 are transferred from Article 32(2) of Directive 2014/65/EU.

(e) The powers in paragraph 22 are transferred from Article 32(3) of Directive 2014/65/EU.

(g) the requirements to ensure appropriate testing of algorithms so as to ensure that algorithmic trading systems including high-frequency algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market(a).

24. To specify minimum tick sizes or tick size regimes for specific shares, depositary receipts, exchange-traded funds, certificates, and other similar financial instruments where necessary to ensure the orderly functioning of markets, in accordance with the factors in paragraph 3G of the Schedule to the Recognition Requirements Regulations(b) and the price, spreads and depth of liquidity of the financial instruments(c).

25. To specify minimum tick sizes or tick size regimes for specific financial instruments other than those referred to in paragraph 24 where necessary to ensure the orderly functioning of markets, in accordance with the factors in paragraph 3G of the Schedule to the Recognition Requirements Regulations and the price, spreads and depth of liquidity of the financial instruments(d).

26. To specify the level of accuracy to which clocks are to be synchronised in accordance with international standards(e).

27. To specify the characteristics of different classes of financial instruments which must be taken into account by the regulated market when it assesses whether a financial instrument is issued in a manner consistent with the conditions laid down in the paragraphs 7A(2) and (3)(a), and 9ZB(1)(a) and (b) of the Schedule to the Recognition Requirements Regulations(f) for admission to trading on the different market segments which it operates(g).

28. To clarify the arrangements that a regulated market—

(a) is required to implement so as to be considered to have fulfilled its obligation to verify that the issuer of a transferable security complies with its obligations under the law of England and Wales, Scotland and Northern Ireland in respect of initial, ongoing or ad hoc disclosure obligations(h);

(b) has to establish pursuant to paragraph 3 in order to facilitate its members or participants in obtaining access to information which has been made public under the conditions established by the law of England and Wales, Scotland and Northern Ireland(i).

29. To specify further the cases in which the connection between a derivative relating or referenced to a financial instrument suspended or removed from trading and the original financial instrument implies that the derivative is also to be suspended or removed from trading, in order to achieve the objective of the suspension or removal of the underlying financial instrument(j).

30. To specify further the format and the timing of the publications market operators are required to make in relation to their decisions on the suspension or removal of financial instruments and any related derivative from trading(k).

31.—(1) To determine the methodology for calculation which will be applied in establishing the spot month position limits and other months' position limits for physically

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(a) The powers in paragraph 23 are transferred from Article 48(12) of Directive 2014/65/EU.

(b) Paragraph 3G was inserted by S.I. 2017/701.

(c) The powers in paragraph 24 are transferred from Article 49(3) of Directive 2014/65/EU.

(d) The powers in paragraph 25 are transferred from Article 49(4) of Directive 2014/65/EU.

(e) The powers in paragraph 26 are transferred from Article 50(2) of Directive 2014/65/EU.

(f) Paragraph 7A was inserted by S.I. 2006/3386 and amended by S.I. 2017/701. Paragraph 9ZB was inserted by S.I. 2017/701.

(g) The powers in paragraph 27 are transferred from Article 51(6)(a) of Directive 2014/65/EU.

(h) The powers in paragraph 28(a) are transferred from Article 51(6)(b) of Directive 2014/65/EU.

(i) The powers in paragraph 28(b) are transferred from Article 51(6)(c) of Directive 2014/65/EU.

(j) The powers in paragraph 29 are transferred from Article 52(2) of Directive 2014/65/EU.

(k) The powers in paragraph 30 are transferred from Article 52(3) of Directive 2014/65/EU.

settled and cash settled commodity derivatives based on the characteristics of the relevant derivative.

(2) The methodology for calculation must take into account the following factors—

- (a) the maturity of the commodity derivative contracts;
- (b) the deliverable supply in the underlying commodity;
- (c) the overall open interest in that contract and the overall open interest in other financial instruments with the same underlying commodity;
- (d) the volatility of the relevant markets, including substitute derivatives and the underlying commodity markets;
- (e) the number and size of the market participants;
- (f) the characteristics of the underlying commodity market, including patterns of production, consumption and transportation to market;
- (g) the development of new contracts.

(3) The appropriate regulator must take into account experience regarding the position limits of investment firms or market operators operating a trading venue and of other jurisdictions(a).

32. To determine—

- (a) the criteria and methods for determining whether a position qualifies as reducing risks directly relating to commercial activities for the purpose of position limits applying to commodity derivatives;
- (b) the methods to determine when positions of a person are to be aggregated within a group;
- (c) the criteria for determining whether a contract is an economically equivalent over-the-counter (OTC) contract to that traded on a trading venue, referred to in regulation 16(1) of the Markets in Financial Instruments Regulations 2017(b), in a way that facilitates the reporting of positions taken in equivalent OTC contracts to the FCA;
- (d) the methodology for aggregating and netting OTC and on-venue commodity derivatives positions to establish the net position for purposes of assessing compliance with the limits. Such methodologies must establish criteria to determine which positions may be netted against one another and must not facilitate the build-up of positions in a manner inconsistent with the objectives set out in regulation 16(2) of the Markets in Financial Instruments Regulations 2017;
- (e) the procedure setting out how persons may apply for the exemption under regulation 17 of the Markets in Financial Instruments Regulations 2017 and how the FCA will approve such applications(c).

33. To determine the format of the weekly reports referred to in paragraph 7BB of the Schedule to the Recognition Requirement Regulations and direction 10.4.5 of the Market Conduct sourcebook and of the breakdowns in paragraph 7BB(2)(b) of that Schedule(d) and paragraph (2) of that direction.

34. To determine—

- (a) the information to be provided to the FCA in relation to an application for authorisation under regulation 7 of the Data Reporting Services Regulations 2017, including the programme of operations(e);

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(a) The powers in paragraph 31 are transferred from Article 57(3) of Directive 2014/65/EU.

(b) S.I. 2017/701.

(c) The powers in paragraph 32 are transferred from Article 57(12) of Directive 2014/65/EU.

(d) The powers in paragraph 33 are transferred from Article 58(5) of Directive 2014/65/EU.

(e) The powers in paragraph 34(a) are transferred from Article 61(4)(a) of Directive 2014/65/EU.

(b) to determine standard forms, templates and procedures for the provision of information referred to in regulation 7 of those Regulations(a).

35. To determine common formats, data standards and technical arrangements facilitating the consolidation of information referred to in regulation 14(1) of the Data Reporting Services Regulations 2017(b).

