

SCHEDULE 1

Regulation 2

Equivalence directions and relevant cooperation arrangements

Table 1**Equivalence directions and relevant cooperation arrangements**

<i>Retained EU law Regulation to which the equivalence direction relates</i>	<i>Applicable paragraph of Schedule 2 to these Regulations</i>	<i>Applicable paragraph of Schedule 3 to these Regulations</i>	<i>Applicable paragraph of Schedule 1 to the 2019 Regulations</i>
Benchmarks Regulation	paragraph 1	paragraph 1	paragraph 1(1) or (2)
CRAR	paragraph 2	paragraph 2	paragraph 3
CSDR	paragraph 3	paragraph 3	paragraph 3A
EMIR	paragraph 4	paragraph 4	paragraph 4A
MiFIR	paragraph 5	paragraph 5	paragraph 8
Prospectus Regulation	paragraph 6	N/A	paragraph 9(8)
SFTR	paragraph 7	paragraph 6	paragraph 10(1)

SCHEDULE 2

Regulation 3

Cooperation arrangements before IP completion day

Cooperation arrangements for the purposes of Article 30(4) of the Benchmarks Regulation

1. For the purposes of Article 30(4) of the Benchmarks Regulation, cooperation arrangements must specify, at least, the following—

- (a) a mechanism for the exchange of information between the FCA and the EEA regulator for an EEA state, including access to all relevant information regarding the administrator authorised in that EEA state that is requested by the FCA;
- (b) a mechanism for prompt notification to the FCA where the EEA regulator deems that the administrator authorised in that EEA state that it is supervising is in breach of the conditions of its authorisation or other national legislation in that EEA state; and
- (c) procedures concerning the coordination of supervisory activities, including on-site inspections.

Cooperation arrangements for the purposes of Article 5(7) of CRAR

2. For the purposes of Article 5(7) of CRAR, cooperation arrangements must specify, at least, the following—

- (a) a mechanism for the exchange of information between the FCA and the EEA regulator for an EEA state; and
- (b) procedures concerning the coordination of supervisory activities.

Cooperation arrangements for the purposes of Article 25(10) of CSDR

3.—(1) For the purposes of Article 25(10) of CSDR, cooperation arrangements must specify, at least, the following—

- (a) a mechanism for the exchange of information between the Bank and the EEA regulator for an EEA state, including access to all information regarding EEA CSDs authorised in that EEA state that is requested by the Bank and access to information relating to the matters referred to in sub-paragraph (2);
- (b) a mechanism for prompt notification of the Bank where the EEA regulator for that EEA state considers an EEA CSD authorised in that EEA state has infringed or is infringing the conditions of its authorisation or of other applicable law; and
- (c) procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

(2) The matters referred to in sub-paragraph (1)(a) are requests by the Bank that the EEA regulator—

- (a) report on the activities in the United Kingdom of an EEA CSD authorised in that EEA state, including for the purpose of collecting statistics; or
- (b) communicate, within an appropriate timeframe, the identity of the issuers and participants in the securities settlement systems operated by an EEA CSD authorised in that EEA state which provide services in the United Kingdom and any other relevant information concerning the activities of that EEA CSD in the United Kingdom.

Cooperation arrangements for the purposes of Article 75(3) of EMIR

4. For the purposes of Article 75(3) of EMIR, cooperation arrangements must specify, at least, the following—

- (a) a mechanism for the exchange of information between the FCA and the EEA regulator for an EEA state; and
- (b) procedures concerning the coordination of supervisory activities.

Cooperation arrangements for the purposes of Article 47(2) of MiFIR

5. For the purposes of Article 47(2) of MiFIR, cooperation arrangements must specify, at least, the following—

- (a) a mechanism for the exchange of information between the FCA and the EEA regulator for an EEA state, including access to all information regarding the non-United Kingdom firms authorised in that EEA state that is requested by the FCA;
- (b) a mechanism for prompt notification to the FCA where the EEA regulator considers that a firm that it is supervising, and that the FCA has registered in the register provided for in Article 48 of MiFIR, has infringed or is infringing the conditions of its authorisation or any other law to which it is obliged to adhere; and
- (c) procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

Cooperation arrangements for the purposes of Article 30(1) of the Prospectus Regulation

6. For the purposes of Article 30(1) of the Prospectus Regulation, cooperation arrangements must, at least—

- (a) concern the exchange of information between the FCA and the EEA regulator for an EEA state and the enforcement of obligations arising under the Prospectus Regulation; and

- (b) ensure an efficient exchange of information that allows the FCA to carry out its duties under the Prospectus Regulation.

