EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument is being made in order to ensure a coherent and functioning financial services regulatory regime in the United Kingdom ("UK") at the end of the Transition Period. It makes a number of amendments to address deficiencies in UK domestic law and retained EU law arising from the UK's withdrawal from the EU, in line with the approach taken in other financial services EU exit instruments under the European Union (Withdrawal) Act 2018 ("EUWA 2018").

2.2 This instrument also revokes a number of pieces of retained EU law and UK domestic law, which would not be appropriate to keep on the statute book after the Transition Period, as they deal with cross-border activity within the EU and the functioning of EU institutions. Additionally, this instrument makes a small number of minor clarifications and corrections to previous financial services EU exit instruments. The amendments outlined below are ordered sequentially as they appear in the instrument, except where common subject matter means it is appropriate to combine the descriptions of the amendments.

Explanations - What did any relevant EU or UK law do before exit day and how is it being changed?

The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) (No. 2) Order 2013

2.3 The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 ("QEUPO") and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) (No. 2) Order 2013 ("QEUPO2") made under Part 29 of the Financial Services and Markets Act 2000 ("FSMA") are used to designate directly applicable EU regulations to ensure that the financial regulators' enforcement powers can be used to enforce those regulations.

2.4 EU measures designated under the QEUPO and QEUPO2 are known as "qualifying EU provisions". Regulations 2 and 3 of this instrument will ensure that, during the Transition Period, the correct domestic versions of those EU regulations (and in the future, the domestic legislation replacing them) are referred to and can be enforced under FSMA.

Amendment to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

2.5 Regulation 4 of this instrument amends regulations 33, 50 and 52A of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) ("the MLRs"), to ensure that retained EU law in relation to anti-money laundering will continue to operate effectively at the end of the Transition Period.

2.6 The MLRs were updated in January 2020 to implement the Fifth Money Laundering Directive (Directive (EU) 2018/843). Those changes were made by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (SI 2019/1511). This instrument ensures that those amendments operate effectively at the end of the Transition Period, equalising the regulatory treatment of EEA member states and other third countries.

2.7 Firstly, this instrument will equalise the regulatory requirements of enhanced due diligence measures ("EDD"), so that relevant customer risk factors for EDD no longer distinguish between EEA and other third countries. Secondly, in regulation 50 of the MLRs, there is currently a duty on UK supervisors to co-operate with supervisors both within and outside the UK, as a result of an EU obligation. However, HM Treasury considers that it is appropriate to remove the duty, and substitute it with a power to co-operate, in relation to overseas supervisory authorities after the end of the Transition Period. Thirdly, amendments to regulation 52A, concerning the application of confidentiality obligations between UK supervisory authorities and overseas supervisory authorities, will remove the current distinction between EEA and non-EEA authorities.

Amendment to the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

2.8 Regulation 5 amends the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (SI 2018/1115, "the 2018 Regulations"). The 2018 Regulations give the UK financial services regulators powers to fix deficiencies in EU Binding Technical Standards ("BTS") so that they operate effectively in UK law from the end of the Transition Period. This instrument will ensure that recently adopted BTS, which will form part of retained EU law, will continue to operate effectively at the end of the Transition Period.

2.9 Regulation 5 adds to the Schedule to the 2018 Regulations new BTS adopted under: the Transparency Directive (Directive 2004/109/EC); the Securitisation Regulation (Regulation (EU) 2017/2402); and the Markets in Financial Instruments Regulation (Regulation (EU) 600/2014). It also makes a minor amendment to the 2018 Regulations to clarify that references to specified EU Regulations are to the version of those EU Regulations as they are amended from time to time.

Amendment to the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

2.10 Regulation 7 of this instrument amends Articles 37 and Article 38(2) of the Markets in Financial Instruments Regulation ("MiFIR"), to ensure that they operate effectively in the UK at the end of the Transition Period. These Articles ensure that central counterparties ("CCPs", firms which sit between the buyer and the seller in a trade to ensure a trade is completed if one party defaults) and trading venues are permitted

non-discriminatory access to the relevant price and data feeds of benchmarks for the purposes of clearing and trading (a benchmark is a standard against which the performance of a security, mutual fund or investment manager can be measured). This means access to the relevant price and data must be granted on request to a CCP or trading venue for the purposes of clearing.

