

EXPLANATORY MEMORANDUM TO
THE MARKETS IN FINANCIAL INSTRUMENTS (AMENDMENT) (EU EXIT)
REGULATIONS 2018

2018 No. 1403

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument is being made under the EU (Withdrawal) Act 2018 in order to address deficiencies in retained EU law in relation to markets in financial instruments arising from the withdrawal of the United Kingdom (UK) from the European Union (EU). This instrument amends key pieces of UK domestic law and EU tertiary legislation (as defined in the European Union (Withdrawal) Act 2018) to ensure that the legislation continues to operate effectively at the point at which the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The revised Markets in Financial Instruments Directive (MiFID), implemented in particular by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (No 701) and the Data Reporting Services Regulations 2017 (No 699), and the linked Markets in Financial Instruments Regulation (MiFIR) – collectively referred to as MiFID II in this explanatory memorandum – are the key pieces of EU legislation that govern the buying, selling and organised trading of financial instruments, such as shares, bonds, units in collective investment schemes and derivatives. As such, MiFID II governs the practices of investment banks, stock and futures exchanges, broker-dealers, investment advisers and investment managers. It also contains a ‘passport’ that permits firms to provide investment services cross-border and to establish branches in another EEA state on the basis of their authorisation in their ‘home’ Member State.
- 2.3 MiFID II took effect in early 2018 and aims to create more robust and efficient market structures. It requires more trades to be conducted through trading venues to promote transparency and financial stability, introduces new safeguards for algorithmic and high frequency trading, and provides a stricter framework for trading commodity derivatives by introducing a position limits and position reporting regime. It also strengthens investor protection including through enhanced controls on the distribution of financial products.

Why is it being changed?

- 2.4 This statutory instrument makes amendments to MiFIR, the tertiary legislation made under MiFID II and the UK legislation which implemented MiFID which would otherwise no longer operate effectively once the UK has left the EU. This is part of the wider work the government is undertaking to prepare for the UK’s withdrawal

from the EU. The changes made in this statutory instrument would not take effect on 29 March 2019 if, as expected, we enter an implementation period.

What will it now do?

- 2.5 This statutory instrument does not intend to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth this transition. Consistent with the government's policy of providing continuity to businesses and consumers when the UK leaves the EU, the policy approach set out in MiFID II legislation will not change after the UK has left the EU. This SI ensures that UK financial markets continue to operate in a fair, stable and transparent manner post EU withdrawal, and ensures that investors will be afforded the same protections that they currently enjoy. Details of the changes being made by this statutory instrument are set out in paragraphs 7.9 to 7.22 of this Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is to the whole United Kingdom.
- 4.2 The territorial application of this instrument is to the whole United Kingdom.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding Human Rights:

“In my view the provisions of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 To address the deficiencies in retained EU law that arise from the UK's exit from the EU, this instrument amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (No 544), the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (No 701), and the Data Reporting Services Regulations 2017 (No 699).
- 6.2 This instrument also amends Regulation (EU) No 600/2014 on markets in financial instruments, 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.

7. Policy background

What is being done and why?

- 7.1 The UK will leave the EU on 29 March 2019. The UK and the EU have agreed the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. This will provide time to introduce the new arrangements that will underpin the UK-EU future relationship, and provide valuable certainty for businesses and individuals. During the implementation period, common rules will continue to apply. The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU's single market in financial services. This will mean that access to each other's markets will continue on current terms and businesses, including financial services firms, will be able to trade on the same terms as now until 31 December 2020. UK firms will need to comply with any new EU legislation that becomes applicable during the implementation period.
- 7.2 The government is seeking a deep and special future partnership with the EU, which should be greater in scope and ambition than any such agreement before and encompass financial services. Given the highly regulated nature of financial services, the volume of trade between UK and EU markets, and a shared desire to manage financial stability risks, the UK proposes a new economic and regulatory arrangement that will preserve mutually beneficial cross-border business models and economic integration for the benefit of businesses and consumers. Decisions on market access would be autonomous in our proposed model, but would be underpinned by stable institutional processes in a bilateral agreement and continued close regulatory and supervisory cooperation.
- 7.3 While the government has every confidence that a deal will be reached and the implementation period will be in place, it has a duty to plan for all eventualities, including a 'no deal' scenario. The government is clear that this scenario is in neither the UK's nor the EU's interest, and the government does not anticipate it arising. To prepare for this unlikely eventuality, HM Treasury intends to use powers in the European Union (Withdrawal) Act 2018 (EUWA) to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios.
- 7.4 The EUWA repeals the European Communities Act 1972 and converts into UK domestic law the existing body of directly applicable EU law (including EU Regulations). It also preserves UK laws relating to EU membership – e.g. legislation implementing EU Directives. This body of law is referred to as "retained EU law". The EUWA also gives ministers a power to prevent, remedy or mitigate any failure of EU law to operate effectively, or any other deficiency in retained EU law, through SIs. These contingency preparations for financial services legislation are sometimes referred to as 'onshoring'. These SIs are not intended to make policy changes, other than to reflect the UK's new position outside the EU, and to smooth the transition to this situation. The scope of the power is drafted to reflect this purpose and is subject to further restrictions, such as the inability to use the power to impose or increase taxation, or establish a public authority. The power is also time-limited and falls away two years after exit day.