Cooperation arrangements for the purposes of Article 19(5)(b) of SFTR

7. For the purposes of Article 19(5)(b) of SFTR, cooperation arrangements must specify, at least, the following—

- (a) a mechanism for the exchange of information between the FCA and the EEA regulator for an EEA state; and
- (b) procedures concerning the coordination of supervisory activities.

SCHEDULE 3

Regulation 2

Regulatory decisions

Regulatory decisions for EEA benchmarks for the purposes of Article 30(1) of the Benchmarks Regulation

1.—(1) The FCA may include, in the FCA register, a benchmark or a combination of benchmarks provided by an administrator located in an EEA state, for the purposes of Article 30(1) of the Benchmarks Regulation, where the following conditions are met—

- (a) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 1(1) or (2) of Schedule 1 to the 2019 Regulations;
- (b) the administrator is authorised or registered, and is subject to supervision, in that EEA state;
- (c) the FCA is notified by the administrator of—
 - (i) its consent that its actual or prospective benchmarks may be used by supervised entities in the United Kingdom;
 - (ii) the list of the benchmarks for which they have given consent to be used in the United Kingdom; and
 - (iii) the authority responsible for its supervision in that EEA state; and
- (d) relevant cooperation arrangements have been established in relation to that EEA state.

(2) In this paragraph, “FCA register” means the register of administrators and benchmarks established and maintained by the FCA in accordance with Article 36(1) of the Benchmarks Regulation.

Regulatory decisions for credit rating agencies for the purposes of Article 5(2) and (4) of CRAR

2.—(1) A credit rating agency established in an EEA state may be certified by the FCA for the purposes of Article 5(2) of CRAR, provided that—

- (a) the credit rating agency is authorised or registered in and is subject to supervision in that EEA state;
- (b) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 3 of Schedule 1 to the 2019 Regulations;
- (c) relevant cooperation arrangements have been established in relation to that EEA state; and

- (d) the credit ratings issued by the credit rating agency and its credit rating activities are not of systemic importance to the financial stability or integrity of the financial markets of the United Kingdom.
- (2) A credit rating agency established in that EEA state may be granted exemption for the purposes of Article 5(4) of CRAR—
 - (a) on a case-by-case basis from complying with some or all of the requirements set out in Section A of Annex I and Article 7(4) of CRAR if the credit rating agency demonstrates that the requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings;
 - (b) from the requirement of physical presence in the United Kingdom where such a requirement would be too burdensome and disproportionate in view of the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings.
- (3) When assessing an application under regulation 4 for an exemption referred to in sub-paragraph (2), the FCA must consider the size of the credit rating agency established in that EEA state, having regard to the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings, as well as the impact of the credit ratings issued by the credit rating agency on the financial stability and integrity of the financial markets of the United Kingdom.

Regulatory decisions for EEA CSDs for the purposes of Article 25(4) of CSDR

3.—(1) An EEA CSD authorised in an EEA state that intends to provide, on or after IP completion day, the core services referred to in points (1) and (2) of Section A of the Annex to CSDR in relation to financial instruments constituted under the law applicable within the United Kingdom or to set up a branch in the United Kingdom is subject to the procedure referred to in sub-paragraphs (2) to (4) of this paragraph.

(2) After consulting the authority referred to in sub-paragraph (3), the Bank may recognise an EEA CSD authorised in an EEA state for the purposes of Article 25(4) of CSDR that has applied for recognition to provide the services referred to in sub-paragraph (1), where the following conditions are met—

- (a) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 3A of Schedule 1 to the 2019 Regulations;
- (b) the EEA CSD is subject to effective authorisation, supervision and oversight or, if the securities settlement system is operated by a central bank, oversight, ensuring full compliance with the prudential requirements applicable in that EEA state;
- (c) relevant cooperation arrangements have been established in relation to that EEA state; and
- (d) where relevant, the EEA CSD has taken the necessary measures to allow its users to comply with the relevant law applicable within the United Kingdom or any part of the United Kingdom and the adequacy of those measures has been confirmed by the Bank.