36. To specify—

(a) the means by which an APA (within the meaning of regulation 2(1) of the Data Reporting Services 2017) may comply with the information obligation referred to in regulation 14 of the Data Reporting Services Regulations 2017;

(b) the content of the information published under regulation 14 of those Regulations, including the information referred to in regulation 14(4) in such a way as to enable the publication of information required under regulations 14;

(c) the concrete organisational requirements laid down in regulation 14(5) of those Regulations(c).

37. To determine data standards and formats for the information to be published in accordance with Articles 6, 10, 20 and 21 of Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments, including financial instrument identifier, price, quantity, time, price notation, venue identifier and indicators for specific conditions the transactions were subject to as well as technical arrangements promoting an efficient and consistent dissemination of information in a way ensuring for it to be easily accessible and utilisable for market participants as referred to in regulation 15(3) and (7) of the Data Reporting Services Regulations 2017, including identifying additional services the CTP (within the meaning of regulation 2(1) of the Data Reporting Services 2017) could perform which increase the efficiency of the market(d).

38. To specify—

(a) the means by which the CTP may comply with the information obligation referred to in regulation 15(1) and (5) of the Data Reporting Services Regulations 2017;

(b) the content of the information published under regulation 15 of those Regulations;

(c) the financial instruments data of which must be provided in the data stream and for non-equity instruments the trading venues and APAs which need to be included;

(d) other means to ensure that the data published by different CTPs is consistent and allows for comprehensive mapping and cross-referencing against similar data from other sources, and is capable of being aggregated at the level of the United Kingdom;

(e) the concrete organisational requirements laid down in regulation 15(10) and (11) of the Data Reporting Services Regulations 2017(e).

39. To specify—

(a) the means by which the ARM (within the meaning of regulation 2(1) of the Data Reporting Services 2017) may comply with the information obligation referred to in regulation 16(1) of the Data Reporting Services Regulations 2017; and

(b) the concrete organisational requirements laid down in regulation 16(3) and (4) of those Regulations(f).

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(a) The powers in paragraph 34(b) are transferred from Article 61(5) of Directive 2014/65/EU.

(b) The powers in paragraph 35 are transferred from Article 64(6) of Directive 2014/65/EU.

(c) The powers in paragraph 36 are transferred from Article 64(8) of Directive 2014/65/EU.

(d) The powers in paragraph 37 are transferred from Article 65(6) of Directive 2014/65/EU.

(e) The powers in paragraph 38 are transferred from Article 65(8) of Directive 2014/65/EU.

(f) The powers in paragraph 39 are transferred from Article 66(5) of Directive 2014/65/EU.



## PART 3

### Powers to make technical standards transferred to the PRA and the FCA

40. To specify—
- (a) the information to be provided to the competent authorities by an investment firm applying for authorisation under FSMA, including information in relation to the firm's programme of operations;
  - (b) the requirements applicable to the management of investment firms under rules 4.2.2R and 4.2.6R of the Senior Management, Systems and Controls sourcebook, or rules 3.1 and 3.2 of the General Organisational Requirements for investment firms in the PRA rulebook, as applicable;
  - (c) the information required for notifications under direction 10A.13.3D and rule 10A.13.10R of the Supervision Manual in the FCA Handbook or rule 2.2 of the Senior Managers Regime – Applications and Notifications Part of the PRA rulebook;
  - (d) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory function of the competent authority(a).
41. To develop standard forms, templates and procedures for the notification or provision of information provided for under paragraph 40(b).
42. To establish an exhaustive list of information to be included by persons who have decided to acquire or increase control over a UK authorised person in the notification required under section 178 of FSMA(c).
43. To determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in sections 187A to 187C of FSMA(d).
44. To specify the following—
- (a) the details of organisational requirements laid down in regulations 30, 32, 33 and 46 of the Markets in Financial Instruments Regulations 2017, sections 7A.3 and 7A.4 of the Market Conduct sourcebook or the Algorithmic Trading Part of the PRA rulebook, as applicable, on investment firms providing different investment services or activities and ancillary services or combinations thereof, whereby the specifications in relation to the organisational requirements laid down in regulations 32 and 33 of those Regulations must set out specific requirements for direct market access and for sponsored access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access;
  - (b) the circumstances in which an investment firm would be obliged to enter into the market making agreement referred to in regulation 30(10)(b) of the Markets in Financial Instruments Regulations 2017 and the content of such agreements, including the proportion of the trading venue's trading hours laid down in regulation 30(10)(a) of those Regulations;
  - (c) the situations constituting exceptional circumstances referred to in regulation 30(10) of the Markets in Financial Instruments Regulations 2017, including circumstances of extreme volatility, political and macroeconomic issues, system and operational matters, and circumstances which contradict the investment firm's ability to maintain prudent risk management practices as laid down in regulation 30(3) of those Regulations;

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(a) The powers in paragraph 40 are transferred from Article 7(4) of Directive 2014/65/EU.

(b) The powers in paragraph 41 are transferred from Article 7(5) of Directive 2014/65/EU.

(c) The powers in paragraph 42 are transferred from Article 12(8) of Directive 2014/65/EU.

(d) Sections 187A to 187C were inserted by section 6 of the Financial Services Act 2012 (c.21). The powers in paragraph 43 are transferred from Article 12(9) of Directive 2014/65/EU.

- (d) the content and format of the approved form referred to in regulation 30(9) of the Markets in Financial Instruments Regulations 2017 and the length of time for which such records must be kept by the investment firm(a).”.

## CHAPTER 2

### Commission Delegated Regulation 2017/565

#### Commission Regulation 2017/565

38. Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive is amended in accordance with regulations 39 to 56.

#### Application, scope and definitions

39.—(1) Before Article 1, insert—

*“Article 1*

#### **Application**

1. Subject to paragraph 2, this Regulation applies to—
  - (a) an investment firm which has its head office in the United Kingdom;
  - (b) a person authorised by the FCA to provide a data reporting service under the Data Reporting Services Regulations 2017(b);
  - (c) a market operator which has its registered office (or if it has no registered office, its head office) in the United Kingdom, including any UK regulated markets they operate.
2. This Regulation does not apply to—
  - (a) any person excluded from the definition of “investment firm” in Schedule 3 to the Regulated Activities Order;
  - (b) any firm which has permission under Part 4A of FSMA to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Markets in Financial Instruments Regulations 2017.”.

(2) In Article 1—

- (a) in paragraph 1, for the words from “in accordance with” to the end of the paragraph, substitute “in relation to the services described in paragraph 1A.”;
- (b) after paragraph 1, insert—

“1A. The services referred to in paragraph 1 are—

- (a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Part 1 of Schedule 2 to the Regulated Activities Order(c);
- (b) investment advice concerning one or more of the instruments referred to in subparagraph (a);
- (c) safe-keeping and administration in relation to units of collective investments undertakings; and
- (d) reception and transmission of orders in relation to financial instruments.”;

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(a) The powers in paragraph 44 are transferred from Article 17(7) of Directive 2014/65/EU.

