

## SCHEDULE 1

Regulation 49

### Administration and enforcement of Parts 3, 4, and 5

## PART 1

### Interpretation

#### Interpretation of Schedule 1

**1.** In this Schedule—

“the EMIR regulation” means Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories<sup>(1)</sup>;

“management body” in relation to a person (“P”) means—

- (a) the board of directors, or if there is no such board, the equivalent body responsible for the management of P; and
- (b) any other person who effectively directs the business of P;

“non-authorised counterparty” means—

- (a) a financial counterparty (within the meaning of Article 2.8 of the EMIR regulation) who is neither an authorised person nor a recognised body; or
- (b) a non-financial counterparty (within the meaning of Article 2.9 of the EMIR regulation) who meets the conditions in Article 10.1.b of that regulation;

“PRA-authorised person” has the meaning given in section 2B(5) of the Act<sup>(2)</sup>;

“recognised body” has the meaning given in section 313(1) of the Act;

“senior management” has the meaning given by Article 4.1.37 of the markets in financial instruments directive.

#### Directly applicable EU regulations

**2.—**(1) In this Schedule, any reference to a requirement imposed by or under Part 3 or 4 of these Regulations includes a reference to a requirement imposed on a person to whom Part 3 or 4 of these Regulations applies under—

- (a) a directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation; and
- (b) the markets in financial instruments regulation.

(2) In this Schedule, any reference to Article 28 of the markets in financial instruments regulation includes a reference to any directly applicable EU regulation made under that Article.

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(1) OJ No L173, 12/6/2014, p84.

(2) Section 2B was inserted by section 6 of the Financial Services Act 2012 (c.21).

## PART 2

### The FCA and the PRA

#### *Functions of the FCA and the PRA*

##### **Functions of the FCA**

3.—(1) The FCA has the functions conferred on it by these Regulations.

(2) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, and in giving general guidance under these Regulations, the FCA must, so far as is reasonably possible, act in a way which—

- (a) is compatible with its strategic objective as defined in section 1B(2) of the Act<sup>(3)</sup> (the FCA's general duties); and
- (b) advances one or more of its operational objectives as defined in section 1B(3) of the Act.

##### **Functions of the PRA**

4.—(1) The PRA has the functions conferred on it by these Regulations.

(2) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, the PRA must, so far as is reasonably possible, act in a way which is compatible with its general objective as defined in section 2B(2) of the Act<sup>(4)</sup> (the PRA's general duties).

(3) Section 2H(1) of the Act<sup>(5)</sup> (secondary competition objective) applies to the exercise by the PRA of its functions under these Regulations.

#### *Supervision*

##### **Monitoring and enforcement**

5.—(1) The FCA must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under Part 3, 4 or 5 of these Regulations or non-authorised counterparties on whom requirements are imposed by Article 28 of the markets in financial instruments regulation are complying with them.

(2) The PRA must maintain arrangements designed to enable it to determine whether PRA-authorised persons on whom requirements are imposed by or under Part 5 of these Regulations are complying with them.

(3) The FCA must maintain arrangements for enforcing the provisions of—

- (a) Parts 3, 4 and 5 of these Regulations, and
- (b) Article 28 of the markets in financial instruments regulation as respects non-authorised counterparties.

(4) The PRA must maintain arrangements for enforcing the provisions of Part 5 of these Regulations as respects PRA-authorised persons.

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(3) Sections 1B and 1F were inserted by section 6 of the Financial Services Act 2012.

(4) Section 2B was inserted by section 6 of the Financial Services Act 2012 and amended by section 1 of the Financial Services (Banking Reform) Act 2013 (c.33).

(5) Section 2H was substituted by section 130 of the Financial Services (Banking Reform) Act 2013.

## Co-operation

6.—(1) In exercising its functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation, the FCA must take such steps as it considers appropriate to co-operate with—

- (a) persons who have functions similar to the functions of the FCA under these Regulations;
- (b) persons who have functions similar to the functions of the FCA with respect to Article 28 of the markets in financial instruments regulation; and
- (c) other persons mentioned in Article 79 of the markets in financial instruments directive.

(2) In exercising its functions under Part 5 of these Regulations, the PRA must take such steps as it considers appropriate to co-operate with—

- (a) persons who have functions similar to the functions of the PRA under these Regulations; and
- (b) other persons mentioned in Article 79 of the markets in financial instruments directive.

(3) The duty under section 3D of the Act<sup>(6)</sup> (duty of FCA and PRA to ensure co-ordinated exercise of functions) applies to the exercise of the functions of the FCA and PRA under these Regulations, and in the case of the FCA its functions with respect to Article 28 of the markets in financial instruments regulation, as it applies to the exercise of their functions under the Act.

## Guidance

7.—(1) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of Parts 3, 4, and 5 of these Regulations;
- (b) any matters relating to the functions of the FCA under these Regulations or with respect to Article 28 of the markets in financial instruments regulation; or
- (c) any other matters about which it appears to the FCA to be desirable to give information or advice in connection with these Regulations.

(2) The FCA may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price; and
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(3) Section 139B of the Act<sup>(7)</sup> (notification of FCA guidance to the Treasury) applies with respect to guidance given by the FCA under this paragraph as it applies with respect to guidance given by the FCA under section 139A of the Act (power of the FCA to give guidance) as if—

(a) for subsection (5) there were substituted—

“(5) “General guidance” means guidance given by the FCA under paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 which is—

- (a) given to persons generally, to persons to whom those Regulations apply generally or to a class of persons to whom those Regulations apply,
- (b) intended to have continuing effect, and

<sup>(6)</sup> Section 3D was inserted by section 6 of the Financial Services Act 2012.

<sup>(7)</sup> Sections 139A and 139B were inserted by section 24 of the Financial Services Act 2012. There are amendments to section 139A but none is relevant.

- (c) given in writing or other legible form.”;
- (b) subsection (6) were omitted.

### **Reporting requirements**

**8.**—(1) A person (“P”) must provide the appropriate regulator with such information in respect of P’s compliance or non-compliance with any requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation applicable to P as the appropriate regulator may direct.

(2) The information required to be given under this paragraph must be provided at such times, in such form, and verified in such manner, as the appropriate regulator may direct.

(3) If at any time P considers that it is unable to comply with a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation applicable to it, P must as soon as reasonably practicable notify the appropriate regulator of that fact, including the reasons why it is unable to comply.

(4) In this paragraph, “appropriate regulator” means—

- (a) in relation to a requirement imposed by the PRA on a PRA-authorised person under Part 5 of these Regulations, the PRA, and
- (b) in any other case, the FCA.

## **PART 3**

### **Administrative sanctions and offences**

#### *Administrative sanctions*

### **Interpretation of Part 3**

**9.**—(1) In this Part, “regulator” means the FCA or the PRA.

(2) In paragraphs 10 and 11, “appropriate regulator” means—

- (a) in relation to a contravention of a requirement imposed by the PRA on a PRA-authorised person under Part 5 of these Regulations, the PRA; and
- (b) in relation to any other contravention of these Regulations or of Article 28 of the markets in financial instruments regulation, the FCA.

### **Public censure**

**10.** If the appropriate regulator considers that—

- (a) a person (“P”) has contravened a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation,
- (b) a member of the management body of P is responsible for the contravention by P of a requirement imposed by or under these Regulations or by Article 28 of that regulation, or
- (c) another member of the senior management of P is responsible for the contravention by P of a requirement imposed by or under these Regulations or by Article 28 of that regulation,

the appropriate regulator may publish a statement to that effect.

### **Financial penalties**

**11.**—(1) If the appropriate regulator considers that a person (“P”) has contravened a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation, it may impose a penalty of such amount as it considers appropriate on—

- (a) P;
- (b) a member of the management body of P if the appropriate regulator considers the person is responsible for the contravention;
- (c) another member of the senior management of P if the appropriate regulator considers the person is responsible for the contravention.

(2) A penalty imposed under this paragraph is payable to the regulator that imposed the penalty and may be recovered as a debt owed to that regulator.

### **Warning notice**

**12.**—(1) If a regulator proposes to—

- (a) publish a statement in respect of a person under paragraph 10; or
- (b) impose a penalty on a person under paragraph 11,

it must give the person a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

### **Decision notice**

**13.**—(1) If, having considered any representations made in response to the warning notice, a regulator decides to—

- (a) publish a statement under paragraph 10 (whether or not in the terms proposed); or
- (b) impose a penalty under paragraph 11 (whether or not of the amount proposed),

it must without delay give the person concerned a decision notice.

