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DRAFT STATUTORY INSTRUMENTS

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**2020 No.**

The Equivalence Determinations for Financial Services  
(Amendment etc.) (EU Exit) Regulations 2020

PART 1

General provisions

**Citation and commencement**

1.—(1) These Regulations may be cited as the Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020.

(2) These Regulations come into force on the day after the day on which they are made.

**Interpretation**

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000(1);

“the 2019 Regulations” means the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019(2);

“administrator” has the same meaning as in the Benchmarks Regulation;

“the Bank” means the Bank of England;

“the Benchmarks Regulation” means Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds;

“cooperation arrangements” means arrangements established in accordance with regulation 3 and Schedule 2;

“CRAR” means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;

“CRR” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;

“CSDR” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;

“EEA CSD” means a legal person that is established in an EEA state and that operates a securities settlement system similar to that referred to in point (3) of Section A of the Annex

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(1) 2000 c. 8, with relevant amendments by the Companies Act 2006 (c. 46), the Financial Services Act 2010 (c. 28), the Financial Services Act 2012 (c. 21), Financial Services (Banking Reform) Act 2013 (c. 33), the Bank of England and Financial Services Act 2016 (c. 14), and S.I. 2007/1093, 2011/1043, 2013/1881 and 2016/1239, and to be amended by S.I. 2019/681.

(2) S.I. 2019/541, as amended by S.I. 2019/710, 1212, 1234, 1390 and 1416, and S.I. 2020/628.

to CSDR and provides at least one other core service similar to those listed in Section A of that Annex;

“EEA regulator” means a regulator that is responsible for functions corresponding to those of the UK regulator, for the purposes of cooperation arrangements or regulatory decisions under these Regulations, and includes (where appropriate) authorities such as ESMA and the EFTA Surveillance Authority;

“EFTA Surveillance Authority” means the independent surveillance authority established in accordance with Article 108 of the EEA Agreement;

“EMIR” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

“equivalence direction” means a direction made under regulation 2 of the 2019 Regulations;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)(3);

“the FCA” means the Financial Conduct Authority as referred to in section 1A of the 2000 Act(4);

“MiFIR” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;

“the Prospectus Regulation” means Regulation (EU) No 2017/1129 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;

“Regulation (EU) 2018/1644” means Commission Delegated Regulation (EU) 2018/1644 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent;

“regulatory decision” means a decision made under regulation 5 and Schedule 3;

“relevant cooperation arrangements” means, in relation to a regulatory decision under a paragraph of Schedule 3 specified in the third column of Table 1 in Schedule 1, cooperation arrangements established in accordance with the paragraph of Schedule 2 that is specified in the second column of the same row of that Table;

“SFTR” means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse;

“Solvency 2 Regulation” means Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

“SSR” means Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps;

“trade repository” means a legal person that centrally collects and maintains the records of derivatives or the records of securities financing transactions.

(2) The “UK regulator” means—

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(3) OJ No. L 331, 15.12.2010, p. 84.

(4) Section 1A inserted by section 6(1) of the Financial Services Act 2012 (c. 21).

- (a) in relation to cooperation arrangements, either the Bank or the FCA, whichever is mentioned in the paragraph of Schedule 2 that is specified in the second column of Table 1 in Schedule 1 to which the equivalence direction relates;
  - (b) in relation to a regulatory decision, or an application under regulation 4 for such a decision, either the Bank or the FCA, whichever is mentioned in the paragraph of Schedule 3 that makes provision with respect to that regulatory decision.
- (3) “Applicant” and “application”, including related terms, are to be interpreted in accordance with regulation 4, unless the contrary intention appears.
- (4) Any reference in these Regulations to a specific EU Regulation, or part of an EU Regulation, is to that EU Regulation, or that part of the EU Regulation, as it forms part of retained EU law on or after IP completion day.