(b) S.I. 2017/699.

(c) S.I. 2001/544. Part 1 of Schedule 2 has been amended by S.I. 2006/3384, 2017/488, and these Regulations.

(c) in paragraph 2, for the words from “referred to in Article 1(3)” to the end, substitute “(so far as relevant) in Chapters II to IV of this Regulation”;

(d) after paragraph 2, insert—

“3. Chapters I, II, III and VI apply to relevant firms.

4. Chapters IV and V apply to a firm which has temporary permission to operate an organised trading facility as a branch in the United Kingdom under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

5. If—

(a) a relevant firm complies with a requirement in Chapter II, III or VI of this Regulation as it applies in the EEA (“the EEA requirement”) in relation to the services it provides in the United Kingdom; and

(b) the EEA requirement has equivalent effect to a requirement in this Regulation as it applies in the United Kingdom (“the UK requirement”),

the firm is to be treated as complying with the UK requirement.

6. For the purposes of this Article “relevant firm” means an investment firm or credit institution which has temporary permission to carry on a regulated activity which is any of the investment services and activities in the United Kingdom under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(a).”.

(3) In Article 2, after point (6) insert—

“(7) “portfolio management” means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;

(8) “retail client” means a client who is not a professional client;

(9) “limit order” means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;

(10) “management company” has the meaning given in section 237(2) of FSMA;

(11) “tied agent” means a natural or legal person, who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts—

(a) promotes investment or ancillary services to clients or prospective clients;

(b) receives and transmits instructions or orders from the client in respect of investment services or financial instruments; or

(c) places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;

(12) “Group” has the meaning given in section 421 of FSMA;

(13) “durable medium” means any instrument which—

(a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information; and

(b) allows the unchanged reproduction of the information stored;

(14) references in this Regulation to a sourcebook are to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by that Authority under FSMA as the sourcebook has effect on exit day;

(15) references in this Regulation to the PRA rulebook are to the rulebook published by the PRA containing rules made by that Authority under FSMA as the rulebook has effect on exit day;

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(a) S.I. 2018/\*\*\*\*.

(16) References to “UK law on markets in financial instruments” are to the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2014/65/EU and its implementing measures—

- (a) as they have effect on exit day, in the case of rules made by the FCA or by the PRA under FSMA, and
- (b) as amended from time to time, in all other cases.

(17) In this Regulation—

- (a) any expression which is used in Regulation (EU) No 600/2014 (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in that Regulation;
- (b) subject to point (a), any expression which is used in the Markets in Financial Instruments Regulations 2017 (as so amended) has the same meaning as in those Regulations;
- (c) subject to point (a), any expression which is used in the Data Reporting Services Regulations 2017 (as so amended) has the same meaning as in those Regulations.”

(4) In Article 3, in paragraph 1, omit “as defined in Article 4(1) point (62) of Directive 2014/65/EU”.

(5) In Article 4—

- (a) omit the sub-heading in brackets;
- (b) in the opening words, for “the exemption in point (c) of Article 2(1) of Directive 2014/65/EU” substitute “section 327(4) of FSMA and the exemption in paragraph 1(c) of Schedule 3 to the Regulated Activities Order”.

(6) In Article 5—

- (a) omit the sub-heading in brackets;
- (b) in the opening words of paragraph 1, for “Section C(6) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order”;
- (c) in paragraphs 3, 4, 5, 6 and 7, for “Section C(6) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order”.

(7) In Article 6—

- (a) omit the sub-heading in brackets;
- (b) in paragraphs, 1, 2 and 3 for “Section C(6) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order”.

(8) In Article 7—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1—
  - (i) in the opening words, for “Section C(7) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 7 of Part 1 of Schedule 2 to the Regulated Activities Order”;
  - (ii) for point (a)(i), substitute—

“(i) it is traded on a third country trading venue which is a regulated market, an MTF or an OTF (as defined by Article 2(1)(13), (14) and (15) respectively of the markets in financial instruments regulation);”
  - (iii) in point (a)(ii), for “a regulated market, an MTF, an OTF”, substitute “a UK regulated market, a UK MTF, a UK OTF (as defined by Article 2(1)(13A), (14A) and (15A) respectively of the markets in financial instruments regulation);”
  - (iv) in sub-paragraph (a)(iii), for “a regulated market, MTF, an OTF”, substitute “a UK regulated market, a UK MTF, a UK OTF”;

- (c) in paragraph 3, for “Section C(10) of Annex 1 to Directive 2004/39/EC of the European Parliament and of the Council” substitute “paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order”;
- (d) in paragraph 4—
  - (i) in the opening words—
    - (aa) for “Section C(7) of Annex I to Directive 2014/65/EU” substitute “paragraph 7 of Part 1 of Schedule 2 to the Regulated Activities Order”;
    - (bb) for “Sections C(7) and (10) of that Annex” substitute “paragraphs 7 and 10 of Part 1 of Schedule 2 to the Regulated Activities Order”.

(9) In Article 8—

- (a) in the heading, for “Section C(10) of Annex I to Directive 2014/65/EU” substitute “paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order”;
- (b) omit the sub-heading in brackets;
- (c) in the opening words—
  - (i) for “Section C(10) of Annex I to Directive 2014/65/EU” substitute “paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order”;
  - (ii) for “that Section”, both time it appears, substitute “that Part”;
- (d) in point (d), for “Section C(4) of Annex I to Directive 2014/65/EU” substitute “paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order”;
- (e) in point (e), for “units recognised for compliance with the requirements of Directive 2003/87/EC of the European Parliament and of the Council” substitute “emission allowances referred to in paragraph 11 of Part 1 of Schedule 2 to the Regulated Activities Order”.

(10) In Article 9—

- (a) omit the sub-heading in brackets;
- (b) in the opening paragraph, for the words from the beginning to “Directive 2014/65/EU” substitute—

“For the purposes of the list of investment services and activities in Part 3 of Schedule 2 to the Regulated Activities Order, “investment advice” means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments.

For these purposes”.

(11) In Article 10, in paragraph 1, for “Section C(4) of Annex I to Directive 2014/65/EU”, substitute “paragraph 4 of Part 1 of the Schedule 2 to the Regulated Activities Order”.

(12) In Article 11—

- (a) omit the sub-heading in brackets;
- (b) renumber the existing paragraph as paragraph 1;
- (c) in paragraph 1, as renumbered, omit “in accordance with Article 4(1)(17) of Directive 2014/65/EU,”;
- (d) after paragraph 1, insert—

“2. For the purposes of this Article, “money market instruments” means those classes of instruments which are normally dealt with on the money market, excluding instruments of payment.”