(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

(4) If a regulator decides to—

- (a) publish a statement in respect of a person under paragraph 10; or
- (b) impose a penalty on a person under paragraph 11,

the person may refer the matter to the Tribunal.

(5) After a statement under paragraph 10 is published, the regulator concerned must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the Act<sup>(8)</sup> (third party rights) (as applied by paragraph 22).

### **Statements of policy**

**14.**—(1) Each regulator must prepare and issue a statement of policy with respect to—

- (a) the imposition of penalties under paragraph 11; and
- (b) the amount of penalties under that paragraph.

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<sup>(8)</sup> Section 393(4) was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.

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- (2) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;
  - (b) the extent to which that contravention was deliberate or reckless; and
  - (c) whether the person against whom action is to be taken is an individual.
- (3) A regulator may at any time alter or replace a statement issued by it under this paragraph.
- (4) If a statement issued under this paragraph is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.
- (5) A regulator must, without delay, give the Treasury a copy of any statement which it issues under this paragraph.
- (6) A statement issued under this paragraph by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (7) The regulator may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, its power under paragraph 11 in the case of any particular contravention, a regulator must have regard to any statement of policy published by it under this paragraph and in force at the time when the contravention in question occurred.

#### **Statements of policy: procedure**

- 15.**—(1) Before a regulator issues a statement under paragraph 14, the regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
  - (2) The draft must be accompanied by a notice that representations about the proposal may be made to the regulator within a specified time.
  - (3) Before issuing the proposed statement the regulator must have regard to any representations made to it in accordance with sub-paragraph (2).
  - (4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
    - (a) the representations made to in accordance with sub-paragraph (2); and
    - (b) its response to them.
  - (5) If the statement differs from the draft published under sub-paragraph (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with sub-paragraph (4)) publish details of the difference.
  - (6) A regulator may charge a reasonable fee for providing a person with a copy of a draft published by it under sub-paragraph (1).
  - (7) This paragraph also applies to a proposal to alter or replace a statement.

#### *Offences*

#### **Misleading the FCA or PRA**

- 16.**—(1) A person must not, for the purposes of compliance or purported compliance with a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation knowingly or recklessly give a regulator information which is false or misleading in a material particular.
  - (2) A person must not provide information to another person—

- (a) knowing; or
- (b) being reckless as to whether,

the information is false or misleading in a material particular and knowing that the information is to be provided to, or to be used for the purposes of providing information to, a regulator in connection with the discharge of its functions under these Regulations or with respect to Article 28 of the markets in financial instruments regulation.

- (3) A person who contravenes sub-paragraph (1) or (2) is guilty of an offence.
- (4) A person guilty of an offence under this paragraph is liable—
  - (a) on summary conviction—
    - (i) in England and Wales, to a fine;
    - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.

### **Restriction on penalties**

17.—(1) A person who is convicted of an offence under these Regulations or under the Act as applied by these Regulations is not subsequently liable to a penalty under paragraph 11 in respect of the same acts or omissions that constituted the offence.

(2) A person who is liable to a penalty under paragraph 11 is not subsequently liable for an offence under these Regulations in respect of the same acts or omissions that constituted the contravention of a requirement imposed by or under these Regulations for the purposes of that penalty.

## **PART 4**

### **Application of the Act for the purposes of the Regulations**

#### **Application of Part 9 of the Act (hearings and appeals)**

18.—(1) Part 9 of the Act<sup>(9)</sup> (hearings and appeals) applies with respect to proceedings pursuant to references to the Tribunal under these Regulations and under the Act as applied by these Regulations (“relevant proceedings”) as it applies with respect to proceedings pursuant to references to the Tribunal under that Act, with the following modifications.

- (2) Section 133 of the Act (proceedings before the Tribunal: general provision) applies as if—
  - (a) in subsection (1)—
    - (i) “(whether made under this or any other Act)” were omitted;
    - (ii) paragraphs (b) and (c) were omitted;
  - (b) in subsection (2), “, (b) or (c)” were omitted;
  - (c) in subsection (5) the reference to section 393(11) were a reference to section 393(11) as applied by these Regulations;
  - (d) for subsection (7A) there were substituted—

“(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of either of the following decisions—

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(9) Part 9 was amended by section 23 of the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013, paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c.22), S.I. 2010/22, 2013/1388, 2014/3329 and 2016/680.

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- (a) a decision to publish a statement under paragraph 10 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
  - (b) a decision to impose a penalty under paragraph 11 of Schedule 1 to those Regulations.”.
- (3) Section 133A of the Act (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if for subsection (1) there were substituted—
- “(1) In determining in accordance with section 133(5) (as applied by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017) a reference made as a result of a decision notice given by the FCA or the PRA, the Tribunal may not direct the FCA or the PRA (as the case may be) to take action which it would not, under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, have had power to take when giving the notice.”.
- (4) Section 133B of the Act (offences) applies as if subsection (1)(b) and (c) were omitted.

#### **Application of Part 11 of the Act (information gathering and investigations)**

**19.**—(1) Part 11 of the Act<sup>(10)</sup> (information gathering and investigations) applies with respect to the discharge by the regulators of their functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation as it applies with respect to the discharge by the regulators of their functions under the Act, with the following modifications.

- (2) In this paragraph, “regulator” means the FCA or the PRA.
- (3) Part 11 of the Act applies as if—
  - (a) each reference to the Act included a reference to these Regulations and Article 28 of the markets in financial instruments regulation;
  - (b) each reference to a section or Part of, or Schedule to, the Act were a reference to that section, Part or Schedule as applied by these Regulations;
  - (c) each reference to an authorised person were a reference to a person in respect of whom a requirement is imposed by or under these Regulations or to a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation.
- (4) Sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc. in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d)) of the Act do not apply.
- (5) Section 166A of the Act (appointment of skilled person to collect and update information) applies as if—
  - (a) for subsection (1) there were substituted—
 

“(1) This section applies if either regulator considers that a person has contravened a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 to collect, and keep up to date, information of a description specified in those Regulations.”;
  - (b) subsection (10) were omitted.

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<sup>(10)</sup> Part 11 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44), paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c.28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c.28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012, paragraphs 36 and 37 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c.14), paragraph 9 of Schedule 2 to the Investigatory Powers Act 2016 (c.25), S.I. 2001/1090, 2005/1433, 2007/126, 2011/1043, 2012/2554, 2013/1773, 2015/575 and 2016/680. There are other amendments but none is relevant.



(6) Section 167 of the Act (appointment of persons to carry out general investigations) applies as if—

(a) for subsection (1) there were substituted—

“(1) If it appears to an investigating authority that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into—

- (a) the nature, conduct or state of the business of a person in respect of whom a requirement is imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (“a person subject to the 2017 Regulations”) or a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation (“a non-authorised counterparty”);
- (b) a particular aspect of that business; or
- (c) the ownership or control of a person subject to the 2017 Regulations or a non-authorised counterparty.”;

(b) for subsection (4) there were substituted—

“(4) The power conferred by this section may be exercised in relation to a person who was formerly a person subject to the 2017 Regulations or a non-authorised counterparty but only in relation to—

- (a) business carried on when the person was a person subject to the 2017 Regulations or a non-authorised counterparty; or
- (b) the ownership or control of a person who was formerly a person subject to the 2017 Regulations or a non-authorised counterparty at any time when the person was a person subject to the 2017 Regulations or a non-authorised counterparty.”;

(c) in subsection (5A) for paragraphs (b) and (c) there were substituted—

- “(b) in relation to any other person subject to the 2017 Regulations, the FCA or the PRA;
- (c) in relation to a non-authorised counterparty, the FCA.”;

(d) subsection (6) were omitted.

(7) Section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if—

(a) for subsection (1) there were substituted—

“(1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—

- (a) a person may have contravened a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or by Article 28 of the markets in financial instruments regulation;
- (b) a member of the management body of a person referred to in paragraph (a) or another member of the senior management of such a person may be responsible for the contravention of a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or by Article 28 of the markets in financial instruments regulation; or
- (c) a person may be guilty of an offence under those Regulations or under this Act as applied by those Regulations.”;

(b) subsections (2), (4) and (5) were omitted;

(c) for subsection (6) there were substituted—

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“(6) “Investigating authority” means the FCA or the PRA.”

