
DRAFT STATUTORY INSTRUMENTS

2018 No.

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

PART 4

Amendment of EU Regulations

CHAPTER 1

Amendment of Markets in Financial Instruments Regulation

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(1);
- (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

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

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⁽²⁾;
 - (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
- (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;

(2) [S.I. 2001/995](#). Paragraph 9A was inserted by [S.I. 2006/3386](#).

(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⁽³⁾;

(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⁽⁴⁾, 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—

(3) S.I. 2017/699.

(4) 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(5) 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 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⁽⁶⁾;

(54) “FSMA” means the Financial Services and Markets Act 2000⁽⁷⁾;

(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⁽⁸⁾;

⁽⁶⁾ S.I. 2001/544.

⁽⁷⁾ 2000 c.8

⁽⁸⁾ S.I. 2001/995.

(56) the “Markets in Financial Instruments Regulations 2017” means the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017⁽⁹⁾;

(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 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](#)⁽¹⁰⁾;

(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—

⁽⁹⁾ [S.I. 2017/701](#).

⁽¹⁰⁾ [OJ L173, 12.6.2014, p.349](#).

- (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;
 - (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”.