**Systematic internalisers**

**40.—(1) In Article 12—**

- (a) omit the sub-heading in brackets;

- (b) re-number the existing paragraph as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of Directive 2014/65/EU” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”.
- (f) after paragraph 1, insert—

“2. For the purposes of this Article, and Articles 13 to 16, “relevant area” in relation to a financial instrument, means the United Kingdom and such other countries or regions as have been specified by the FCA by direction for the purposes of Article 5, 9 or 14 of Regulation (EU) No 600/2014.

3. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.”

(2) In Article 13—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of Directive 2014/65/EU” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“2. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.”.

(3) In Article 14—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of Directive 2014/65/EU” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“2. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.”.

(4) In Article 15—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of Directive 2014/65/EU” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“2. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.”.

- (5) In Article 16—
- (a) omit the sub-heading in brackets;
  - (b) re-number the existing Article as paragraph 1;
  - (c) in the opening words, for “Article 4(1)(20) of Directive 2014/65/EU” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
  - (d) in point (a)(i), for “the Union” substitute “the relevant area”;
  - (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
  - (f) after paragraph 1, insert—

“2. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.”.

- (6) After Article 16, insert—

*“Article 16ZA*

**Transitional period: data for calculations**

1. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, for the purposes of determining whether the criteria set out in Articles 12 to 16 are satisfied, firms must use data published by the FCA for the financial instrument in question to calculate—

- (a) whether there is a liquid market for that financial instrument;
- (b) the total number of transactions in that financial instrument executed in the relevant area on any trading venue or OTC;
- (c) the total turnover for that financial instrument executed in the relevant area on a trading venue or OTC.

2. Where the FCA has not published relevant data for the financial instrument in question, firms must use the most recent data published before exit day by the European Securities and Markets Authority in relation to that financial instrument to calculate the questions set out in paragraph 1.

3. If neither the data described in paragraph 1 nor the data described in paragraph 2 are available in relation to the financial instrument in question, an investment firm is not a systematic internaliser within the definition given in Article 2(1)(12) of Regulation (EU) No 600/2014 unless it has chosen to opt in to the systematic internaliser regime.”.

- (7) In Article 16a, for “Article 4(1)(20) of Directive 2014/65/EU” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”.

- (8) In Article 17, omit the sub-heading in brackets.

**Algorithmic trading and electronic access**

- 41.**—(1) In Article 18—

- (a) omit the sub-heading in brackets;
- (b) for “Article 4(1)(39) of Directive 2014/65/EU” substitute “regulation 2(1) of the Markets in Financial Instruments Regulations 2017”.

- (2) In Article 19—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, in the opening words, for “in accordance with Article 4(1)(40) of Directive 2014/65/EU” substitute “for the purposes of the definition of “high-frequency

- algorithmic trading technique” in regulation 2(1) of the Markets in Financial Instruments Regulations 2017<sup>(a)</sup> and regulation 3(1) of the Recognition Requirements Regulations”;
- (c) in paragraph 2, for “the criteria in Article 17(4) of Directive 2014/65/EU” substitute “the criteria described in paragraph 2A.”;
  - (d) after paragraph 2, insert—
 

“2A A market making strategy satisfies the criteria in this paragraph where the strategy (pursued by the investment firm as a member or participant in one or more trading venues), when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.”;
  - (e) in paragraph 4, insert at the end “(and for the purposes of this paragraph, “DEA” means “direct electronic access” as defined in regulation 2(1) of the Markets in Financial Instruments Regulations 2017)”.
- (3) In Article 20—
- (a) omit the sub-heading in brackets;
  - (b) for “Article 4(1)(41) of Directive 2014/65/EU” substitute “the definition of “direct electronic access in regulation 2(1) of the Markets in Financial Instruments Regulations 2017”.

### **Organisation requirements**

- 42.**—(1) In Article 21, omit the sub-heading in brackets.
- (2) In Article 22—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) for “Directive 2014/65/EU” substitute “UK law on markets in financial instruments (“UK obligations)”;
    - (ii) for “that Directive” substitute “UK law on markets in financial instruments”;
  - (c) in paragraph 2(b), for “obligations under Directive 2014/65/EU” substitute “UK obligations”;
  - (d) in paragraph 3—
    - (i) in point (b) for “by Directive 2014/65/EU and” substitute “in relation to its UK obligations and by”;
    - (ii) in point (c) for “obligations under Directive 2014/65/EU” substitute “UK obligations”.
- (3) In Article 23, omit the sub-heading in brackets.
- (4) In Article 24, omit the sub-heading in brackets.
- (5) In Article 25—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) in the first sentence, for “Directive 2014/65/EU” substitute “UK law on markets in financial instruments (“UK obligations)”;
    - (ii) in the second sentence, for “the obligations under Directive 2014/65/EU” substitute “UK obligations”.
- (6) In Article 26—

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(a) S.I. 2017/701. The definition of “high-frequency algorithmic trading technique” was inserted by these regulations.



- (a) omit the sub-heading in brackets;
  - (b) in paragraph 5, for “Article 4(h) of Directive 2013/11/EU of the European Parliament and of the Council on consumer ADR” substitute “regulation 4 of the Alternative Dispute Resolution Regulations 2015(a)”.
- (7) In Article 27, omit the sub-heading in brackets.
- (8) In Article 28, omit the sub-heading in brackets.
- (9) In Article 29—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 2, in point (c) for “Directive 2014/65/EU” substitute “UK law on markets in financial instruments”;
  - (c) in paragraph 6(b), for “a Member State” substitute “the United Kingdom”.
- (10) In Article 30—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) for “the first sub-paragraph of Article 16(5) of Directive 2014/65/EU” substitute “rule 8.1.1 of the Senior Management Arrangements, Systems and Controls sourcebook and rule 2.1 of the Outsourcing Part of the PRA rulebook”;
    - (ii) for “Directive 2014/65/EU” substitute “UK law on markets in financial instruments”.
- (11) In Article 31—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) in the opening words and in point (b), for “Directive 2014/65/EU” substitute “UK law on markets in financial instruments”;
    - (ii) in point (c), for “to be authorised in accordance with Article 5 of Directive 2014/65/EU” substitute “to have permission under Part 4A of FSMA to carry on a regulated activity which is any of the investment services and activities (within the meaning of regulation 2(1) of the Markets in Financial Instruments Regulations 2017)”;
  - (c) in paragraph 5, for “Directive 2014/65/EU and its implementing measures” substitute “UK law on markets in financial instruments”.
- (12) In Article 32—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 2—
    - (i) in point (a) for “Directive 2014/65/EU” substitute “UK law on markets in financial instruments”;
    - (ii) in point (c), for “Directive 2014/65/EU and its implementing measures” substitute “UK law on markets in financial instruments”;
    - (iii) in point (d)—
      - (aa) for “in the Union” substitute “in the United Kingdom”;
      - (bb) for “Directive 2014/65/EU and its implementing measures and relevant national law” substitute “UK law on markets in financial instruments”;
  - (c) in paragraph 3—
    - (i) in the first subparagraph, for “Competent authorities shall publish on their”, substitute “The FCA must publish on its”;
    - (ii) omit the second sub-paragraph.

