

Status: Point in time view as at 31/12/2020.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, PART 1 is up to date with all changes known to be in force on or before 16 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

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

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 .

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;
- 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

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

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 .

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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 .

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 .

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—

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

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

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

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

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

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

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

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

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

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

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 .]

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