

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 600/2014 of the European Parliament and of the Council, SCHEDULE 3 is up to date with all changes known to be in force on or before 04 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F1}SCHEDULE 3 U.K.]

Article 51

Transfer of Functions to the Treasury and Regulators

Textual Amendments

- F1** Sch. 3 inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **37** (as amended by: S.I. 2019/576, regs. 1(2), **3**; S.I. 2019/710, regs. 1(2), **16(17)**; S.I. 2019/1212, regs. 1(3), **14(7)**) (as itself amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 45(a)(v)**); S.I. 2020/1301, regs. 1, 3, **Sch. para. 12(m)**; and S.I. 2020/1385, regs. 1(4), **49(6)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**)

PART 1 U.K.

Directive functions transferred to the Treasury

1 U.K.

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 .

2 U.K.

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;
- 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.

3 U.K.

To make further provision in relation to the criteria set out in section 186 of FSMA .

4 U.K.

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 .

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5 U.K.

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 .

6 U.K.

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 .

7 U.K.

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—

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 .

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

8 U.K.

1 To determine whether the legal and supervisory framework of a third country ensures that a regulated market or other trading venue authorised in that country complies with legally binding requirements which are equivalent to the requirements applicable to that trading venue which result from Regulation (EU) No 596/2014, from Title II of this Regulation, and from the law of the United Kingdom which was relied on by the United Kingdom immediately before IP completion 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, 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—

3 For the purposes of this paragraph, references to requirements resulting from the law of the United Kingdom which was relied on by the United Kingdom immediately before IP completion day to implement Title III of Directive 2014/65/EU and Directive 2004/109/EC are to those requirements as they apply on the day on which regulations are made by the Treasury under this paragraph.

9 U.K.

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—

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

10 U.K.

To make provision concerning—

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- 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 .

11 U.K.

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 .

12 U.K.

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 .

13 U.K.

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

- a rule 5.6.1 of the Market Conduct sourcebook ; or
- b rule 3.21.1 or 3.25.1 of the Recognised Investment Exchanges sourcebook .

14 U.K.

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.

15 U.K.

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, and paragraph 7E in the Schedule to the Recognition Requirements Regulations.

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16 U.K.

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

17 U.K.

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 ;
- b to provide access to data streams as referred to in regulation 15 of those Regulations .

PART 2 U.K.

Powers to make technical standards transferred to the FCA

19 U.K.

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(k) of Schedule 3 to the Regulated Activities Order.

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

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—

20 U.K.

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, 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.

21 U.K.

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 .

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22 **U.K.**

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.

23 **U.K.**

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;
- 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.

24 **U.K.**

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 and the price, spreads and depth of liquidity of the financial instruments.

25 **U.K.**

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.

26 **U.K.**

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

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27 **U.K.**

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 paragraph 9ZB(1)(a) and (b) of the Schedule to the Recognition Requirements Regulations for admission to trading on the different market segments which it operates.

28 **U.K.**

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;
- 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.

29 **U.K.**

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.

30 **U.K.**

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.

31 **U.K.**

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 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—

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.

32 **U.K.**

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, in a way that facilitates the reporting of positions taken in equivalent OTC contracts to the FCA;

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- 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.

33 **U.K.**

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 and paragraph (2) of that direction.

34 **U.K.**

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

35 **U.K.**

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.

36 **U.K.**

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.

37 **U.K.**

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

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the meaning of regulation 2(1) of the Data Reporting Services 2017) could perform which increase the efficiency of the market.

38 **U.K.**

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.

39 **U.K.**

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.

PART 3 U.K.

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

40 **U.K.**

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 applications under direction 10A.13.3D 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.

41 **U.K.**

To develop standard forms, templates and procedures for the notification or provision of information provided for under paragraph 40.

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42 **U.K.**

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.

43 **U.K.**

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.

44 **U.K.**

To specify the following—

- a the details of organisational requirements laid down in regulations 30, 32 and 33 of the Markets in Financial Instruments Regulations 2017, sections 7A.3, 7A.4 and 7A.5 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;
- 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.]

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