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(a) S.I. 2015/542.

### **Conflicts of interest**

- 43.**—(1) In Article 33, omit the sub-heading in brackets.
- (2) In Article 34—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 4—
    - (i) for “Article 23(2) of Directive 2014/65/EU” substitute “rule 10.1.8(1) of the Senior Management Arrangements, Systems and Controls sourcebook”;
    - (ii) for “Article 23 of Directive 2014/65/EU” substitute “rule 10.1.3 of the Senior Management Arrangements, Systems and Control sourcebook”.
- (3) In Article 35, omit the sub-heading in brackets.

### **Investment research and marketing**

- 44.**—(1) In Article 36—
- (a) omit the sub-heading in brackets;
  - (b) in paragraphs 1(b) and 2, for “Directive 2014/65/EU” substitute “UK law on markets in financial instruments”.
- (2) In Article 37, omit the sub-heading in brackets.

### **Underwriting and placing**

- 45.**—(1) In Article 38—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, in the opening words, for “Section B(3) of Annex 1” substitute “Paragraph 3 of Part 3A of Schedule 2 to the Regulated Activities Order”.
- (2) In Article 39, omit the sub-heading in brackets.
- (3) In Article 40—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 3, in the first sentence, after “comply with” insert “rules made by the FCA under FSMA which were relied on by the United Kingdom immediately before exit day to implement”;
- (4) In Article 41—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, for “Article 24(7), 24(8) and 24(9) of Directive 2014/65/EU” substitute “rules 2.3A.5 to 2.3A.7, 2.3A.15, 2.3A.16, 2.3A.19 and 6.2B.11 of the Conduct of Business sourcebook”;
  - (c) in paragraph 4—
    - (i) after “575/2013 of the European Parliament and of the Council,” insert “the law of the United Kingdom or any part of the United Kingdom (“the UK law”) which was relied on by the United Kingdom immediately before exit day to implement”
    - (ii) after “in accordance with” insert “the UK law which was relied on by the United Kingdom immediately before exit day to implement”.
- (5) In Article 42, omit the sub-heading in brackets.
- (6) In Article 43, omit the sub-heading in brackets.

### **Information to clients**

- 46.**—(1) In Article 44—
- (a) omit the sub-heading in brackets;

- (b) in paragraph 4(e), for “that of the Member State in which the retail client or potential retail client is resident” substitute “pounds sterling”.
- (2) In Article 45—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, for “Directive 2014/65/EU” substitute “UK law on markets in financial instruments”;
  - (c) in paragraph 3—
    - (i) in point (a), for “Article 30(2) of Directive 2014/65/EU” substitute “rule 3.6.2 of the Conduct of Business sourcebook”;
    - (ii) in point (b), for “Section I of Annex II to Directive 2014/65/EU” substitute “Part 2 of Schedule 1 to Regulation (EU) No 600/2014”.
- (3) In Article 46, omit the sub-heading in brackets.
- (4) In Article 47—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) in point (e), omit “specifying the Member State in which that agent is registered”;
    - (ii) in point (f), for “Article 25(6) of Directive 2014/65/EU” substitute “rules 9A.3.2 and 16A.2.1 of the Conduct of Business sourcebook”;
    - (iii) in point (g), for “a Member State” substitute “the United Kingdom”.
- (5) In Article 48—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 3, for “Directive 2003/71/EC” substitute “the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2003/71/EC, as that law is amended from time to time”.
- (6) In Article 49—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 5, for “a Member State” substitute “the United Kingdom”.
- (7) In Article 50—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) in the first subparagraph, for “Article 24(4) of Directive 2014/65/EU” substitute “rule 6.1ZA.11 of the Conduct of Business sourcebook (“the relevant rule”)”;
    - (ii) in the second and third subparagraphs, for “Article 24(4) of Directive 2014/65/EU” substitute “the relevant rule”;
  - (c) in paragraph 5(b), omit “in accordance with relevant Union legislation”;
  - (d) in paragraph 6, omit “in accordance with relevant Union legislation”.
- (8) In Article 51—
- (a) in the heading, for “in accordance with Directive 2009/65/EU and Regulation (EU) No 1286/2014” substitute “in relation to units in collective investment undertakings or PRIIPs”;
  - (b) omit the sub-heading in brackets.

## **Investment Advice**

**47.**—(1) In Article 52, omit the sub-heading in brackets.

(2) In Article 53—

- (a) omit the sub-heading in brackets;

- (b) in paragraph 1, in the opening words, for “Article 24(7)(a) of Directive 2014/65/EU” substitute “rule 6.2B.11 of the Conduct of Business sourcebook”;
  - (c) in paragraph 3(a), for “Article 24(4)(a) of Directive 2014/65/EU” substitute “rule 6.2B.33 of the Conduct of Business sourcebook”.
- (3) In Article 54—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, for “Article 25(2) of Directive 2014/65/EU” substitute “rule 9A.2.1 of the Conduct of Business sourcebook”;
  - (c) in paragraph 3, in the second sub-paragraph, for “Section 1 of Annex II to Directive 2014/65/EU” substitute “Part 2 of Schedule 1 to Regulation (EU) No 600/2014”;
  - (d) in paragraph 6, in the second sub-paragraph, for “Section 2 of Annex II to Directive 2014/65/EU” substitute “Part 3 of Schedule 1 to Regulation (EU) No 600/2014”;
  - (e) in paragraph 8, for “Article 25(2) of Directive 2014/65/EU” substitute “rule 9A.2.1 of the Conduct of Business sourcebook”.
- (4) In Article 55—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 2, for “Article 25(2) and (3) of Directive 2014/65/EU” substitute “rules 9A.2.1 and 10A.2.1 of the Conduct of Business sourcebook”.
- (5) In Article 56—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, for “Article 25(3) of Directive 2014/65/EU” substitute “rule 10A.1.1 of the Conduct of Business sourcebook”.
- (6) In Article 57—
- (a) omit the sub-heading in brackets;
  - (b) in the opening words—
    - (i) for “Article 25(4)(a) of Directive 2014/65/EU” substitute “rule 10A.4.1(2) of the Conduct of Business sourcebook”;
    - (ii) for “Article 25(4)(a)(vi) of Directive 2014/65/EU” substitute “paragraph (2)(f) of that rule”;
    - (iii) for point (a), substitute—
      - “(a) it does not fall within Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order;”.
- (7) In Article 58—
- (a) omit the sub-heading in brackets;
  - (b) in the first sub-paragraph, for “Section B(1) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order”;
  - (c) in the second sub-paragraph, in point (c) for “Section B(1) of Annex 1 to Directive 2014/65/EU” substitute “paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order”.
- (8) In Article 59, omit the sub-heading in brackets.
- (9) In Article 60—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 3, in the second sub-paragraph, for the words from “Article 4(1)(44)(c) of” to the end substitute “Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order”.
- (10) In Article 61, omit the sub-heading in brackets.
- (11) In Article 62, omit the sub-heading in brackets.