- 7.5 Wherever practicable, the proposed approach is that the same laws and rules that are currently in place in the UK would continue to apply at the point of exit, providing continuity and certainty as we leave the EU. However, if the UK does not enter an implementation period, some changes would be required to reflect the UK's new position outside the EU from 29 March 2019.
- 7.6 In the unlikely scenario that the UK leaves the EU without a deal, the UK would be outside the EU's framework for financial services. The UK's position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.
- 7.7 In light of this, the approach in this scenario cannot and does not rely on any new, specific arrangements being in place between the UK and the EU. As a general principle, the UK would also need to default to treating EU Member States largely as it does other third countries, although there are cases where a different approach would be needed including to provide for a smooth transition to the new circumstances.
- 7.8 HM Treasury published a document on 27 June 2018, which sets out in more detail HM Treasury's approach to financial services legislation under the European Union (Withdrawal) Act. (<https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>)
- 7.9 To ensure that the MiFID II regime continues to operate effectively once the UK is outside of the EU, certain deficiency fixes to the legislation are necessary. These deficiency fixes are explained below.
- 7.10 Functions under MiFID II that are carried out by EU authorities, principally the European Commission and the European Securities and Markets Authority (ESMA), would no longer apply in the UK after EU withdrawal. This SI removes this deficiency by generally transferring the functions of ESMA to the relevant UK regulator (the Financial Conduct Authority (FCA) or the Bank of England) and the functions of the Commission to HM Treasury.
- 7.11 Under the EU system of financial regulation, drafts of Binding Technical Standards (BTS) are developed by European Supervisory Authorities. This SI transfers responsibility for making BTS under MiFID II to the relevant UK regulators (the FCA or the Prudential Regulation Authority, and in some cases the regulators having joint responsibility for making BTS), including responsibility for correcting deficiencies in MiFID II BTS, so that they operate effectively immediately on exit day and that they remain fit for purpose thereafter. This is in-line with the approach taken across financial services regulation, where the Treasury is transferring responsibility for making BTS to UK regulators, as set out in the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018, laid in draft on 16 July 2018. (<https://www.legislation.gov.uk/ukdsi/2018/9780111171394>).
- 7.12 This SI deletes provisions in retained EU law that will become redundant when the UK leaves the EU, such as requirements regarding automatic recognition of an action by an EU body and other references to EU bodies and EU Member States. In MiFID II, there are also obligations on UK authorities to cooperate and share information with EEA authorities. This SI removes these obligations. Instead, UK authorities will be able to continue to cooperate and share information with EEA authorities, in the same way as they can with authorities outside the EEA, based on the existing

framework provisions for cooperation and information sharing in the Financial Services and Markets Act 2000, which allow for this on a discretionary basis.

- 7.13 Under MiFID II, a third-country's regulatory or supervisory regime may be deemed by the European Commission to be equivalent to the approach set out in MiFID II. For example, a third-country regime may be equivalent in relation to trading venues for the purpose of the trading obligations for shares and derivatives, or for the purpose of the provision of investment services and activities to professional clients. Equivalence decisions reduce duplication in regulatory or supervisory requirements between the EU and third-countries and facilitate international trade in financial services. To ensure that the MiFID II equivalence regimes can continue to operate effectively in the UK, HM Treasury will take on the Commission's function of making equivalence decisions for third-country regimes. Where the Commission has taken equivalence decisions for third-countries before exit day, these will be incorporated into UK law and will continue to apply to the UK's regulatory and supervisory relationship with those third-countries.
- 7.14 As the EEA financial services 'passporting' system will be unworkable without a negotiated agreement with the EU, the Government is introducing a Temporary Permissions Regime (TPR), which is set out in the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, laid in draft on 5 September 2018 (<https://www.legislation.gov.uk/ukdsi/2018/9780111172421>), which will enable relevant EEA firms and funds operating in the UK via a passport to continue their activities in the UK for a limited period after exit day in order to allow them to obtain UK authorisation or transfer business to a UK entity as necessary. This SI makes special provisions for EEA firms which intend to operate in the UK under the TPR by ensuring that a firm operating under the TPR will not be deemed in breach of the UK's MiFID II rules if it can demonstrate that it complies with corresponding provisions in the EU's MiFID II rules (provided that the EU MiFID II requirement has an equivalent effect to a requirement in the UK MiFID II regime in respect of the services the TPR firm is providing in the UK).
- 7.15 This SI also disapplies certain requirements or rights for firms operating under the TPR which would be otherwise unworkable. For example, EU trading venues in the TPR will not have the right to request access to a UK central counterparty (CCP) in the way that a UK trading venue can do under the open access regime, unless an equivalence decision is made by HM Treasury relating to EU trading venues.
- 7.16 As data reporting service providers (DRSPs) fall outside the TPR described above, this SI makes amendments to the UK's Data Reporting Services Regulations 2017 (No 699) to put in place a transitional arrangement in which EU-authorised DRSPs that meet the required conditions will be granted temporary authorisations to continue to provide data reporting services in the UK for a period of up to one year. The intention of this amendment is to allow DRSPs to consider their options and, if appropriate, establish a UK branch or subsidiary to obtain permanent UK authorisation during the transitional arrangement. This SI also ensures that Gibraltar-based DRSPs providing data reporting services in the UK, that are authorised in accordance with Gibraltar law that enacts MiFID II, will continue to be able to provide data reporting services in the UK. This is in line with the UK Government's statement in March 2018 on guaranteeing Gibraltar financial services firms' access to