(8) Section 169 of the Act (investigations etc. in support of overseas regulator) applies as if—

- (a) subsection (2A) were omitted;
- (b) for subsection (13) there were substituted—

“(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA or the PRA under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or with respect to Article 28 of the markets in financial instruments regulation.”

(9) Section 169A of the Act (support of overseas regulator with respect to financial stability) does not apply.

(10) Section 170 of the Act (investigations: general) applies as if—

- (a) in subsection (1) “or (5)” were omitted;
- (b) for subsection (3) there were substituted—

“(3) Subsections (2) and (9) do not apply if the investigator is appointed as a result of section 168(1) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated.”;

- (c) subsection (10)(b) were omitted.

(11) Section 172 of the Act (additional power of persons appointed as a result of section 168(1) or (4)) applies as if in the heading and in subsection (4) “or (4)” were omitted.

(12) Section 173 of the Act (powers of persons appointed as a result of section 168(2)) applies as if—

- (a) in the heading for “as a result of section 168(2)” there were substituted “in relation to a recognised investment exchange”;
- (b) in subsection (5) for “subsection (3) of section 168 (as a result of subsection (2) of that section)” there were substituted “section 167 in relation to a recognised investment exchange”.

(13) Section 174 of the Act (admissibility of statements made to investigators) applies as if—

- (a) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123 to which this section applies” were omitted;
- (b) in subsection (3)(a) for “398” substitute “paragraph 16 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;
- (c) subsection (3A) were omitted;
- (d) in subsection (4) the words from “or (5),” to the end were omitted.

(14) Section 175 of the Act (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted.

(15) Section 176 of the Act (entry of premises under warrant) applies as if—

- (a) in subsection (1) “the Secretary of State,” were omitted;
- (b) in subsection (3)(a) for “an authorised person or an appointed representative” there were substituted “a person in respect of whom a requirement is imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation”;
- (c) in subsection (10) “or (5)” were omitted;

- (d) in subsection (11)(a) “87C, 87J,” and “,165A, 169A” were omitted.

### **Restrictions on disclosure of information**

**20.** Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.), 349 (exceptions from section 348) and 352 (offences) of the Act<sup>(11)</sup> apply with respect to information received under these Regulations as they apply with respect to information received under the Act as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of the Act were a reference to that section or Part as applied by these Regulations;
- (c) in section 348(2), for “In this Part” there were substituted “In sections 348, 349 and 352 as applied by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;
- (d) in section 352—
  - (i) in subsection (1) “or 350(5)” were omitted;
  - (ii) subsection (4) were omitted;
  - (iii) in subsection (5) “or (4)” were omitted;
  - (iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

### **Application of Part 25 of the Act (injunctions and restitution)**

**21.—**(1) Part 25 of the Act<sup>(12)</sup> (injunctions and restitution) applies for the purposes of these Regulations, Article 28 of the markets in financial instruments regulation, and the Act as applied by these Regulations, with the following modifications.

- (2) Part 25 of the Act applies as if—
- (a) each reference to the Act included a reference to these Regulations and to Article 28 of the markets in financial instruments regulation;
  - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
  - (c) references to the Secretary of State were omitted;
  - (d) each reference to a relevant requirement were a reference to a requirement which is imposed by or under these Regulations, Article 28 of the markets in financial instruments regulation or the Act as applied by these Regulations.
- (3) Section 380 of the Act (injunctions) applies as if—
- (a) subsections (6) and (7) were omitted;
  - (b) in subsection (8) paragraphs (b) and (c) were omitted;
  - (c) subsection (9) were omitted.

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<sup>(11)</sup> Section 348 was 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, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013, paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016 and S.I. 2016/1239. Section 349 was amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012, S.I. 2006/1183, 2007/1093 and 2011/1043. Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

<sup>(12)</sup> Part 25 was amended by paragraphs 19, 21, 23, 24 and 25 of Schedule 9 to the Financial Services Act 2012, paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2007/126, 2013/1773, 2015/1755, 2016/225 and 680. There are other amendments but none is relevant.

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- (4) Section 381 of the Act (injunctions in cases of market abuse) does not apply.
- (5) Section 382 of the Act (restitution orders) applies as if—
  - (a) subsections (9) and (10) were omitted;
  - (b) in subsection (11) paragraphs (b) and (c) were omitted;
  - (c) subsection (12) were omitted.
- (6) Section 383 of the Act (restitution orders in cases of market abuse) does not apply.
- (7) Section 384 of the Act (power of FCA or PRA to require restitution) applies as if—
  - (a) subsections (2) and (3) and references to those subsections were omitted;
  - (b) subsection (7) were omitted;
  - (c) in subsection (9) paragraphs (b) and (c) were omitted;
  - (d) subsection (10) were omitted.

#### **Application of Part 26 of the Act (notices)**

**22.**—(1) Part 26 of the Act(**13**) (notices) applies with respect to the giving of notices under regulations 28(4) (FCA power to intervene), 36(4) (FCA power to impose requirements) and 40(3) and (6) (removal of persons from management boards: procedure), paragraphs 12 and 13 of this Schedule and the Act as applied by these Regulations as it applies with respect to the giving of notices under the Act, with the following modifications.

- (2) Part 26 of the Act applies as if—
  - (a) each reference to the Act included a reference to these Regulations;
  - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
  - (c) each reference to a regulator or to the regulator concerned were a reference to the regulator giving the notice.
- (3) In this paragraph, “regulator” means the FCA or the PRA.
- (4) Section 387 of the Act (warning notices) applies as if subsections (1A) and (3A) were omitted.
- (5) Section 388 of the Act (decision notices) applies as if subsections (1A) and (2) were omitted.
- (6) Section 391 of the Act (publication) applies as if—
  - (a) in subsection (1) the reference to a warning notice falling within subsection (1ZB) were to a warning notice given under paragraph 12;
  - (b) in subsection (1ZA) the reference to a warning notice not falling within subsection (1ZB) were to a warning notice given under the Act as applied by these Regulations;
  - (c) subsection (1ZB) were omitted;
  - (d) in subsection (4A) the reference to sections 391A, 391B and 391C were omitted;
  - (e) subsections (5A), (8A), (8B) and (8C) were omitted;
  - (f) for subsection (11) there were substituted—

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(13) Part 26 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), sections 13 and 24 of and paragraphs 28 and 29 of Schedule 2 to the Financial Services Act 2010, sections 17, 18, 19 and 24 of and paragraph 37 of Schedule 8, Schedule 9 and paragraph 8 of Schedule 13 to the Financial Services Act 2012, section 4 of and Schedule 3 to the Financial Services (Banking Reform) Act 2013, paragraph 43 of Schedule 10 to the Investigatory Powers Act 2016, S.I. 2005/381, 2005/1433, 2007/126, 2007/1973, 2009/534, 2010/22, 2010/747, 2012/916, 2013/1388, 2013/3115, 2014/2879, 2015/1755, 2016/225, 2016/680, 2016/715 and 2016/1239. There are other amendments but none is relevant.

“(11) Section 425A(14) (meaning of “consumers”) applies for the purposes of this section as if subsection (2)(c) were omitted.”.

(7) Sections 391A (publication: special provisions relating to the capital requirements directive), 391B (publication: special provisions relating to the transparency obligations directive) and 391C (publication: special provisions relating to the UCITS directive) of the Act do not apply.

(8) Section 392 of the Act (application of sections 393 and 394) applies as if for paragraphs (a) and (b) there were substituted—

- “(a) a warning notice given in accordance with paragraph 12 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or section 385 as applied by those Regulations;
- (b) a decision notice given in accordance with paragraph 13 of Schedule 1 to those Regulations or section 386 as applied by those Regulations.”.

(9) Section 395 of the Act (the FCA’s and PRA’s procedures) applies as if—

- (a) in subsection (1) paragraph (b)(ii) were omitted;
- (b) in subsection (9) “other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1) (b)(ii)” were omitted;
- (c) subsection (9A) were omitted;
- (d) for subsection (13) there were substituted—

“(13) “Supervisory notice” means a notice given in accordance with regulation 28(4) (FCA power to intervene), 36(4) (FCA power to impose requirements) or 40(3) or (6) (removal of persons from management boards: procedure) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.”.