(12) In Article 63—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, in the second sub-paragraph—
  - (i) for “authorised under Directive 2000/12/EC of the European Parliament and of the Council” substitute “that is a CRR firm as defined in Article 4(1)(2A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms”;
  - (ii) for “of that Directive” substitute “of Article 2(1)(23A) of Regulation (EU) No 600/2014”.
- (c) in paragraph 2(d) for “Directive 2014/65/EU and its implementing measures” substitute “the UK law on markets in financial instruments”.

### **Best execution**

**48.**—(1) In Article 64—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, for “Article 27(1) of the Directive 2014/65/EU” substitute “rule 11.2A.2 of the Conduct of Business sourcebook”;
- (c) in paragraph 2, for “Article 27(1) of Directive 2014/65/EU” substitute “rules 11.2A.2, 11.2A.3, 11.2A.9, 11.2A.12 and 11.2A.15 of the Conduct of Business sourcebook”.

(2) In Article 65—

- (a) omit the sub-heading in brackets;
- (b) in paragraphs 1 and 2, for “Article 24(1) of Directive 2014/65/EU” substitute “rule 2.1.1. of the Conduct of Business sourcebook”;
- (c) in paragraph 4—
  - (i) for “Article 27(1) of Directive 2014/65/EU”, the first time it occurs, substitute “rule 11.2A.2 of the Conduct of Business sourcebook”;
  - (ii) for “Article 27(1) of Directive 2014/65/EU” the second time it occurs, substitute “rule 11.2A.9 of the Conduct of Business sourcebook”;
- (d) in paragraph 6, for “the technical standards developed under Article 27(10)(b) of Article 2014/65/EU” substitute “Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 20(b) of Schedule 3 to Regulation (EU) No 600/2014”;
- (e) in paragraph 8, for the last sentence, substitute “In those cases, Articles 64 and 66 of this Regulation, technical standards made under Article 27(10) of Directive 2014/65/EC and rules in the Conduct of Business sourcebook which were relied on by the United Kingdom immediately before exit day to implement Article 27 of Directive 2014/65/EU shall apply.”.

(3) In Article 66—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, for “Article 27(4) of Directive 2014/65/EU” substitute “rule 11.2A.20 of the Conduct of Business sourcebook”;
- (c) in paragraph 3, in point (a), for “Article 27(1) of Directive 2014/65/EU” substitute “rule 11.2A.2 of the Conduct of Business sourcebook”;
- (d) in paragraph 6, for “Article 24(9) of Directive 2014/65/EU” substitute “rules 2.3A.5, 2.3A.6 and 2.3A.7E of the Conduct of Business sourcebook”;

- (e) in paragraph 7, for “Article 24(9) of Directive 2014/65/EU and its implementing measures” substitute “rules 2.3A.5, 2.3A.6 and 2.3A.7E of the Conduct of Business sourcebook”;
  - (f) in paragraph 9, for “Article 27(3) of Directive 2014/65/EU” substitute “rule 11.2C.1 of the Conduct of Business sourcebook, rules 5.3.1A(5), 5A.4.2(3) and 6.3A.1 of the Market Conduct sourcebook and paragraph 4C of the Schedule to the Recognition Requirements Regulations(a)”.
- (4) In Article 67, omit the sub-heading in brackets.
- (5) In Article 68, omit the sub-heading in brackets.
- (6) In Article 69, omit the sub-heading in brackets.
- (7) In Article 70—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) for “Article 28(2) of Directive 2014/65/EU” substitute “rule 11.4.1 of the Conduct of Business sourcebook”;
    - (ii) for “a data reporting services provider located in one Member State” substitute “a person authorised to provide data reporting services under the Data Reporting Services Regulations 2017(b)”.

**Eligible counterparties**

- 49.** In Article 71—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) for “Article 30(2) of Directive 2014/65/EU” substitute “rule 3.6.2 of the Conduct of Business sourcebook”;
    - (ii) for “Member States” substitute “the FCA”;
    - (iii) omit “, in accordance with Article 30(3) of that Directive,”;
    - (iv) for “paragraphs 1, 2 and 3 of Section 1 of Annex II to that Directive” substitute “paragraph 3(a), (b) and (c) of Schedule 1 to Regulation (EU) No 600/2014”;
  - (c) in paragraph 2—
    - (i) for “the second subparagraph of Article 30(2) of Directive 2014/65/EU” substitute “rule 3.7.1 of the Conduct of Business sourcebook”;
    - (ii) for “Articles 24, 25, 27 and 28 of that Directive” substitute “rules in the Conduct of Business; Market Conduct; Senior Management Arrangements, Systems and Controls and the Product Intervention and Product Governance sourcebooks which were relied on by the United Kingdom immediately before exit day to implement Articles 24, 25, 27 and 28 of Directive 2014/65/EU (“the relevant rules”)”;
  - (d) in paragraph 3, in the first sub-paragraph, for “Articles 24, 25, 27 and 28 of Directive 2014/65/EU” substitute “the relevant rules”;
  - (e) in paragraph 4, for “the second, third and fourth sub-paragraphs of Section 1 of Annex II to Directive 2014/65/EU” substitute “paragraph 3(b), (c), (d) and 4 of Schedule 1 to Regulation (EU) No 600/2014”;
  - (f) in paragraph 5, for “Article 30(3) of Directive 2014/65/EU” substitute “rule 3.6.4A of the Conduct of Business sourcebook”.

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(a) S.I. 2001/995. Paragraph 4C was inserted by S.I. 2017/701.

(b) S.I. 2017/699.

## Record-keeping

### 50.—(1) In Article 72—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 3, for “Directive 2014/65/EU, Regulation (EU) No 600/2014, Directive 2014/57/EU and Regulation (EU) No 596/2014 and their respective implementing measures” substitute “Regulation (EU) No 600/2014, Regulation (EU) No 596/2014 and their implementing measures (as amended under the European Union (Withdrawal) Act 2018) and the law of the United Kingdom or any part of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2014/65/EU, Directive 2014/57/EU and their implementing measures”;

(2) In Article 73, omit the sub-heading in brackets.