UK markets as now until 2020 (<https://www.gov.uk/government/news/uk-government-statement-following-the-jmcgen-wednesday-8-march-2018>).

- 7.17 In general, this SI provides that the EU is treated as a third-country, consistent with the approach in other SIs made under the EU (Withdrawal) Act 2018. However, certain exceptions to this approach have been taken to help provide for a smooth transition for market participants by maintaining existing outcomes as far as possible. These include the following exceptions:
- EEA emission allowances will continue to be a financial instrument so that there is no change to how they are currently traded on UK markets;
 - Energy forwards that must be physically settled and are traded on Organised Trading Facilities in the EU will continue to be excluded from the definition of financial instruments, to ensure there is no change in the requirements applied to UK market participants trading these instruments;
 - UK firms will be able to treat Undertakings for Collective Investment in Transferable Securities (UCITS) in the EU as automatically non-complex instruments, so that they can, in general, continue to be sold to retail clients in the UK without a client undertaking an appropriateness test the exemption from authorisation for commercial firms trading commodity derivatives.
- 7.18 This SI grants the FCA a set of temporary powers that will allow the FCA some flexibility over how the MiFID II transparency regime is operated during a transitional period of up to four years in length (although it can be ended earlier by the Treasury). The powers being granted to the FCA aim to preserve existing outcomes of the transparency regime as far as possible, while providing the FCA with the time required to operate the transparency regime in a standalone UK context (including making any necessary changes to aspects of the transparency regime that are in the Binding Technical Standards) and avoiding any potential for regulatory arbitrage with relevant transparency regimes in third-countries.
- 7.19 The MiFID II transparency regime requires that buyers and sellers of financial instruments disclose price and volume information for their trades. For each class of financial instrument, there are various thresholds and waivers which apply in respect of making price and volume data of orders and transactions public. Some of these thresholds and waivers protect investors who place large orders while others take account of the illiquidity of some instruments. Waivers relating to the trading in equities are also subject to a mechanism which limits the proportion of trading that can take place without being subject to pre-trade transparency (the ‘Double Volume Cap Mechanism’). The waivers and thresholds contained in the MiFID II transparency regime are generally calculated on the basis of EU-wide market data. An abrupt move to using UK-only data poses operational challenges for the FCA and could result in outcomes that are contrary to what the transparency regime aims to achieve. For this reason, the FCA is being granted temporary powers in regard to the regime during the transitional period.
- 7.20 These temporary powers include the ability, in specified circumstances, to:
- Amend certain transparency calibrations (which are otherwise frozen on exit day);
 - To direct the application of the Double Volume Cap Mechanism; and
 - Freeze the obligation to publish trading information in respect of certain instruments.