### **Application of Part 27 of the Act (offences)**

**23.**—(1) Part 27 of the Act (offences)(15) applies with respect to offences under these Regulations and the Act as applied by these Regulations as it applies with respect to offences under the Act, with the following modifications.

(2) Part 27 of the Act applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
- (c) references to the Secretary of State were omitted.

(3) Sections 398 (misleading the FCA or PRA: residual cases) and 399 (misleading the CMA) of the Act do not apply.

(4) Section 400 of the Act (offences by bodies corporate) applies as if subsection (6A) were omitted.

(5) Section 401 of the Act (proceedings for offences) applies as if—

- (a) subsection (1)(c) were omitted;
- (b) in subsection (3A)—
  - (i) paragraphs (a), (f), (g) and (h) were omitted;

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(14) Section 425A was inserted by paragraph 32 of Schedule 2 to the Financial Services Act 2010 and amended by [S.I. 2013/655](#) and [2013/3115](#).

(15) Part 27 was amended by section 95 of and paragraphs 37, 38 and 40 of Schedule 9 to the Financial Services Act 2012 and [S.I. 2013/1881](#) and [2016/1239](#). There are other amendments but none is relevant.

*Status: This is the original version (as it was originally made).*

(ii) in paragraph (i) for “section 398(1)” there were substituted “paragraph 16(1) of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;

(c) subsection (3AB) were omitted.

(6) Section 402 of the Act (power of FCA to institute proceedings for certain other offences) does not apply.

(7) Section 403(7) of the Act (jurisdiction and procedure in respect of offences) applies as if the words from “or an offence” to the end were omitted.

#### **Application of section 413 of the Act (protected items)**

**24.** Section 413 of the Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of the Act.

#### **FCA: penalties, fees and exemption from liability in damages**

**25.**—(1) Paragraphs 19 to 23 (penalties and fees) and 25 (exemption from liability in damages) of Schedule 1ZA to the Act<sup>(16)</sup> apply with respect to the discharge by the FCA of its functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation as they apply with respect to the discharge by it of its functions under the Act, with the following modifications.

(2) Those paragraphs apply as if—

- (a) each reference to penalties imposed under the Act included a reference to penalties imposed under these Regulations;
- (b) each reference to a section or Part of the Act included a reference to that section or Part as applied by these Regulations;
- (c) each reference to the functions of the FCA included a reference to its functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation.

(3) Paragraph 20 applies as if references to the FCA’s enforcement powers included—

- (a) its powers under these Regulations and under Part 25 of the Act as applied by these Regulations;
- (b) its powers in relation to the investigation of offences under these Regulations or under the Act as applied by these Regulations;
- (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under these Regulations or under the Act as applied by these Regulations.

(4) Paragraph 21 applies as if regulated persons included persons on whom requirements are imposed under these Regulations and non-authorised counterparties on whom requirements are imposed by Article 28 of the markets in financial instruments regulation.

(5) Paragraph 23 applies as if references to qualifying functions included references to the functions of the FCA under these Regulations, with respect to Article 28 of the markets in financial instruments regulation and under the Act as applied by these Regulations.

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<sup>(16)</sup> Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, section 29 of the Bank of England and Financial Services Act 2016 and [S.I. 2013/1773](#). There are other amendments but none is relevant.

### **PRA: penalties, fees and exemption from liability in damages**

**26.**—(1) Paragraphs 27 to 31 (penalties and fees) and 33 (exemption from liability in damages) of Schedule 1ZB to the Act<sup>(17)</sup> apply with respect to the discharge by the PRA of its functions under these Regulations as they apply with respect to the discharge by it of its functions under the Act, with the following modifications.

- (2) Those paragraphs apply as if—
  - (a) each reference to penalties imposed under the Act or under FSMA 2000 included a reference to penalties imposed under these Regulations;
  - (b) each reference to a section or Part of the Act included a reference to that section or Part as applied by these Regulations;
  - (c) each reference to the functions of the PRA included a reference to its functions under these Regulations.
- (3) Paragraph 28 applies as if references to the PRA’s enforcement powers included—
  - (a) its powers under Part 5 of these Regulations and under Part 25 of the Act as applied by these Regulations;
  - (b) its powers in relation to the investigation of offences under these Regulations or under the Act as applied by these Regulations;
  - (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under those Regulations or under the Act as applied by those Regulations.
- (4) Paragraph 31 applies as if references to qualifying functions included references to the functions of the PRA under Part 5 of these Regulations and under the Act as applied by these Regulations.

## **PART 5**

### **Application of secondary legislation for the purposes of the Regulations**

#### **Service of notices**

**27.** The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001<sup>(18)</sup> (“Notice Regulations”) apply with respect to any notice or document to be given by the FCA or PRA under regulation 12(3)(b) (FCA power to intervene in relation to third country firms registered with ESMA), 28(4) (FCA power to intervene), 36(4) (FCA power to impose requirements) or 40(3) or (6) (removal of persons from management boards: procedure), paragraph 12 or 13 of this Schedule or the Act as applied by these Regulations, as if—

- (a) that notice or document were “a relevant document” under the Notice Regulations;
- (b) each reference to the Act included a reference to these Regulations and to the Act as applied by these Regulations;
- (c) each reference to a section of the Act were a reference to that section as applied by these Regulations.

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<sup>(17)</sup> Schedule 1ZB was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, paragraph 50 of Schedule 2 to the Bank of England and Financial Services Act 2016 and [S.I. 2013/1773](#). There are other amendments but none is relevant.

<sup>(18)</sup> [S.I. 2001/1420](#).

**Disclosure of confidential information**

**28.** The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**19**) apply for the purposes of section 349 of the Act (exceptions from section 348) as applied by paragraph 20.

**Communications by auditors**

**29.** The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001(**20**) apply for the purposes of sections 342 (information given by auditor or actuary to a regulator), 343 (information given by auditor or actuary to a regulator: person with close links) and 344 (duty of auditor or actuary resigning etc. to give notice) of the Act as if—

- (a) in regulation 1(2) (citation, commencement and interpretation) “relevant requirement” included a requirement which is imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation;
- (b) in regulation 2(2)(a)(ii) (circumstances in which an auditor is to communicate) the reference to functions included a reference to the FCA’s and PRA’s functions under these Regulations and under the Act as applied by these Regulations.

## SCHEDULE 2

Regulation 50(1)

## Amendments to the Financial Services and Markets Act 2000

1. The Act is amended as follows.

**Amendments to Part 3 (authorisation and exemption)**

2.—(1) Section 39 (exemption of appointed representatives) is amended as follows.

(2) In subsection (1ZA)(**21**) after “(1A)” insert “, (1AA)”.

(3) In the opening words of subsection (1A)(a)(**22**) for “or a credit institution” substitute “, a credit institution, or a person mentioned in Article 3.1 (optional exemptions) of the markets in financial instruments directive”.

(4) After subsection (1A) insert—

“(1AA) This subsection applies to a person—

- (a) if the person’s principal is an investment firm or a credit institution, and
- (b) so far as the business for which the person’s principal has accepted responsibility is selling, or advising clients on, structured deposits as defined by Article 4.1.43 (definitions) of the markets in financial instruments directive,

unless the person is entered on the applicable register.”

(5) In subsection (1B)(**23**)—

- (a) in the opening words at the beginning insert “In subsections (1A) and (1AA)”;
- (b) in paragraph (a)—

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(19) [S.I. 2001/2188](#).

(20) [S.I. 2001/2587](#).

(21) Subsection (1ZA) was inserted by [S.I. 2015/910](#).

(22) Subsection (1A) was inserted by [S.I. 2007/126](#) and amended by [S.I. 2015/910](#).

(23) Subsection (1B) was inserted by [S.I. 2007/126](#) and amended by paragraph 5(2) of Schedule 18 to the Financial Services Act 2012 (c.21).



- (i) omit the words from “which” to “appoint tied agents”;
- (ii) for “Article 23” substitute “Article 29”; and
- (iii) at the end insert “and”; and
- (c) omit paragraph (b) (with the “and” following it).
- (6) In subsection (7)(a)(**24**) for “4.1.25” substitute “4.1.29”.
- (7) In subsection (8)(**25**), in the definition of “competent authority” for “4.1.22” substitute “4.1.26”.