## PART 2

### Cooperation arrangements, regulatory decisions and equivalence directions

#### Cooperation arrangements between UK regulators and EEA regulators

3.—(1) Subject to paragraphs (2) to (4), where the Treasury have made an equivalence direction that makes a determination set out in a paragraph of Schedule 1 to the 2019 Regulations that is specified in the final column of Table 1 in Schedule 1 in relation to an EEA state, the UK regulator must take such steps as it considers appropriate to establish cooperation arrangements with the EEA regulator—

- (a) for the EEA state referred to in the equivalence direction; and
- (b) in accordance with the paragraph of Schedule 2 that is specified in the second column of the same row of that Table.

(2) Where the UK regulator considers that existing arrangements with the EEA regulator meet the requirements in the paragraph of Schedule 2 to which paragraph (1)(b) refers, then the UK regulator may consider paragraph (1) to be satisfied.

(3) Paragraph (1) need not be satisfied where the Treasury have made an equivalence direction that makes a determination set out in paragraph 9(8) of Schedule 1 to the 2019 Regulations (in respect of the Prospectus Regulation) and the EEA state referred to in that equivalence direction is a high-risk third country within the meaning of regulation 33(3)(a) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(5).

(4) Paragraph (1) does not apply on or after IP completion day.

#### Applications for a regulatory decision before IP completion day

4.—(1) Subject to paragraph (2), a person (“the applicant”) may make an application (“the application”) to the UK regulator under this regulation for a regulatory decision set out in a paragraph of Schedule 3 specified in the third column of Table 1 in Schedule 1.

- (2) An application may only be made—
  - (a) before IP completion day; and
  - (b) after an equivalence direction has been made that makes a determination set out in the paragraph of Schedule 1 to the 2019 Regulations specified in the final column of the same row of Table 1.

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(5) [S.I. 2017/692](#), as amended by [S.I. 2019/1511](#).

- (3) An application under paragraph (1) must—
  - (a) be made in such manner as the UK regulator may direct;
  - (b) be accompanied by such other information as that regulator may direct.
- (4) The UK regulator must confirm promptly receipt of the application to the applicant.
- (5) The UK regulator must determine, and inform the applicant, within a reasonable time whether the application is complete and meets requirements set out in accordance with paragraph (3).
- (6) If the UK regulator determines that the application is not complete and does not meet requirements set out in accordance with paragraph (3), that regulator may—
  - (a) request that the applicant provide further information; and
  - (b) set such a time period for the provision of further information requested under sub-paragraph (a) as the regulator considers appropriate.
- (7) The UK regulator may at any time request that the applicant provide further information relating to the application.
- (8) The applicant must notify the UK regulator promptly of any material changes affecting the application.
- (9) The applicant may withdraw the application by giving notice to the UK regulator at any time before the application is determined.

### **Regulatory decisions**

- 5.—(1) Where an application has been made under regulation 4, the UK regulator must decide that application in accordance with the paragraph of Schedule 3 to which the application relates.
- (2) Where the decision under paragraph (1) is that the application meets the applicable requirements of regulation 4 and Schedule 3, the UK regulator must issue the regulatory decision to the applicant promptly.
- (3) Where the decision under paragraph (1) is that the application does not meet the applicable requirements of regulation 4 and Schedule 3, the UK regulator must notify the applicant promptly and in writing of the reasons for refusal.
- (4) The UK regulator must make a decision under paragraph (1) within the period of one year beginning with the first day on which—
  - (a) the applicant has submitted a complete application; and
  - (b) relevant cooperation arrangements have been established in relation to the EEA State to which the application relates, where required under the paragraph of Schedule 3 to which the application relates.
- (5) A regulatory decision may not have effect before IP completion day.

### **Application of the 2000 Act to the Bank in relation to its functions under these Regulations**

- 6.—(1) Subject to paragraph (2), the provisions of the 2000 Act referred to in paragraphs (3) to (6) apply in relation to the Bank in accordance with those paragraphs.
- (2) In relation to the functions of the Bank under these Regulations, any reference in the 2000 Act to the PRA that is contained in, or relates to, any of the provisions (however expressed) mentioned below is to be read as a reference to the Bank.

(3) Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.) to 350 (disclosure of information by the Inland Revenue)(6) and 353 (removal of other restrictions on disclosure)(7), and Regulations made under those sections(8), apply in relation to information received by the Bank for the purposes of, or in the discharge of, any of its functions under these Regulations.