2.11 CCPs mutualise the risk of failure by requiring users to post collateral on all their trading activity to create a pool of capital that can prevent the failure of one market participant which might cause a domino effect; this might happen if other investors were exposed to the risk of the firm and/or the trade failing. Regulators require that market participants transact certain standardised derivative contracts through a CCP.

2.12 Regulation 7 of this instrument replace references to the European Supervisory and Markets Authority ("ESMA") with references to the Financial Conduct Authority ("FCA") and to the Bank of England. This is consistent with the approach taken across other statutory instruments made under the EUWA 2018.

Amendments to the Regulations of the European Supervisory Authorities and the European Systemic Risk Board

2.13 The EU's Review of the European System of Financial Supervision Regulation (Regulation (EU) No. 2175/2019) ("ESFS") replaces all references that are made to the Data Protection Directive (EU) 1995/46 ("DPD") in the EU's Anti-Money Laundering Directive (EU) 2015/849 ("AMLD"), with the General Data Protection Regulation (EU) 2016/679 ("GDPR").

2.14 Regulation 8 of this instrument updates the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019 (SI 2019/253) to take account of changes to EU legislation since those Regulations were made; for example, to refer to the General Data Protection Regulation rather than the Data Protection Directive.

2.15 Regulations 23 and 24 of this instrument will revoke elements of the European System of Financial Supervision Regulations that will not be relevant in a UK-only context at the end of the Transition Period.

Amendment of the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019

2.16 Regulation 9 amends the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019, to provide that equivalence determinations made by HM Treasury are made by regulations. This instrument also puts in place an appropriate Parliamentary procedure (i.e. the process (negative or affirmative) for the statutory instrument that HM Treasury would need to lay) for regulations made by HM Treasury under retained EU law in relation to credit rating agencies. Specifically, it provides that individual equivalence determinations or other regulations made under the Credit Rating Agencies Regulation in retained EU law are by negative instrument, but that amendments to the criteria for making equivalence determinations are by affirmative instrument.

Inclusion of the provisions of the Cross-Border Distribution of Funds, Proxy Advisors, Prospectus and Gibraltar (Amendment) (EU Exit) Regulations 2019

2.17 The Cross-Border Distribution of Funds, Proxy Advisors, Prospectus and Gibraltar (Amendment) (EU Exit) Regulations 2019 ("the CBDF and Misc. Regulations 2019") were made and laid before Parliament on 22 October 2019. The instrument was made

using the urgent "made-affirmative" procedure, which was necessary at the time as the instrument needed to be in force had the UK left the EU without a Transition Period on 31 October 2019. The instrument was not debated within 28 sitting days, and therefore the provisions contained in the instrument have now ceased to have effect.

2.18 To ensure that the provisions of the CBDF and Misc. Regulations 2019 are in force for the end of the Transition Period, regulations 10, 13-15, 18 and 21 of this instrument put in place the provisions previously contained in the CBDF and Misc. Regulations 2019, as detailed below.

2.19 Maintaining the PRIIPS Exemption. There is currently a provision in the Packaged Retail and Insurance-based investment Products ("PRIIPS") Regulation (EU) No. 2014/1286 ("the EU PRIIPS Regulation"), which provides an exemption from the requirement for Undertakings for the Collective Investment in Transferable Securities ("UCITS") funds to create a "key information document" ("KID"). This exemption would have ended on the 31 December 2019. The EU's Cross-Border Distribution of Funds Regulation extended this exemption until 31 December 2021. This is to allow the Commission to review whether the requirement to produce a KID are appropriate for UCITS funds, and whether the requirement should be adjusted or removed.