**3.—(1)** Section 39A(**26**) (certain tied agents operating outside the United Kingdom) is amended as follows.

- (2) In subsection (6)—
  - (a) for paragraph (c)(**27**) substitute—
    - “(c) enters into a relevant contract with an agent who is not entered on—
      - (i) the record maintained by the FCA by virtue of section 347(1)(ha), or
      - (ii) the register of tied agents of another EEA State maintained pursuant to Article 29 of the markets in financial instruments directive,”; and
    - (b) in paragraph (d) after “record” insert “or register,”.
  - (3) In subsection (8)(a) for “Article 4.1.25” substitute “Article 4.1.29”.
  - (4) In subsection (9) in the definition of “competent authority” for “Article 4.1.22” substitute “Article 4.1.26”.

#### **Amendments to Part 4A (permission to carry on regulated activities)**

**4.** After section 55K(1)(d)(**28**) (investment firms: particular conditions that enable cancellation) insert—

- “;
- (e) that the firm has seriously or systematically infringed the markets in financial instruments regulation.”.

**5.—(1)** Section 55R(**29**) (persons connected with an applicant) is amended as follows.

- (2) In subsection (2)—
  - (a) in paragraph (a) after “intermediaries))” insert “or “an EEA market operator”;
  - (b) in the closing words after “the firm’s” insert “ or the market operator’s”.
- (3) After subsection (3) insert—
  - “(3A) A person (“P”) is connected with an EEA market operator if—
    - (a) P is an investment firm and is a subsidiary undertaking of the market operator, or
    - (b) P is an investment firm and is a subsidiary undertaking of a parent undertaking of the market operator.
  - (3B) In subsection (2)—

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(24) Subsection (7) was inserted by [S.I. 2007/126](#).

(25) Subsection (8) was inserted by [S.I. 2007/126](#).

(26) Section 39A was inserted by [S.I. 2007/126](#).

(27) Paragraph (c) was amended by paragraph 6 of Schedule 18 to the Financial Services Act 2012.

(28) Section 55K was inserted by section 11(2) of the Financial Services Act 2012.

(29) Section 55R was inserted by section 11(2) of the Financial Services Act 2012.

*Status: This is the original version (as it was originally made).*

“EEA market operator” has the meaning given in section 312D (interpretation of Chapter 3A); and

“home state regulator”, in relation to an EEA market operator, has the meaning given in section 312D.”.

(4) After subsection (6)(30) insert—

“(7) Subsection (8) applies where—

- (a) an investment firm (“C”) makes an application for permission under section 55A to carry on a regulated activity which is any of the investment services and activities;
- (b) the requirement for C to obtain permission under section 55A to carry on that activity derives from Chapter 1 of Title II of the markets in financial instruments directive; and
- (c) C is controlled by a person who also controls—
  - (i) an EEA credit institution,
  - (ii) an EEA investment firm, or
  - (iii) an EEA insurance undertaking.

(8) Before granting C’s application for permission, the regulator concerned must—

- (a) in a case falling within subsection (7)(c)(i) consult the competent authorities of the other EEA State responsible for the authorisation or supervision of the credit institution;
- (b) in case falling within subsection (7)(c)(ii) consult the competent authority of the other EEA State responsible for the authorisation of the investment firm;
- (c) in a case falling within subsection (7)(c)(iii), consult the competent authorities of the other EEA State responsible for the authorisation or supervision of the insurance undertaking.

(9) In subsections (7)—

“controls” has the same meaning as in Article 4.1.35(b)(definitions) of the markets in financial instruments directive;

“EEA credit institution” means a credit institution, as defined by Article 4.1.27 of the markets in financial instruments directive, authorised in another EEA State pursuant to Title III of the capital requirements directive;

“EEA insurance undertaking” means an insurance undertaking, as defined by Article 13.1 of the Solvency 2 Directive, authorised in another EEA State;

“EEA investment firm” means an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive, authorised in another EEA State pursuant to Chapter 1 of Title II of that directive.”.

### **Amendments to Part 6 (official listing)**

**6.** In section 86(7)(31) (exempt offers to the public) for subsection (d) substitute—

“(d) a person whom—

- (i) any relevant firm was authorised to continue to treat as a professional client immediately before 3 January 2018 by virtue of Article 71.6 (transitional

(30) Subsection (6) was inserted by [S.I. 2013/3115](#).

(31) Section 86(7) was inserted [S.I. 2005/1433](#) and amended by [S.I. 2012/1538](#).

provisions) of [Directive 2004/39/EC](#) on markets in financial instruments<sup>(32)</sup>; and

- (ii) the firm may continue to treat as a professional client from 3 January 2018 by virtue of Section II.2 of Annex II to the markets in financial instruments directive.”.

7.—(1) Section 102A<sup>(33)</sup> (meaning of “securities” etc) is amended as follows.

(2) In subsection (3)<sup>(34)</sup> for the words “[Directive 2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments” substitute “the markets in financial instruments directive”.

(3) In subsection (4)<sup>(35)</sup> for “4.1.17” substitute “4.1.15”.

8. In section 103(1)<sup>(36)</sup> (interpretation of Part 6) in the definition of “regulated market” for the words “Article 4.1(14) of Directive 2004” to the end substitute “Article 4.1.21 of the markets in financial instruments directive”.

#### **Amendments to Part 8 (provisions relating to market abuse)**

9.—(1) Section 122G<sup>(37)</sup> (publication of information and corrective statements by issuers) is amended as follows.

(2) In the opening words of subsection (1) after “issuer” insert “or emission allowance market participant”.

(3) For subsection (7) substitute—

“(7) In this section—

“emission allowance market participant” has the same meaning as in Article 3.1.19 (definitions) of the market abuse regulation; and

“specified” means specified by the FCA.”.

10.—(1) Section 122I<sup>(38)</sup> (power to suspend trading in financial instruments) is amended as follows.

(2) After subsection (2) insert—

“(2A) But subsection (2) does not apply if the financial instrument is an emission allowance.”.

(3) In the opening words of subsection (4) after “instrument” insert “other than an emission allowance”.

(4) After subsection (4) insert—

“(4A) A suspension of trading in a financial instrument that is an emission allowance takes effect—

(a) immediately, if the FCA states that is the case; or

(b) on such later date as the FCA specify.”.

11. After section 122I insert—

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<sup>(32)</sup> OJ L145 30.4.2004 p.1.

<sup>(33)</sup> Section 102A was inserted by [S.I. 2005/1433](#).

<sup>(34)</sup> Subsection (3) was amended by paragraph 10(3) of Schedule 15 to the Companies Act 2006 ([c.46](#)).

<sup>(35)</sup> Subsection (4) was inserted by [S.I. 2016/680](#).

<sup>(36)</sup> Section 103(1) was amended by paragraph 11(2) of Schedule to the Companies Act 2006; there are other amendments but none is relevant.

<sup>(37)</sup> Section 122G was inserted by [S.I. 2016/680](#).

<sup>(38)</sup> Section 122I was inserted by [S.I. 2016/680](#).

*Status: This is the original version (as it was originally made).*

**“Power to suspend auctioning of auctioned products on a recognised auction platform**

**122IA.**—(1) The FCA may suspend the auctioning of a relevant auctioned product at an auction conducted by a recognised auction platform where it considers it necessary for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(2) If the FCA does so the recognised auction platform may refer the matter to the Tribunal.

(3) A suspension by the FCA takes place—

- (a) immediately, if the FCA specify this is the case, or
- (b) on such later date as the FCA specify.

(4) The FCA may—

- (a) cancel a suspension under subsection (1), and
- (b) impose such conditions for the cancellation to take effect as it considers appropriate.

(5) The provisions relating to the suspension and removal of financial instruments from trading set out in—

- (a) section 313B(2) to (4)(**39**) (suspension or removal of financial instruments from trading: procedure), and
- (b) sections 313BA (procedure following consideration of representations) to 313BC(**40**) (decisions on applications for revocation by institutions),

apply, with the modifications set out in subsection (6), to a suspension of the auctioning of a relevant auctioned product at an auction conducted by a recognised auction platform.