(3) When assessing whether the conditions referred to in sub-paragraph (2) are met, the Bank must consult the EEA regulator entrusted with the authorisation, supervision and oversight of EEA CSDs in that EEA state.

(4) A regulatory decision in accordance with this paragraph—

- (a) may be granted only for services listed in the Annex to CSDR; and
- (b) must specify the services the EEA CSD is recognised to provide or perform.

Regulatory decisions for trade repositories for the purposes of Article 77(2) of EMIR

4. The FCA may grant recognition to a trade repository established in an EEA state for the purposes of Article 77(2) of EMIR only if—

- (a) the trade repository is authorised and subject to supervision in that EEA state;
- (b) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 4A of Schedule 1 to the 2019 Regulations; and
- (c) relevant cooperation arrangements have been established in relation to that EEA state.

Regulatory decisions for the purposes of Article 46(2) of MiFIR

5. The FCA may register a firm established in an EEA state that has applied in relation to the provision of investment services or the performance of activities listed in Article 46(1) of MiFIR in the United Kingdom, for the purposes of Article 46(2) of MiFIR, only where the following conditions are met—

- (a) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 8 of Schedule 1 to the 2019 Regulations;
- (b) the firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in the United Kingdom and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that EEA state; and
- (c) relevant cooperation arrangements have been established in relation to that EEA state.

Regulatory decisions for the purposes of Article 19(4) of SFTR

6. The FCA may recognise a trade repository established in an EEA state for the purposes of Article 19(4) of SFTR only where the following conditions are met—

- (a) the trade repository is authorised and subject to effective supervision in that EEA state;
- (b) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 10(1) of Schedule 1 to the 2019 Regulations; and
- (c) relevant cooperation arrangements have been established in relation to that EEA state.

SCHEDULE 4

Regulation 8

Equivalence directions and regulatory decisions on or after IP completion day

Table 2

Effect of equivalence directions on or after IP completion day

<i>Applicable paragraph of Schedule 1 to the 2019 Regulations</i>	<i>Applicable provision of retained EU law</i>
paragraph 1(1)	Article 30(2) of the Benchmarks Regulation
paragraph 1(2)	Article 30(3) of the Benchmarks Regulation
paragraph 2	the particular provision or provisions of CRR that the equivalence direction makes a determination for the purposes of
paragraph 3	Article 5(6) of CRAR
paragraph 3A	Article 25(9) of CSDR

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020 No. 1055

<i>Applicable paragraph of Schedule 1 to the 2019 Regulations</i>	<i>Applicable provision of retained EU law</i>
paragraph 4(1)	Article 2A(2) of EMIR
paragraph 4(2)	Article 13(2) of EMIR
paragraph 4A	Article 75(1) of EMIR
paragraph 4B	Article 76a(2) of EMIR
paragraph 5(1)	Article 23(1) of, and paragraph 8 of Schedule 3 to, MiFIR
paragraph 5(2)	Article 28 of MiFIR
paragraph 6	Article 33 of MiFIR
paragraph 7	Article 38(3) of MiFIR
paragraph 8	Article 47(1) of MiFIR
paragraph 9(8)	Article 29(3) of the Prospectus Regulation
paragraph 10(1)	Article 19(1) of SFTR
paragraph 10(3)	Article 21(1) of SFTR
paragraph 11	Article 17(2) of SSR
paragraph 12	the particular provision or provisions of the Solvency 2 Regulation that the equivalence direction makes a determination for the purposes of

Table 3

Effect of regulatory decisions on or after IP completion day

<i>Paragraph of Schedule 3 in accordance with which the regulatory decision made</i>	<i>Provision of retained EU law the decision is to have effect as if made under</i>
paragraph 1	Article 30(1) of the Benchmarks Regulation
paragraph 2(1)	Article 5(2) of CRAR
paragraph 2(2)	Article 5(4) of CRAR
paragraph 3	Article 25(4) of CSDR
paragraph 4	Article 77(2) of EMIR
paragraph 5	Article 46(2) of MiFIR
paragraph 6	Article 19(4) of SFTR