- 7.21 In exercising these powers, the FCA will take into account in each instance specified factors (e.g., where the use of the relevant power would advance the FCA’s integrity objective or where a failure to use the power would unduly harm price formation). In addition, certain transparency conditions (such as the requirement to publish trading carried out under the waivers) will be suspended for the duration of the transitional period (on the basis that the FCA will not have sufficient data or resources during the transitional period to comply with such transparency conditions). The FCA will have a statement of policy on how these temporary powers will be used in place before exit day. This statement of policy, and any subsequent changes to it, must be approved by the Treasury before being published.
- 7.22 In addition to the temporary powers described above, certain other changes will be made to the long-term operation of the transparency regime. These changes will allow the FCA to take into account trading data from countries other than the UK in determining certain transparency thresholds. The FCA will be permitted to do this where it is able to obtain sufficient, reliable trading data from other countries in respect of trading in the relevant financial instruments. This is to enable the FCA appropriately to take into account instruments which are traded significantly both in the UK and in another country (or countries). In such cases, in order to set thresholds which achieve the intended outcomes of the transparency regime, the FCA will be able to use trading data from another country (or countries), assuming they are available to the FCA, as well as UK trading data.
- 7.23 Under the transaction reporting regime in MiFID II, investment firms are required to submit a report to their national regulatory authorities following the execution of a trade. These transaction reports are used by regulators to detect and prevent market abuse. The transaction reporting regime in MiFID II is explicitly linked to the Market Abuse Regulation (MAR), in that MiFID II provides for the collection of data used to identify possible instances of market abuse, and MAR provides for its investigation and enforcement. UK branches of EEA firms currently send transaction reports to their home regulator rather than the FCA. The effect of this SI is to require UK branches of EU firms to report to the FCA, in the same way as UK branches of non-EEA firms are required to do. Under this SI, firms will continue to be required to report on trades in financial instruments admitted to trading, or traded, on trading venues in the UK and in the EU. This will maintain the existing scope for the monitoring of markets by the FCA.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 HM Treasury has not undertaken a consultation on the instrument, but has engaged with relevant stakeholders on its approach to Financial Services legislation under the European Union (Withdrawal) Act 2018, including on this instrument, in order to familiarise them with the legislation ahead of laying.
- 10.2 The instrument was also published in draft, along with an explanatory policy note, on 5th October 2018 in order to maximise transparency ahead of laying.
(<https://www.gov.uk/government/publications/draft-markets-in-financial-instruments-amendment-eu-exit-regulations-2018>)
- 10.3 The financial services regulators plan to undertake public consultation in the Autumn on any changes they propose to make to Binding Technical Standards and rules made under the powers conferred upon them by the Financial Services and Markets Act 2000.

11. Guidance

- 11.1 The FCA and PRA will provide further information on how they intend to use the powers conferred to them by virtue of this instrument.

12. Impact

- 12.1 Firms and other regulated entities may have to implement operational changes as part of the transfer of functions under MiFID II that are carried out by EU authorities to UK authorities. For example, firms may need to make operational changes to be able to send and receive MiFID II transaction reporting and transparency data to and from the FCA. Firms that participate in the UK's financial markets may also want to acquire the services of legal experts to help examine the new legislation and understand its implications. There is no impact on charities and voluntary bodies.
- 12.2 The impact on the public sector is that, after the UK leaves the EU, the FCA and the Bank of England will be responsible for carrying out functions under MiFID II that are currently carried out by the European Securities and Markets Authority (ESMA), while HM Treasury will be responsible for carrying out the relevant functions of the European Commission.
- 12.3 A full Impact Assessment will be published alongside the Explanatory Memorandum on the legislation.gov.uk website, when an opinion from the Regulatory Policy Committee has been received.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the effects of this instrument in relation to small businesses. The instrument implements amendments to retained MiFID II law that would otherwise no longer operate effectively once the UK has left the EU, and in order to help smooth the transition for all businesses participating in the UK's financial markets, irrespective of their size.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Alexandre Christie at HM Treasury (Telephone: 020 270 4759 or email: Alexandre.Christie@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Clare Bolingford, Deputy Director for the Securities, Markets & Banking team at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury, John Glen MP, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

- 1.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.

- 1.2 This is the case because the instrument goes no further than doing what is appropriate to mitigating a disruption in financial markets for UK consumers, firms and the UK financial services sector as a whole, from the UK exiting the EU. This instrument ensures that UK financial markets continue to operate in a fair, stable and transparent manner post EU withdrawal, and ensures that investors will be afforded the same protections that they currently enjoy while providing continuity to market participants.

2. Good reasons

- 2.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 Without the provisions in this instrument, the orderliness of financial markets and the protections afforded to investors by MiFID II would be jeopardised. Amongst other things, it would be unclear to firms on which financial instruments and which regulator they would need to provide transaction reports to, while the MiFID II transparency framework would be rendered obsolete, severely undermining the integrity and attractiveness of UK financial markets.

3. Equalities

- 3.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 3.2 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Economic Secretary to the Treasury (John Glen MP) have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Legislative sub-delegation

- 5.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement(s):

“In my view it is appropriate to create a relevant sub-delegated power in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018”.

- 5.2 Powers to make certain directions are sub-delegated to the FCA. This is considered appropriate as the FCA will have the requisite technical knowledge to make assessments of certain matters contained within the MiFID II transparency regime. On this basis, the FCA will be able to issue directions in respect of the relevant geographical area that the FCA will take into account in determining certain transparency thresholds (as noted in paragraph 7.21 above). The FCA will also have the power to issue a direction in respect of the calculation of certain other transparency thresholds. The FCA will also have the ability to issue a direction to disregard specific transparency assessments made prior to exit day in specific circumstances and where a failure to do so would cause liquidity issues.