(6) The modifications referred to in subsection (5) are—

- (a) references to a requirement imposed on an institution under section 313A are to be read as references to the suspension of the auctioning of the relevant auctioned product;
- (b) references to an institution are to be read as references to the recognised auction platform;
- (c) in section 313B, the omission of—
  - (i) subsection (2)(a)(ii);
  - (ii) in subsection (3A)(d), the words “or the issuer of the financial instrument in question” and “or the issuer”;
  - (iii) in subsection (3A)(f), the words “or the issuer of the financial instrument in question”;
- (d) the omission of section 313BA(5)(b) and (8);
- (e) the omission of section 313BB(6)(b); and
- (f) the omission of section 313BC(3)(b) and (6)(b).

(7) In this section “relevant auctioned product” means an auctioned product (as defined by Article 4 (auctioned products) of the emission allowance auctioning regulation) which is an emission allowance or based on an emission allowance.”

**(39)** Sections 313B(2) to (4) were inserted by [S.I. 2007/126](#) and amended by [S.I. 2010/1193](#) and section 36 of the Financial Services Act 2012.

**(40)** Section 313BA to 313BC were inserted by [S.I. 2010/1193](#) and amended by section 36 of the Financial Services Act 2012.

**12.** In section 123(1)(c)(i)(**41**) (power to impose penalties or issue censure) after “122I,” insert “122IA,”.

**13.—**(1) Section 123A(**42**) (power to prohibit individuals from managing or dealing) is amended as follows.

(2) In subsection (1)(c) after “122I” insert “, 122IA”.

(3) In subsection (2)—

(a) in the opening words for “either or both” substitute “one or more”; and

(b) after paragraph (b) insert—

“(c) a temporary prohibition on the individual making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform.”.

(4) After subsection (7) insert—

“(8) For the meaning of “recognised auction platform” in this Part, see section 131AB.”.

**14.** In section 123B(1)(c)(**43**) (suspending permission to carry on regulated activities etc) after “122I” insert “, 122IA”.

**15.** In section 124(10)(**44**) (statement of policy) in paragraph (c)(i) of the definition of “relevant person” after “122I,” insert “122IA,”.

**16.—**(1) Section 129(**45**) (power of the court to impose administrative sanctions in cases of market abuse) is amended as follows.

(2) In subsection (7), in the definition of “temporary prohibition”—

(a) at the end of paragraph (a) omit “or”;

(b) after paragraph (b) insert—

“; or

(c) making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform.”.

(3) After subsection (7) insert—

“(8) For the meaning of “recognised auction platform” in this Part, see section 131AB.”.

**17.** In section 131AB (**46**) (interpretation)—

(a) in the definition of “financial instrument” for “4.1(17)” substitute “4.1.15”; and

(b) at the appropriate places insert—

““emission allowance” has the meaning given in Article 3.1.19 (definitions) of the market abuse regulation;”;

““recognised auction platform” has the meaning given in regulation 1(3) of the Recognised Auction Platform Regulations 2011 (S.I. 2011/2699);”.

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(41) Section 123 was inserted by S.I. 2016/680.

(42) Section 123A was inserted S.I. 2016/680.

(43) Section 123B was inserted by S.I. 2016/680.

(44) Section 124(10) was inserted by S.I. 2016/680.

(45) Section 129 was inserted by S.I. 2016/680.

(46) Section 131AB was inserted by S.I. 2016/680.

**Amendments to Part 9A (rules and guidance)**

**18.** In section 137R(5)(b)(47) (financial promotion rules)—

- (a) in sub-paragraph (i) for “paragraphs 1 to 8 of Article 19” substitute “Articles 24 (general principles and information to clients) and 25 (assessment of suitability and appropriateness and reporting to clients)”; and
- (b) for sub-paragraph (ii)(48) substitute—
  - “(i) any delegated act adopted under Article 24.13 or 25.8 of that directive.”.

**Amendments to Part 12 (control over authorised persons)**

**19.** In section 184(4)(a)(49) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.

**Amendments to Part 13 (incoming firms: intervention by FCA or PRA)**

**20.**—(1) Section 194A(50) (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: appropriate regulator primarily responsible for securing compliance) is amended as follows.

(2) In subsection (1)(b)(51) for “62.2” substitute “86.2”.

(3) In subsection (3)—

- (a) at the end of paragraph (a) omit “or”;
- (b) after paragraph (a) insert—
  - “(aa) by or under any provision of the markets in financial instruments regulation; or”; and
- (c) in paragraph (b)—
  - (i) for “Community” substitute “EU”; and
  - (ii) after “directive” insert “or the markets in financial instruments regulation”.

**21.**—(1) Section 195A(52) (contravention by relevant EEA firm etc of directive requirements: home state regulator primarily responsible for securing compliance) is amended as follows.

(2) In subsection (1)(a)(53) for “62.1 or 62.3” substitute “86.1 or 86.3”.

(3) In subsection (2), insert—

- (a) at the end of paragraph (a) omit “or”;
- (b) after paragraph (a) insert—
  - “(aa) by or under any provision of the markets in financial instruments regulation; or”; and
- (c) in paragraph (b)—
  - (i) for “Community” substitute “EU”; and
  - (ii) after “directive” insert “or the markets in financial instruments regulation”.

(47) Section 137R was inserted by section 24(1) of the Financial Services Act 2012.

(48) Sub-paragraph (ii) was amended by [S.I. 2015/910](#).

(49) Section 184 was inserted by [S.I. 2009/534](#).

(50) Section 194A was inserted by [S.I. 2007/126](#).

(51) Subsection (1)(b) was amended by paragraph 33(2) of Schedule 4 to the Financial Services Act 2012.

(52) Section 195A was inserted by [S.I. 2007/126](#) and amended by [S.I. 2011/1613](#).

(53) Subsection (1) was amended by paragraph 35(2) of Schedule 4 to the Financial Services Act 2012; there are other amendments but none is relevant.

### **Amendments to Part 14 (disciplinary measures)**

**22.** In section 206A(1B)(**54**) (suspending permission to carry on regulated activities etc) after “122I,” insert “122IA,”.

### **Amendments to Part 15 (the financial services compensation scheme)**

**23.**—(1) Section 213 (the compensation scheme) is amended as follows.

(2) In subsection (1)(**55**)—

(a) at the end of paragraph (a) omit “or”;

(b) after paragraph (a) insert—

“(aa) relevant exchanges are unable, or likely to be unable, to satisfy claims made against them in connection with a regulated activity relating to a trading facility carried on by the exchange, or”; and

(c) in paragraph (b) after “relevant persons” insert “or relevant exchanges”.

(3) In subsection (3)—

(a) for paragraphs (a) and (b) substitute—

“(a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with—

(i) a regulated activity carried on (whether or not with permission) by relevant persons; and

(ii) a regulated activity relating to a trading facility carried on (whether or not in accordance with any requirements relating to that activity resulting from section 286) by relevant exchanges; and

(b) to have power to impose levies for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks)—

(i) on authorised persons, or any class of authorised person;

(ii) on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or any class of such exchanges; or

(iii) on authorised persons and on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or on any class of such persons and exchanges.”.

(4) For subsection (4) substitute—

“(4) The compensation scheme may provide for the scheme manager to have power to impose levies—

(a) on authorised persons, or any class of authorised person;

(b) on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or any class of such exchanges; or

(c) on authorised persons and on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or on any class of such persons and exchanges,

for the purpose of recovering the cost (whenever incurred) of establishing the scheme.”.

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(54) Section 206A was inserted by section 9 of the Financial Services Act 2010 (c.28) and subsection (1B) was inserted by S.I. 2016/680.

(55) Subsection (1) was amended by paragraph 3(2) and (3)(a) and (b) of Schedule 10 to the Financial Services Act 2012.

*Status: This is the original version (as it was originally made).*

(5) For subsection (5)(56) substitute—

“(5) In making any provision of the scheme by virtue of subsection (3)(b), the regulators must take account of the desirability of ensuring that the amount of the levies imposed on a particular —

- (a) class of authorised person;
- (b) class of recognised investment exchange carrying on a regulated activity relating to a trading facility; or
- (c) class of authorised person and of recognised investment exchanges carrying on a regulated activity relating to a trading facility;

reflects, so far as is practicable, the amount of claims made, or likely to be made in respect of that class of person, exchange, or persons and exchanges.”.

(6) After subsection (11)(57) insert—

“(12) In this Part (except in sections 220 and 224) “relevant exchange” means a body corporate or unincorporated association which was a recognised investment exchange carrying on a regulated activity relating to a trading facility at the time the act or omission giving rise to the claim against it, or against a successor falling within subsection (1)(b), took place.