(3) In Article 74, omit the sub-heading in brackets.

(4) In Article 75, omit the sub-heading in brackets.

### (5) In Article 76—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1—
  - (i) in point (a), for “Article 16(7) of Directive 2014/65/EU”, substitute “rules 10A.1.6 to 10A.1.8 and 10A.1.11 to 10.1.14 of the Senior Management Arrangements, Systems and Control sourcebook (“the relevant rules”);
  - (ii) in point (b)—
    - (aa) for “the third and eighth subparagraphs of Article 16(7) of Directive 2014/65/EU”, substitute “rule 10A.1.6 and 10A.1.7 of the Senior Management Arrangements, Systems and Controls sourcebook”;
    - (bb) for “competent authorities” substitute “the FCA”;
- (c) in paragraphs 5 and 6, for “Article 16(7) of Directive 2014/65/EU” substitute “the relevant rules”;
- (d) in paragraph 7, for “relevant competent authorities” substitute “FCA”.

## SME growth market

### 51.—(1) In Article 77—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, in the opening words, for “point (a) of Article 33(3) of Directive 2014/65/EU” substitute “rule 5.10.2(1) of the Market Conduct sourcebook”;
- (c) in paragraph 2, for “Article 4(1)(13) of Directive 2014/65/EU” substitute “regulation 2(1) of the Markets in Financial Instruments Regulations 2017”(a);

### (2) In Article 78—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1—
  - (i) in the first sub-paragraph, for “point (a) of Article 33(3) of Directive 2014/65/EU, the competent authority of the home Member State of the operator of an MTF” substitute “rule 5.10.2(1) of the Market Conduct sourcebook, the FCA”;
  - (ii) in the second sub-paragraph, for “points (b) to (g) of Article 33(3) of Directive 2014/65/EU, the competent authority” substitute “paragraphs (2) to (7) of rule 5.10.2 of the Market Conduct sourcebook, the FCA”;
- (c) in paragraph 2—

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(a) S.I. 2017/701. The definition of “SME growth market” is inserted by regulation 5(1)(t) of these Regulations.

- (i) in the opening words, for “points (b), (c), (d) and (f) of Article 33(3) of Directive 2014/65/EU, the competent authority of the home Member State of the operator of an MTF” substitute “paragraphs (2), (3), (4) and (6) of rule 5.10.2 of the Market Conduct sourcebook, the FCA”;
- (ii) in point (c), after “in cases where” insert “the UK law implementing”;
- (iii) in point (h), after “in accordance with” insert “the UK law implementing”;
- (d) after paragraph 2, insert—
 

“3. For the purposes of paragraph 2, “UK law implementing Directive 2003/71/EC” means the law of the United Kingdom or of any part of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directive 2003/71/EC, as that law has been amended under the European Union (Withdrawal) Act 2018.”
- (3) In Article 79—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraphs 1 and 2—
    - (i) for “points (b) to (g) of Article 33(3) of Directive 2014/65/EU” substitute “paragraphs (2) to (7) of rule 5.10.2 of the Market Conduct sourcebook”;
    - (ii) for “competent authority of its home Member State” substitute “FCA”.

### **Operating obligations for trading venues**

- 52.**—(1) In Article 80—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, for “Articles 32(1), 32(2), 52(1) and 52(2) of Directive 2014/65” substitute “sections 313CA and 313CC of FSMA<sup>(a)</sup>, paragraph 7E of the Schedule to the Recognition Requirements Regulations<sup>(b)</sup> and rules 5.6.1 and 5A.9.1 of the Market Conduct sourcebook”.
- (2) In Article 81, omit the sub-heading in brackets.
- (3) In Article 82—
  - (i) omit the sub-heading in brackets;
  - (ii) in paragraph 1, for “their competent authorities” substitute “the FCA”.

### **Position reporting in commodity derivatives**

- 53.** In Article 83—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, for “Article 58(1)(a) of Directive 2014/65/EU” substitute “paragraph 7BB of the Schedule to the Recognition Requirement Regulations<sup>(c)</sup> and rule 10.4.3 of the Market Conduct sourcebook”.

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(a) 2000 c.8. Sections 313CA to 313CC were inserted by S.I. 2017/701.

(b) S.I.2001/995. Paragraph 7E was inserted by S.I. 2006/3386.

(c) Paragraph 7BB was inserted by S.I. 2017/701.



## **Data provision obligations for data reporting service providers**

**54.**—(1) In Article 84—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, for “Articles 64(1) and 65(1) of Directive 2014/65/EU” substitute “regulations 14(1) and 15(1) of the Data Reporting Services Regulations 2017(a)”.  
(2) In Article 85, omit the sub-heading in brackets.  
(3) In Article 86, omit the sub-heading in brackets.  
(4) In Article 87, omit the sub-heading in brackets.  
(5) In Article 88, omit the sub-heading in brackets.  
(6) In Article 89, omit the sub-heading in brackets.

## **Final provisions**

**55.**—(1) Omit Article 90.

(2) After Article 91, omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.”

## **Annexes**

**56.**—(1) In Annex I, in the text before the table, after “nature of their activities” insert “. References to provisions in Directive 2014/65/EU are to be read as references to the provisions in the UK law on markets in financial instruments which implemented those provisions.”

(2) In Annex III, in Section A—

- (a) in paragraph 6, for “Article 48 of Directive 2014/65/EU and its implementing measures” substitute “paragraphs 3 to 3F of the Schedule to the Recognition Requirements Regulations, and Parts 5.3A and 5.5A of the Market Conduct sourcebook”;
- (b) in paragraph 9, for “Directive 2014/65/EU” substitute “the UK law on markets in financial instruments”.

(3) In Annex IV, in Section 1, in paragraph 16, and in Section 2, in paragraphs 32 and 34, for “under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU” each time it occurs, substitute “in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3”.

## **CHAPTER 3**

### **Commission Delegated Regulation 2017/567**

#### **Commission Delegated Regulation 2017/567**

**57.** Commission Delegated Regulation (EU) 2017/567 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions is amended in accordance with regulations 58 to 61.

#### **Interpretation**

**58.** Before Chapter I, insert—

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(a) S.I. 2017/699.

*“Article A1*  
**Interpretation**

For the purposes of this Regulation—

- (a) any reference to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the Financial Conduct Authority containing rules made by that Authority under FSMA as the sourcebook has effect on exit day;
- (b) any reference to the PRA rulebook is to the rulebook published by the Prudential Regulation Authority containing rules made by that Authority under FSMA as the rulebook has effect on exit day.
- (c) any expression which is used in Regulation (EU) No 600/2014 (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in that Regulation;
- (d) any expression which is used in the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 has the same meaning as in those Regulations.”