2.20 Regulation 10 of this instrument makes an amendment to the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 (SI 2019/403) ("the UK PRIIPS Regulations") to mirror this exemption in domestic legislation at the end of the Transition Period. This will mean that UCITS marketed in the UK will not have to produce a KID until 31 December 2021. The Government will continue to keep this under review.

2.21 Gibraltar. Regulation 13 of this instrument makes amendments to regulation 11 of the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/608) ("the Gibraltar Regulations"), ensuring that deficiency fixes made by this instrument; the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019 (SI 2019/1416); and regulations 22 to 24 of this instrument will not apply to Gibraltar. These amendments are consistent with the Government's policy to preserve the pre-withdrawal relationship between the UK and Gibraltar on financial services.

2.22 Amendments to the Official Listing Regulations and related legislation. Companies wishing to raise capital by issuing securities – such as shares and bonds - may be required to provide investors with a prospectus. A prospectus is a document which describes a company's business, shareholding structure, and details of the securities being admitted to trading on a regulated market – such as the London Stock Exchange's Main Market – or offered to the public.

2.23 Prior to 21 July 2019, the EEA prospectus regime was set by the Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading ("the EU Prospectus Directive"). The EU Prospectus Directive was implemented in UK law through Part 6 of FSMA and rules made by the Financial Conduct Authority under that Part of FSMA.

2.24 On 27 March 2019, the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/707) ("the Official Listing Regulations") were made in UK legislation. These Regulations addressed deficiencies

arising from the UK implementation of the EU Prospectus Directive and related legislation.

2.25 On 21 July 2019, Regulation (EU) 2019/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC ("the EU Prospectus Regulation") came into full application across the EU and the EU Prospectus Directive was repealed.

2.26 Many of the deficiency fixes applied by the Official Listing Regulations are therefore no longer appropriate or workable. On 5 September 2019, the Prospectus (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1234) were made to address deficiencies arising from the newly applicable EU Prospectus Regulation, including amendment or deletion of provisions in the Official Listing Regulations that are no longer workable.

2.27 This instrument contains an additional amendment. The prospectus regime under the EU Prospectus Regulation includes exemptions which mean issuers do not have to produce a prospectus under certain circumstances, for instance, when a company is issuing additional shares which amount to no more than twenty per cent of shares already issued. Without these exemptions, issuers would be obliged to produce a prospectus – which can be a significant cost – in these circumstances. The exemptions need to be preserved in the UK's post-Transition Period regime, where the combined effect of the previous Regulations would not maintain this exemption. Regulation 14 of this instrument amends the Official Listings Regulation so that these exemptions continue to operate after the end of the Transition Period.

2.28 Additionally, further amendments to the EU Prospectus Regulation were introduced by Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 as regards the promotion of the use of SME Growth Markets ("the SME Growth Markets Regulation") that came into application on 31 December 2019. As a result, regulation 17 of this instrument also introduces minor deficiency fixes to ensure the UK prospectus regime remains operational in a wholly domestic context at the end of the Transition Period.

2.29 Amendments to the Proxy Advisors Regulations. Article 3j of the Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (as inserted by Directive (EU) 2017/828) was implemented in UK legislation by the Proxy Advisors (Shareholders' Rights) Regulations 2019 (SI 2019/926). The rest of the Directive was implemented by the Department for Business, Energy and Industrial Strategy, the Department for Work and Pensions and the Financial Conduct Authority.

2.30 Article 3j of the Shareholder Rights Directive seeks to improve the stewardship of EEA-based corporations by introducing the regulation of proxy advisors. Proxy advisors provide research, advice and recommendations to shareholders and their intermediaries. This may include advising shareholders on how to vote at an annual general meeting or translating documents. Proxy advisors primarily offer voting services to shareholders of publicly-listed companies, and therefore can have a considerable impact on how shareholders exercise their voting rights.

2.31 The Proxy Advisors Regulations require proxy advisors to disclose to the public any code of conduct they apply, information relating to how proxy advisors prepare their

research, advice and voting recommendations, and whether there are any actual or potential conflicts of interest they may have whilst undertaking their activities.

