
DRAFT STATUTORY INSTRUMENTS

2018 No.

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

PART 4

Amendment of EU Regulations

CHAPTER 2

Commission Delegated Regulation 2017/565

Systematic internalisers

40.—(1) In Article 12—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing paragraph as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”.
- (f) after paragraph 1, insert—

“2. For the purposes of this Article, and Articles 13 to 16, “relevant area” in relation to a financial instrument, means the United Kingdom and such other countries or regions as have been specified by the FCA by direction for the purposes of Article 5, 9 or 14 of Regulation (EU) No 600/2014.

3. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.”

(2) In Article 13—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“2. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.”.

(3) In Article 14—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“2. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.”.

(4) In Article 15—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“2. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.”.

(5) In Article 16—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“2. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.”.

(6) After Article 16, insert—

“Article 16ZA

Transitional period: data for calculations

1. During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, for the purposes of determining whether the criteria set out in Articles 12 to 16 are satisfied, firms must use data published by the FCA for the financial instrument in question to calculate—

- (a) whether there is a liquid market for that financial instrument;

- (b) the total number of transactions in that financial instrument executed in the relevant area on any trading venue or OTC;
- (c) the total turnover for that financial instrument executed in the relevant area on a trading venue or OTC.

2. Where the FCA has not published relevant data for the financial instrument in question, firms must use the most recent data published before exit day by the European Securities and Markets Authority in relation to that financial instrument to calculate the questions set out in paragraph 1.

3. If neither the data described in paragraph 1 nor the data described in paragraph 2 are available in relation to the financial instrument in question, an investment firm is not a systematic internaliser within the definition given in Article 2(1)(12) of Regulation (EU) No 600/2014 unless it has chosen to opt in to the systematic internaliser regime.”

(7) In Article 16a, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”.

(8) In Article 17, omit the sub-heading in brackets.