(13) In this Part “regulated activity relating to a trading facility” means—

- (a) the regulated activity of operating a multilateral trading facility; or
- (b) the regulated activity of operating an organised trading facility.”.

**24.** In section 214(1)(58)(general)—

(a) in paragraph (a)—

- (i) after “person” insert “or relevant exchange”; and
- (ii) after “him” insert “or it”;

(b) in paragraph (aa)(59) after “person” insert “or relevant exchange”.

**25.—**(1) Section 215(60) (rights of the scheme in insolvency) is amended as follows.

(2) In subsection (3) for the words from “a company” to the end substitute—

“—

(a) a company or partnership which is a relevant person; or

(b) a body corporate or unincorporated association which is a relevant exchange;

the scheme manager has the same rights as are conferred on the regulators by section 362.”.

(3) In subsection (4) after “relevant person” insert “or relevant exchange”.

**26.—**(1) Section 218A(61) (regulators power to require information) is amended as follows.

(2) In subsection (1)(62) after “authorised persons” insert “or recognised investment exchanges carrying on a regulated activity relating to a trading facility”.

(56) Subsection (5) was amended by paragraph 3(2) of Schedule 10 to the Financial Services Act 2012.

(57) Subsection (11) was inserted by S.I. 2011/16/13.

(58) Section 214 was amended by paragraph 4 of Schedule 10 to the Financial Services Act 2012; there are other amendments but none is relevant.

(59) Paragraph (aa) was inserted by paragraph 4 of Schedule 10 to the Financial Services Act 2012.

(60) Section 215 was amended by paragraph 54(2) of the Enterprise Act 2002 (c.40), S.I. 2005/1455, and paragraph 5 of Schedule 10 to the Financial Services Act 2012; there are other amendments but none is relevant.

(61) Section 218A was inserted by section 176(1) of the Banking Act 2009.

(62) Subsection (1) was inserted by S.I. 2015/486.



- (3) In subsection (3) after paragraph (a) insert—
- “(aa) to recognised investment exchanges mentioned in subsection (1) generally or only to specified exchanges or classes of exchange;”.

**27.**—(1) Section 220(**63**) (scheme manager’s power to inspect information held by liquidator etc.) is amended as follows.

- (2) In subsection (1) after “relevant person” insert “or insolvent relevant exchange”.
- (3) In subsection (3)—
- (a) in paragraph (a) after “relevant person” insert “or insolvent relevant exchange”; and
- (b) in paragraph (b) after “relevant person” insert “or insolvent relevant exchange”.
- (4) In subsection (5)—
- (a) after ““relevant person”” insert “and “relevant exchange””; and
- (b) for “has” substitute “have”.

**28.**—(1) Section 224 (scheme manager’s power to inspect documents held by Official Receiver etc) is amended as follows.

(2) In subsection (1)(**64**) in the opening words after “relevant person” insert “or relevant exchange”.

- (3) After subsection (4) insert—
- “(4A) In this section “relevant exchange” means a body corporate or unincorporated association carrying on a regulated activity relating to a trading facility at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place.”.

### **Amendments to Part 18 (recognised investment exchanges and clearing houses)**

**29.** Omit section 286(4A) to (4E)(**65**) (qualification for recognition).

**30.** After section 287(**66**) (application by an investment exchange) insert—

#### **“Application by an investment exchange: persons connected with an applicant**

**287A.**—(1) Subsection (2) applies where—

- (a) a body corporate or unincorporated association (“A”) makes an application under section 287 for an order declaring it to be a recognised investment exchange; and
- (b) A is—
- (i) connected with an EEA credit institution or EEA insurance undertaking; or
- (ii) controlled by a person who also controls an EEA credit institution or EEA insurance undertaking.

(2) Before making a recognition order declaring A to be a recognised investment exchange under section 290, the FCA must consult the competent authority responsible for the supervision of the EEA credit institution or EEA insurance undertaking.

(3) A is connected with an EEA credit institution or EEA insurance undertaking if—

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**(63)** Section 220 was amended by section 123(3) of the Banking Act 2009, [S.I. 2009/805](#), and [S.I. 2016/1034](#).

**(64)** Subsection (1) was amended by paragraph 15 of Schedule 10 to the Financial Services Act 2012.

**(65)** Subsections (4A) to (4E) were inserted by [S.I. 2006/2975](#) and amended by paragraph 2(3) of Schedule 8 to the Financial Services Act 2012.

**(66)** There are amendments to section 287 but none is relevant.

*Status: This is the original version (as it was originally made).*

- (a) A is a subsidiary undertaking of the EEA credit institution or EEA insurance undertaking; or
- (b) A is a subsidiary undertaking of a parent undertaking of the EEA credit institution or EEA insurance undertaking.

(4) In this section—

“control” has the same meaning as in Article 4.1.35(b) (definitions) of the markets in financial instruments directive;

“EEA credit institution” means a credit institution (as defined by Article 4.1.27 of the markets in financial instruments directive) authorised in another EEA State under the capital requirements directive;

“EEA insurance undertaking” means an insurance undertaking (as defined by Article 13.1 of the Solvency 2 Directive) authorised in another EEA State.”.

**31.** In section 290(1A)(**67**) (recognition orders)—

- (a) for “Community” substitute “EU”; and
- (b) at the end insert “or the markets in financial instruments regulation”.

**32.** In section 292(3)(**68**) (overseas investment exchanges and overseas clearing houses), for paragraph (a) substitute—

- “(a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with—
  - (i) recognition requirements, other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph, and
  - (ii) requirements contained in any directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation;”.

**33.** In section 301E(4)(a)(**69**) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.

**34.**—(1) Section 312A(**70**) (exercise of passport rights by EEA market operator) is amended as follows.

(2) In subsection (1)(**71**) for “regulated market or specified multilateral trading facility” substitute “trading venue”.

(3) In subsection (2) for “market or facility” substitute “venue”.

**35.**—(1) Section 312B(**72**) (removal of passport rights from EEA market operator) is amended as follows.

(2) In subsection (1)(**73**) for “regulated market or multilateral trading facility” substitute “trading venue”.

(3) In subsection (2)(**74**)—

- (a) at the end of paragraph (b) omit “or”;

(67) Subsection (1A) was inserted by [S.I. 2007/126](#).

(68) Section 292(3)(a) was amended by [S.I. 2006/2975](#).

(69) Section 301E(4)(a) was inserted by [S.I. 2007/126](#) and amended by [S.I. 2009/534](#).

(70) Section 312A was inserted by [S.I. 2007/126](#).

(71) Subsection (1) was amended by paragraph 33 of Schedule 8 to the Financial Services Act 2012.

(72) Section 312B was inserted by [S.I. 2007/126](#).

(73) Subsection (1) was amended by paragraph 34 of Schedule 8 to the Financial Services Act 2012.

(74) Subsection (2) was amended by [S.I. 2011/1043](#).

(b) for paragraph (c) substitute—

“(c) by the markets in financial instruments regulation; or

(d) by any directly applicable EU regulation made under that directive or that regulation”.

**36.**—(1) Section 312C(**75**) (exercise of passport rights by recognised investment exchange) is amended as follows.

(2) In subsection (1) for “regulated market or multilateral trading facility” substitute “trading venue”.

(3) In subsection (5)(**76**)—

(a) in paragraph (a)—

(i) for “31.6” substitute “34.7”; and

(ii) after “multilateral trading facility”, insert “or an organised trading facility”; and

(b) in paragraph (b) for “42.6” substitute “53.6”.

(4) In subsection (7) for “4.1.22” substitute “4.1.26”.

**37.** In section 312D(**77**) (interpretation of Chapter 3A of Part 18)—

(a) in the definition of “the applicable provision”—

(i) in paragraph (a) for “Article 31.5” substitute “or an organised trading facility, Article 34.6”; and

(ii) in paragraph (b) for “42.6” substitute “53.6”;

(b) in the definition of “EEA market operator” for “4.1.13” substitute “4.1.18”; and

(c) in the definition of “home state regulator” for “4.1.22” substitute “4.1.26”.

**38.** In section 313(1)(**78**) (interpretation of Part 18)—

(a) in the definition of “multilateral trading facility” for “4.1.15” substitute “4.1.22”;

(b) after the definition of “multilateral trading facility” insert—

““organised trading facility” has the meaning given in Article 4.1.23 of the markets in financial instruments directive;”;

(c) in the definition of “regulated market” for “4.1.14” substitute “4.1.21”;

(d) after the definition of “revocation order” insert—

““trading venue” means a multilateral trading facility, a regulated market or an organised trading facility.”.