2.32 The Proxy Advisors Regulations also provide the FCA with powers to enforce the obligations imposed on proxy advisors. Where the FCA considers that a proxy advisor has contravened a relevant requirement in the Proxy Advisors Regulations, the FCA may impose financial penalties or publish a statement outlining the contravention.

2.33 The Proxy Advisors Regulations currently create a regime applying to proxy advisors that: (a) provide services to a shareholder that has shares in a company registered in the UK, EEA or Gibraltar, and that company is trading on a UK, EEA or Gibraltarian regulated market; and (b) have a registered office in the UK, or a registered office in a non-EEA country or territory but provide services through a UK establishment.

2.34 After the Transition Period it would be inappropriate to require proxy advisors that have a registered office or establishment in the UK, but that only offer services to shareholders with shares in companies with registered offices in an EEA State, and which are traded on EU-regulated markets, to fall under the UK proxy advisor regime.

2.35 Regulation 15(3) of this instrument amends this scope so that at the end of the Transition Period the Proxy Advisors Regulations will apply only to proxy advisors that: (a) provide services to a shareholder that has shares in a company registered in the UK or Gibraltar, and that is trading on a UK or Gibraltarian regulated market; and, (b) have their registered office in the UK, or have their registered office outside of the UK or Gibraltar but provide services through a UK establishment.

2.36 In the Proxy Advisors Regulations, the definitions of "shareholder" and "regulated market" contained in the current definition of "proxy advisor", are defined by reference to the Shareholders' Rights Directive. Regulation 15(4) of this instrument removes references to the Directive and replaces them with new definitions and references to related definitions in FSMA and the Financial Services (Markets in Financial Instruments) Act 2018 of Gibraltar, where appropriate. Definitions related to the Proxy Advisors Regulations will reflect the UK-only scope of the regime that will operate after the Transition Period.

2.37 Amendments to the Cross-Border Distribution of Funds ("CBDF") Regulation and related legislation. Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings ("the CBDF Regulation") became applicable on the 1 August 2019 and sought to make it easier for collective investment schemes to market throughout the EU. Specifically, it: (a) allows national regulators to pre-verify promotional marketing material from funds passporting from other member states; (b) introduces additional rules to improve the transparency of regulator fees for marketing; and (c) introduces additional rules requiring ESMA to publish information which will increase the transparency of national regulator rules relating to cross-border activity.

2.38 The CBDF Regulation promotes cross-border activity between member states in the Union, enabled by the "marketing passport". At the end of the Transition Period, the UK will fall outside of the EU's single market for financial services, including the passport regime, and so the provisions of the CBDF Regulation will become inoperable. Regulation 21 of this instrument will therefore revoke the CBDF Regulation.

2.39 A collective investment scheme (commonly referred to as a "investment fund") is a fund that several people contribute towards. There are two pieces of key EU legislation which define how collective investment schemes operate. The UCITS Directive (2009/65/EC) created a regime for UCITS funds, which are predominately sold to retail investors. The Alternative Investment Fund Managers Directive (2011/61/EU) created a regime for Alternative Investment Funds ("AIFs"), which regulates the managers of AIFs ("AIFMs"). AIFs are predominately marketed to sophisticated or professional investors, such as pensions funds.

2.40 Both directives created a harmonised European market for collective investment schemes. They did this by creating a "marketing passport", allowing an operator of a UCITS fund or a manager of an AIF regulated in one member state to be able to market that fund into other member states.

Amendments to equivalence determinations

2.41 Some EU financial services legislation contains provisions which allow the European Commission to determine that a third country's regulatory and supervisory regime is equivalent to the EU's corresponding regulatory framework. In the EU, the Commission is usually responsible for making jurisdiction-level equivalence determinations in relation to third country regimes. Under retained EU law, HM Treasury will usually be responsible for making these determinations.