**Determining liquid markets for equity instruments**

**59.**—(1) In Articles 1(6), 2(5), 3(5) and 4(5)—

- (a) for “the trading venues of a Member State” substitute “UK trading venues”;
- (b) for “that Member State”, the first and third time it occurs, substitute “the United Kingdom”;
- (c) for “the competent authority of that Member State”, substitute “the FCA”.

(2) In Article 5—

- (a) in paragraph 1—
  - (i) at the beginning, insert “Subject to paragraph 1A,”;
  - (ii) for the words from the beginning to “2017/590” substitute “the FCA”;
  - (iii) in points (b) and (c), for “executed in the Union” substitute “executed in the relevant area”;
  - (iv) in the words after point (d), for “Competent authorities” substitute “The FCA”;

(b) after paragraph 1, insert—

“1A. Subject to paragraph 1B, during the transitional period (within the meaning of Article 5(3A) of Regulation 600/2014/EU), paragraph 1 does not apply except as follows—

- (a) the FCA must make and publish the assessment required by—
  - (i) point (a) of paragraph 1, where a share, depository certificate, exchange traded fund or a certificate (“a relevant instrument”) is traded on a UK trading venue for the first time after exit day;
  - (ii) point (d) of paragraph 1;
- (b) the FCA may make (and if it does so must publish) the assessments required by point (b) or (c) of paragraph 1 if it has the data it needs to do so;
- (c) subject to point (f), if no assessment has been carried out by the FCA under this paragraph, where any obligation in retained EU law relating to markets in financial instruments requires the determination of whether a particular relevant instrument has a liquid market, the most recent assessment made before exit day by a competent authority under this Article (as it was in force in the European Union before exit day) is to apply;
- (d) if no assessment had been made by the FCA under this paragraph or by any competent authority before exit day in relation to a relevant instrument, that instrument is to be deemed not to have a liquid market for the purposes of article 2(1)(17)(b) of

Regulation 600/2014/EU, unless an assessment has been made by the FCA under paragraph 1;

- (e) the FCA may disregard the most recent assessment made in relation to a relevant instrument before exit day and direct that the instrument concerned is to be treated as not having a liquid market if—
  - (i) an assessment would be required under point (b) or point (c) of paragraph 1 but the FCA does not have the data to carry out such an assessment; and
  - (ii) it appears to the FCA that—
    - (aa) the liquidity of the financial instrument in UK trading venues has reduced since the relevant instrument was last assessed, and
    - (bb) the extent of the reduction in liquidity is so material that continuing to treat the relevant instrument as having a liquid market would have an adverse effect on price formation in that instrument;
- (f) a direction given by the FCA under point (e) must be published as soon as possible.

1B. The FCA must make at least one assessment required by paragraph 1 no later than the date six weeks before the end of the transitional period in relation to every relevant instrument which is traded on a UK trading venue.

1C. If any assessment has been made and published by the FCA in accordance with paragraph 1A (including an assessment given by direction under point (e)) during the transitional period that assessment is to be used by the FCA, market operators and investment firms (including investment firms operating a trading venue)—

- (a) from the date on which the assessment is published, in the case of an assessment in accordance with point (a)(ii) of paragraph 1A;
- (b) from the date six weeks after the date on which that assessment was published in all other cases.”;
- (c) in paragraph 2, for “competent authorities” both times it occurs, substitute “the FCA”;
- (d) in paragraph 3—
  - (i) in the opening words, for “competent authorities” substitute “the FCA”;
  - (ii) in point (b)(iii) for “competent authority” substitute “FCA”;
- (e) after paragraph 3, insert—

“4. For the purposes of this Article, the “relevant area” consists of the United Kingdom and those countries or regions specified by the FCA by direction.

5. The FCA may only give a direction under paragraph 4 specifying that a country or region is within the relevant area in relation to one or more financial instruments for the purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess the volume of trading in the financial instruments concerned in that country or region.

6. Article 50B of Regulation 600/2014/EU (“the Regulation”) applies to a direction given by the FCA for the purposes of this Article as it applies to a direction given by the FCA for the purposes of Article 5, 9 or 14 of the Regulation.”.

#### **Data publication obligations for systematic internalisers**

**60.** In Article 14(1)—

- (a) in point (a), for “Article 48(5) of Directive 2014/65/EU” substitute “paragraph 3B of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations

2001(a) or rules 5.3A.5 to 5.3A.8 or 5A.5.5 to 5A.5.8 of the Market Conduct sourcebook”;

(b) in point (d), for “a competent authority” substitute “the FCA”.

### **Supervisory measures on product intervention and position management**

**61.**—(1) Omit Articles 19 and 20.

(2) In Article 21—

(a) in the heading, for “competent authorities” substitute “the FCA”;

(b) in paragraph 1—

(i) for “competent authorities”, both times it occurs, substitute “the FCA”;

(ii) for “at least one Member State”, both times it occurs, substitute “the United Kingdom”;

(c) in paragraph 2—

(i) in the opening words—

(aa) for “competent authorities” substitute “the FCA”;

(bb) for “at least one Member State”, substitute “the United Kingdom”;

(ii) in point (b), for “Directive 2014/49/EU” substitute “Chapter 4 of the Depositor Protection Part of the PRA Rulebook.”;

(iii) In point (s), for “the Member State of the relevant competent authority” substitute “the United Kingdom”.

(3) Omit Article 22.

(4) After Article 24, omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States”.

	<i>Name</i>
	<i>Name</i>
Date	Two Lord Commissioners of Her Majesty’s Treasury

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular, the deficiencies under paragraphs (b), (c), (e), (f) and (g) of section 8(2)).

They amend the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, and the Data Reporting Services Regulations 2017. They also amend Regulation (EU) No 600/2014 on markets in financial instruments and Commission Delegated Regulation 2017/565/EU supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms; and Commission Delegated Regulation 2017/567/EU supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions.

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(a) S.I. 2001/995. Paragraph 3B was inserted by S.I. 2017/701.

These Regulations refer to the Rulebook made by the Prudential Regulation Authority under the Financial Services and Markets Act 2000, and sourcebooks made by the Financial Conduct Authority under that Act. The Rulebook is available on <http://www.prarulebook.co.uk> and copies of the rules referred to can be obtained from the Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA, where it is also available for inspection. Sourcebooks made by the Financial Conduct Authority are available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where it is also available for inspection.

An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 at or about the same time, will have on the costs of business, the voluntary sector and the public sector will be available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and will be published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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UK201810151011 10/2018 19585

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