(4) Section 398 (misleading FCA or PRA: residual cases)(9) applies to information given to the Bank in purported compliance with a requirement imposed by or under these Regulations, as if the Bank is the “regulator” referred to in sub-section (1) of that section.

(5) Section 401 (proceedings for offences)(10) applies as if, for the purpose of sub-sections (2) (a) and (3)(a) of that section, the Bank is the “appropriate regulator” in respect of an offence under section 398(1) in relation to these Regulations.

(6) Paragraph 19 (annual report) of Schedule 1ZB(11) applies in relation to the recording of decisions made by the Bank exercising its functions under these Regulations and the 2019 Regulations.

## Fees

7.—(1) The UK regulator may require applicants to pay such fees in connection with discharging its functions under these Regulations as it considers will enable it to meet its expenses incurred in carrying out those functions or for any incidental purpose.

(2) Any fee owed to the UK regulator under this regulation may be recovered as a debt due to that regulator.

(3) Nothing in this regulation affects the operation of Part 8 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019(12).

## Effect of applications, equivalence directions and regulatory decisions on or after IP completion day

8.—(1) On or after IP completion day, an equivalence direction made before IP completion day that makes a determination set out in a paragraph of Schedule 1 to the 2019 Regulations specified in the first column of Table 2 in Schedule 4 to these Regulations (for the purposes set out in that paragraph) has effect as if made—

- (a) on IP completion day; and
- (b) under the provision of retained EU law specified in the second column of the same row of that Table.

(2) A regulatory decision made in accordance with a paragraph of Schedule 3 that is specified in the first column of Table 3 in Schedule 4 has effect on or after IP completion day as if made—

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- (6) Section 348 amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c. 28), paragraph 18 of Schedule 12 to the Financial Services Act 2012 (c. 21), paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c. 33), paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c. 14), and S.I. 2016/1239; section 349 amended by section 964 of the Companies Act 2006 (c. 46), paragraph 19 of Schedule 12 to the Financial Services Act 2012 (c. 21) and S.I. 2007/1093 and 2011/1043, and will be amended by S.I. 2019/681 on IP completion day; section 350 amended by paragraph 20 of Schedule 12 to the Financial Services Act 2012 (c. 21).
  - (7) Section 353 amended by paragraph 23 of Schedule 12 to the Financial Services Act 2012 (c. 21) and S.I. 2013/1881.
  - (8) S.I. 2001/2188 and 3648.
  - (9) Section 398 amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 (c. 21); there are other amendments which are not relevant.
  - (10) Section 401 amended by paragraph 38 of Schedule 9 to the Financial Services Act 2012 (c. 21) and S.I. 2013/1881; there are other amendments which are not relevant.
  - (11) Schedule 1ZB added by Schedule 3 to the Financial Services Act 2012 (c. 21); paragraph 19 amended by sections 5 and 130 of the Financial Services (Banking Reform) Act 2013 (c. 33), paragraph 50 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c. 14).
  - (12) S.I. 2019/632.

- (a) under the provision of retained EU law specified in the second column of the same row of that Table; and
  - (b) on—
    - (i) IP completion day, if made before IP completion day; or
    - (ii) the day that the decision is made, if made on or after IP completion day.
- (3) On or after IP completion day, an application made by an EEA CSD under regulation 4, for the purposes set out in paragraph 3 of Schedule 3, has effect as if it is an application made under Article 25 of CSDR on IP completion day, for the purposes of Article 69(1) and (2)(a) of CSDR only, where—
- (a) the application has not been withdrawn; and
  - (b) the application has not been determined under regulation 5.

## PART 3

### Amendments to existing secondary legislation

#### **The Central Securities Depositories (Amendment) (EU Exit) Regulations 2018**

**9.** In regulation 13(j)(i) of the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018(**13**), at the end of the new first sub-paragraph of paragraph 9, after “regimes” insert “and CSDs authorised under the law applicable in the United Kingdom”.