2.42 The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 ("the Equivalence Regulations") made provision for elements of the UK equivalence framework in a "no deal" scenario. It provides Ministers with a temporary power to make equivalence directions for EEA states. Regulation 11 adds additional financial services regimes to the scope of the power for HM Treasury to make equivalence determinations, through the inclusion of provisions relating to Central Securities Depositories ("CSDs") and Trade Repositories ("TRs"). It also sets out explicitly the conditions that need to be fulfilled when HM Treasury is assessing equivalence for the purposes of Article 47 of MiFIR, and that references to EU Regulations and EU Decisions in Schedule 1 to the Equivalence Regulations are to Regulation or Decision as it forms part of retained EU law at the end of the Transition Period.

2.43 Regulation 11 further clarifies the Equivalence Regulations to ensure that HM Treasury, when assessing equivalence, may consider whether the EEA state is on the UK's list of high-risk countries for anti-money laundering, and also whether sanctions, embargos or similar measures are in place.

2.44 Regulation 11 also clarifies the power to make equivalence determinations, such that the Treasury may impose limitations on the applicability of the equivalence determination it makes. This transfers into domestic law ("onshores") similar powers held currently by the European Commission. Regulation 6 makes a similar amendment for a transitional regime for CCPs in the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1184).

2.45 The power to make equivalence determinations under the Equivalence Regulations currently expires twelve months after exit day (31 January 2020). This instrument amends regulations 2 and 3 of the Equivalence Regulations such that the power will expire at the end of the Transition Period. Finally, regulation 11 also amends some

references to "exit day" to "IP completion day" to take into account the Transition Period.

Amendment of the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019

2.46 The Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (SI 2019/657, "the Benchmarks EU Exit Regulations") made changes to the EU Benchmarks Regulation ("BMR") and related EU tertiary legislation to make sure that the UK continues to have an effective regulatory framework for benchmarks after EU exit. The BMR places requirements on administrators, supervised users of, and supervised contributors to, benchmarks. The Benchmarks EU Exit Regulations amended the scope of BMR to apply only to the UK, creating a "UK BMR". It created an FCA register of approved benchmarks and benchmark administrators to replace the ESMA register. It made changes to ensure that EU located administrators are subject to the UK's third country regime to allow continued use by UK supervised users. It transferred relevant non-legislative and legislative functions to the relevant UK bodies, i.e. HM Treasury and the FCA.

2.47 Since the UK onshored the BMR, the EU has amended its regime to include new categories of low carbon benchmarks ("climate transition benchmarks" and "Paris-aligned benchmarks") and extended existing rules on benchmark transparency in relation to Environmental, Social and Governance ("ESG") factors. The legislation aims to enhance the transparency and comparability of low carbon benchmarks to enable investors to make more informed decisions. It also increases the length of time that national competent authorities can compel administrators to publish, and supervised contributors to submit to, a critical benchmark from two years to five years.

2.48 Regulation 12 of this instrument makes amendments to fix the deficiencies resulting from these recent EU amendments. This is to ensure that UK BMR will continue to be effective over new categories of climate benchmark. The Regulation inserts definitions of "UK Climate Transition Benchmarks" and "UK Paris-aligned Benchmarks" under the existing UK BMR. The regulation transfers relevant legislative and non-legislative functions from EU bodies to HM Treasury and the FCA.

2.49 Regulation 12 also revokes the EU amendment to extend the transitional provision for third country benchmarks until end 2021, as the UK has already extended the third country transitional regime to the end of 2022 in the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/1212). Regulation 12, together with regulation 16 (which omits an existing provision in SI 2019/1212), replaces that provision with one taking into account the Transition Period, by updating references to "exit day", whilst retaining the transitional regime to the end of 2022.

Amendments to Commission Delegated Regulations for European Venture Capital Funds and European Social Entrepreneurship Funds

2.50 In February 2019, the EU put in place new rules on European Venture Capital Funds (EuVECAs) and European Social Entrepreneurship Funds (EuSEFs). The rules outline how within funds, conflicts of interest must be calculated, managed and disclosed to investors.

2.51 These new rules were introduced by two pieces of delegated regulation. First, by Regulation (EU) 2019/820 with regard to conflicts of interest in the area of European venture capital funds and, second, Regulation (EU) 2019/819 with regard to conflicts of interest, social impact measurement and information to investors in the area of European social entrepreneurship funds.

