

*Status: Point in time view as at 31/12/2020.*

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## [<sup>F1</sup>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 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(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

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

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

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

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

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

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

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

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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 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

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

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

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

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

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

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

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

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

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

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

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

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.]

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