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

**10.** In regulation 33(1)(b)(ii) of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018(**14**), after “Article” insert “on or”.

#### **The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019**

**11.—(1)** The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019(**15**) are amended as follows.

(2) In regulation 54(a), in new paragraph 1 of Article 3, after the definition of “credit score”, insert—

“EU CRAR’ means Regulation (EC) 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies(**16**) as it had effect in the European Union immediately before IP completion day;”.

(3) For regulation 55(e) substitute—

“(e) for paragraph 6 substitute—

“**6.** The credit rating agency endorsing credit ratings issued in a third country is no longer required to verify or demonstrate that the condition laid down in paragraph 3(g) of this Article is fulfilled where—

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(13) S.I. 2018/1320.

(14) S.I. 2018/1403. Regulation 33(1)(b)(ii) was to be amended by regulation 16(15)(a) of S.I. 2019/710. That amendment is being omitted by regulation 13 of these Regulations.

(15) S.I. 2019/266, with amendments to be made to regulation 56 by regulation 9 of S.I. 2020/628, which is in turn being amended by regulation 14 of these Regulations.

(16) OJ No. L 302, 17.11.2009, p. 1.

- (a) the legal and supervisory framework of that third country has been recognised as equivalent to the requirements of this Regulation by the Treasury in accordance with Article 5(6) and the cooperation arrangements referred to in Article 5(7) have been established by the FCA and are operational; or
  - (b) the legal and supervisory framework of that third country has been recognised as equivalent to the requirements of this Regulation by a decision adopted in accordance with Article 5(6) of EU CRAR before IP completion day that forms part of retained EU law.”.”.
- (4) In regulation 56—
- (a) for paragraph (a) substitute—
    - “(a) in paragraph 1—
      - (i) for “Union” substitute “United Kingdom”;
      - (ii) for point (b) substitute—
        - “(b) the legal and supervisory framework of that third country has been recognised as equivalent to the requirements of this Regulation—
          - (i) by the Treasury in accordance with paragraph 6 of this Article; or
          - (ii) by a decision adopted by the European Commission in accordance with Article 5(6) of EU CRAR before IP completion day that forms part of retained EU law;”;
      - (iii) in point (c)—
        - (aa) before “the”, insert “where point (b)(i) applies,”;
        - (bb) for “are operational” substitute “have been established by the FCA in accordance with that paragraph and are operational”;
      - (iv) in point (d), for “one or more Member States” substitute “the United Kingdom”,”;
  - (b) for paragraph (f), substitute—
    - “(f) in paragraph 7—
      - (i) for “ESMA shall establish cooperation agreements” substitute “The FCA must take such steps as it considers appropriate to establish cooperation arrangements”;
      - (ii) for “in accordance with paragraph 6” substitute “by the Treasury in accordance with paragraph 6 of this Article or by a decision adopted by the European Commission in accordance with Article 5(6) of EU CRAR before IP completion day that forms part of retained EU law”;
      - (iii) in point (a), for “ESMA” substitute “the FCA”,”.

### **The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019**

**12.**—(1) The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019(17) are amended as follows.

- (2) In regulation 1(4)(b), after “Schedule 1”, insert “, as amended from time to time,”.

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(17) S.I. 2019/541, with a relevant amendment to be made by regulation 11 of S.I. 2020/628.

(3) In paragraph 3(2)(b) of Schedule 1, after “CRAR”, insert “, with the exception of Articles 6a, 6b, 8a, 8c and 11a, and points 3(ba), 3a and 3b of Section B of Annex I”.

**The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019**

**13.** Omit regulation 16(15)(a) of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019**(18)**.

**The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020**

**14.** In regulation 9(4) of the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020**(19)**, in new regulation 96, in new Article 38(2)—

- (a) at the end of paragraph (a), omit “and”;
- (b) in paragraph (b), for “purposes.” substitute “purposes; and”;
- (c) after paragraph (b), insert—  
    “(c) amend or revoke any decision to which Article 5(1)(b)(ii) refers.”.

Date

*Name*  
*Name*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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**(18)** S.I. 2019/710.  
**(19)** S.I. 2020/628.