2.52 Regulations 19 and 20 of this instrument make minor amendments to these Regulations to ensure they continue to function at the end of the Transition Period. First, they reflect that the Regulations will only apply to "UK Undertakings for Collective Investment in Transferable Securities". Second, this instrument replicates the definition of "durable medium" in domestic legislation which is currently derived from an EU Directive.

Revoking elements of the Sustainability-related disclosures in the financial services sector regulation

2.53 Regulation 22 of this instrument omits aspects of the sustainability-related disclosures in financial services regulations as they will not function effectively at the end of the Transition Period in a UK only context.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 On 22 October 2019, HM Treasury made the Cross-Border Distribution of Funds, Proxy Advisors, Prospectus and Gibraltar (Amendment) (EU Exit) Regulations 2019 using the urgent "made-affirmative" procedure. This was necessary at the time as the UK was due to leave the EU on 31 October 2019, and the provisions of the instrument were required to be in force by exit day had the UK left the EU without a Transition Period.

3.2 However, following the subsequent extension under Article 50 TEU and with the UK entering a Transition Period, the instrument was not debated within the 28 sitting days required and so has ceased to have effect. To ensure that the provisions contained within that instrument are in force as required for the end of the Transition Period, this instrument has incorporated the provisions previously contained in the Cross-Border Distribution of Funds, Proxy Advisors, Prospectus and Gibraltar (Amendment) (EU Exit) Regulations 2019, and as set out in section 2 of this Explanatory Memorandum.

3.3 As outlined above, regulation 9 amends the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019, to provide that equivalence determinations made by HM Treasury, under the Credit Rating Agencies Regulations in retained EU law, are made by negative instrument, and sets out the appropriate Parliamentary procedure for all other regulatory powers in the Credit Rating Agencies Regulations. In accordance with the requirement stated in paragraph 4.7.6 of the Statutory Instrument Practice, HM Treasury has consulted with the SI Registrar. As this correction does not alter the substantive obligations contained in the Credit Rating Agencies (Amendment etc.) EU Exit Regulations on members of the public or businesses who may have purchased the Credit Rating Agencies (Amendment etc.) EU Exit Regulations Statutory Instrument, and as the correction only represents a small part of the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019, the procedure for free issue has not been applied.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 The territorial application of this instrument includes Scotland and Northern Ireland.

3.5 The powers under which this instrument is made cover the entire United Kingdom (section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972, section 8(1), and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited by those Acts or by this instrument.

4. Extent and Territorial Application.

4.1 The territorial extent of this instrument is to the whole United Kingdom.

4.2 The territorial application of this instrument is to the whole United Kingdom.

5. European Convention on Human Rights

5.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding Human Rights:

"In my view the provisions of the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends secondary legislation, and amends and revokes parts of retained EU law to address deficiencies arising from the withdrawal of the UK from the EU.

6.2 Part 2 of the instrument amends: the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013; the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order (No. 2) 2013; the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018; the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018; the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019; the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019; the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019; the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019; the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019; the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019; the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019; the Proxy Advisors (Shareholders' Rights) Regulations 2019; The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019; and the Prospectus (Amendment etc.) (EU Exit) Regulations 2019.

6.3 Part 3 of this instrument amends and revokes elements of retained EU law: Regulation (EU) No 2017/1129; the Commission Delegated Regulation (EU) 2019/819; the Commission Delegated Regulation (EU) 2019/820; Regulation (EU) 2019/1156; Regulation (EU) 2019/2088; Regulation (EU) 2019/2175; and Regulation (EU) 2019/2176.

6.4 Regulations 2 and 3 are also made under section 2(2) of the European Communities Act 1972, so far as they have effect before the end of the Transition Period to ensure the UK fulfils its obligations under the Withdrawal Agreement. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 with effect from exit day, but saved with modifications until the end of the Transition Period by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020).

7. Policy background

What is being done and why?

7.1 The UK has left the EU with a deal and has entered a Transition Period lasting until 31 December 2020. During this period, common rules will continue to apply, access to each other's markets will continue as previously, and businesses, including financial services firms, will be able to trade on the same terms as previously. UK firms need to continue to comply with EU legislation, including any new EU legislation that becomes applicable during the Transition Period.

7.2 Since July 2018, HM Treasury has put in place legislation, using powers under the EUWA 2018 to ensure that the UK has an independent and coherent financial services regulatory regime at the end of the Transition Period.

7.3 As far as possible, HM Treasury's approach ensures that the same laws and rules that are currently in place in the UK would continue to apply at the end of the Transition Period, to provide continuity and certainty to firms and their customers.

7.4 During the Transition Period, HM Treasury will continue to use powers under the EUWA 2018, as amended by the European Union (Withdrawal Agreement) Act 2020, to prepare for 1 January 2021. In particular, as new EU legislation becomes applicable during the Transition Period, HM Treasury will bring forward further statutory instruments to ensure that it continues to operate effectively in the UK at the end of the Transition Period.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the EUWA 2018 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

9. Consolidation

9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 HM Treasury has not undertaken a consultation on this instrument, but has engaged extensively with the Bank of England and the FCA during the drafting process. HM Treasury has engaged with relevant industry stakeholders on its approach to Financial Services legislation under the EUWA 2018, including on this instrument, in order to familiarise them with the proposed legislation ahead of laying.

11. Guidance

11.1 No further guidance is being published alongside this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is that some of the instruments being amended impact on the UK financial services regulators (the Bank of England and the FCA). Where required, impact assessments for the individual instruments being amended by this instrument have been published on legislation.gov.uk.

12.3 An Impact Assessment has not been prepared for this instrument because in line with Better Regulation guidance, HM Treasury considers that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de minimis impact assessment has been carried out.

13. Regulating small business

13.1 The legislation applies to small businesses. However, it does not introduce new regulatory requirements for small businesses, but merely ensures a consistent and coherent regulatory regime.

14. Monitoring & review

14.1 As this instrument is made under the EUWA 2018, no review clause is required.

15. Contact

15.1 Thomas Haigh at HM Treasury (Telephone: 020 7270 5225 or email: Thomas.haigh@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Rohan Lee, Deputy Director for Financial Services at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 do no more than is appropriate".

1.2 This is the case because it follows the approach taken in previous instruments to fix deficiencies in retained EU law to ensure that the UK financial services regulatory regime continues to operate in a coherent, effective and transparent manner at the end of the Transition Period. Additionally, this instrument makes the appropriate amendments and revocations to EU legislation that will become redundant in a UK-only context at the end of the Transition Period.

2. Good reasons

2.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are: the approach taken with this instrument is consistent with the approach previously taken in earlier instruments, and maintains the intended effect of those instruments. The amendments and clarifications made to previous instruments are necessary to ensure that legislation operates effectively at the end of the Transition Period, and the amendments go no further than what is required for this purpose.

3. Equalities

3.1 The Economic Secretary to the Treasury (John Glen) has made the following statement(s):

"The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 instrument, I, Economic Secretary to the Treasury, John Glen, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Legislative sub-delegation

5.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

5.2 "In my view it is appropriate to extend the relevant sub-delegated power in the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018, to cover the newly adopted Binding Technical Standards set out in regulation 5 of this instrument. This will give UK regulators the responsibility of ensuring that the full set of EU-derived technical standards operate effectively at the end of the Transition Period. It is appropriate for the regulators to perform this task, given that the corrections required for BTS and regulator rules will be of a highly technical nature. This sub-delegation is also appropriate as the amendments needed to correct deficiencies in BTS will be aligned with the changes that Parliament has approved to EU Level 1 legislation."

5.3 "In my view, it is also appropriate to extend the ministerial power of direction in the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019, to include the power to extend equivalence determinations to Central Securities Depositories ("CSDs") and Trade Repositories ("TRs"), to enable HM Treasury to make equivalence determinations for CSDs and TRs as necessary for the end of the Transition Period".