### **Amendments to Part 18A (suspension and removal of financial instruments from trading)**

**39.** In section 313A(3)(**79**) (FCA’s power to require suspension or removal of financial instruments from trading) for the words “regulated market” to the end substitute “trading venue”.

**40.** Omit section 313C(**80**) (notification in relation to suspension or removal of a financial instrument from trading).

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(75) Section 312C was inserted by [S.I. 2007/126](#).

(76) Subsection (5) was amended by paragraph 35 of Schedule 8 to the Financial Services Act 2012.

(77) Section 312D was inserted by [S.I. 2007/126](#).

(78) Section 313(1) was amended by [S.I. 2007/126](#); there are other amendments but none is relevant.

(79) Section 313A(3) was inserted by [S.I. 2007/126](#).

(80) Section 313C was inserted by [S.I. 2007/126](#) and amended by section 36(a) Financial Services Act 2012 and by [S.I. 2010/1193](#) and [2012/916](#).

**41. After section 313C insert—****“Suspension or removal of financial instruments from trading: notification and trading on other venues**

**313CA.**—(1) The FCA must take the steps in subsection (2) to (4) if it imposes a requirement on an institution under section 313A to—

- (a) suspend or remove a financial instrument from trading; or
- (b) suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading to support the objectives of a suspension or removal mentioned in paragraph (a).

(2) The FCA must require any trading venue or systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the instrument or derivative from trading if a suspension or removal mentioned in subsection (1) was due to—

- (a) suspected market abuse;
- (b) a take-over bid; or
- (c) the non-disclosure of inside information about the issuer or the instrument.

(3) But the FCA is not obliged to impose a requirement under subsection (2) if it could cause significant damage to the interests of investors or the orderly functioning of the market.

(4) The FCA must—

- (a) inform ESMA and the competent authorities of every other EEA State of—
  - (i) a decision to impose a requirement under section 313A;
  - (ii) a decision to revoke a requirement imposed under section 313A;
  - (iii) a decision to impose, not to impose, or to revoke a requirement under subsection (2); and
- (b) publish a decision mentioned in paragraph (a)(i) to (iii) in such a manner as it considers appropriate unless the decision has already been published under section 313B(2)(b) or 313BE(5).

**Suspension or removal of a financial instrument from a trading by a trading venue: FCA duties**

**313CB.**—(1) The FCA must take the steps in subsections (2), (4), and (5) if a person specified in subsection (6) operating a trading venue in the United Kingdom informs the FCA it has made a decision—

- (a) to suspend or remove a financial instrument from trading on the trading venue because the instrument no longer complies with the venue’s rules, or
- (b) to suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading on the trading venue to support the objectives of a suspension or removal mentioned in paragraph (a).

(2) The FCA must require any other trading venue or any systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the instrument or derivative from trading if a suspension or removal mentioned in subsection (1) was due to—

- (a) suspected market abuse;

- (b) a take-over bid; or
- (c) the non-disclosure of inside information about the issuer or the instrument.

(3) But the FCA is not obliged to impose a requirement under subsection (2) if it could cause significant damage to the interests of investors or the orderly functioning of the market.

(4) The FCA must revoke a requirement imposed under subsection (2) if the person mentioned in subsection (1) informs the FCA it has lifted the suspension mentioned in that subsection.

(5) The FCA must—

- (a) inform ESMA and the competent authorities of every other EEA State of any decision to impose, not to impose, or to revoke a requirement under subsection (2),
- (b) provide ESMA and those competent authorities with an explanation if the decision is not to impose a requirement under subsection (2) because subsection (3) applies, and
- (c) publish any decision mentioned in paragraph (a) in such a manner as it considers appropriate.

(6) The specified persons for the purposes of subsection (6) are—

- (a) a recognised investment exchange,
- (b) an investment firm with a Part 4A permission to carry on a regulated activity which is any of the investment services and activities,
- (c) a credit institution authorised under the capital requirements directive.

#### **Suspension or removal of a financial instrument from trading in another EEA state: FCA duties**

**313CC.**—(1) The FCA must take the steps in subsections (2) and (3) if the FCA is informed that a competent authority of another EEA State has made a decision to—

- (a) suspend or remove a financial instrument from trading on a trading venue or systematic internaliser in that State for the purposes of—
  - (i) Article 32.2 (suspension and removal of financial instruments from trading on an MTF or OTF) of the markets in financial instruments directive;
  - (ii) Article 52.2 (suspension and removal of financial instruments from trading on a regulated market) of the directive, or
  - (iii) Article 69.2(m) or (n) (supervisory powers) of the directive, or
- (b) suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading on a trading venue or systematic internaliser in that State for those purposes.

(2) The FCA must require any trading venue or systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the instrument or derivative from trading if the suspension or removal was due to—

- (a) suspected market abuse;
- (b) a take-over bid; or
- (c) the non-disclosure of inside information about the issuer or the instrument.

(3) The FCA must revoke a requirement imposed under subsection (2) if the competent authority of the other EEA State informs the FCA it has lifted the suspension or removal mentioned in subsection (1).

*Status: This is the original version (as it was originally made).*

(4) For the purposes of subsection (1) the FCA is informed of a decision mentioned in subsection (1)(a) or (b) when the competent authority that made the decision, the competent authority of any other EEA State, or ESMA informs the FCA of the decision for the purposes of Article 32.2 or 52.2 of the markets in financial instrument directive.”.

**42.**—(1) Section 313D(**81**) (interpretation of Part 18A) is amended as follows.

(2) The existing text becomes subsection (1).

(3) In subsection (1)—

- (a) in the definition of “financial instrument” for “4.1.17” substitute “4.1.15”;
- (b) omit the definition of “multilateral trading facility”;
- (c) omit the definition of “regulated market”; and
- (d) in the appropriate places, insert—

““competent authority” has the meaning given in Article 4.1.26 (definitions) of the markets in financial instruments directive;”;

““derivative” means a derivative referred to in points (4) to (10) of Section C of Annex 1 to the markets in financial instruments directive;”;

““non-disclosure of inside information” means a failure to disclose inside information, as defined by Article 7 (inside information) of the market abuse regulation, in contravention of Article 17 (public disclosure of inside information) of that Regulation;”;

““market abuse” means a contravention of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or 15 (prohibition of market manipulation) of the market abuse regulation;”;

““systematic internaliser” has the meaning given in Article 4.1.20 of the markets in financial instruments directive;”;

““trading venue” has the meaning given in Article 4.1.24 of the markets in financial instruments directive.”.

(4) After subsection (1) insert—

“(2) In this Part a trading venue or systematic internaliser falls under the FCA’s jurisdiction if—

- (a) the United Kingdom is the home Member State (as defined by Article 4.1.55 of the markets in financial instruments directive) of—
  - (i) in the case of a trading venue which is a regulated market (as defined by Article 4.1.21 of the directive), the regulated market;
  - (ii) in the case of a trading venue which is a multilateral trading facility (as defined by Article 4.1.22 of the directive), the person operating the facility;
  - (iii) in the case of a trading venue which is an organised trading facility (as defined by Article 4.1.23 of the directive), the person operating the facility;

or

  - (iv) in the case of a systematic internaliser, the systematic internaliser; or
- (b) in the case of a systematic internaliser does not fall within the FCA’s jurisdiction by virtue of paragraph (a)—
  - (i) it has established a branch (as defined by Article 4.1.30 of the directive) in the United Kingdom; and

**(81)** Section 313D was inserted by [S.I. 2007/126](#); there are amendments to this section but none is relevant.

- (ii) the FCA considers that it is necessary to impose a requirement on the systematic internaliser under section 313CA(2), 313CB(2), or 313CC(2) for the purposes of Article 32.2 or 52.2 of the markets in financial instruments directive.”.

#### **Amendments to Part 20 (provision of financial services by members of the professions)**

**43.**—(1) Section 327 (exemption from general prohibition) is amended as follows.

(2) In subsection (1)—

(a) at the end of paragraph (a) omit “and”;

(b) after paragraph (a) insert—

“(aa) where the activity is the provision of a service listed in Section A of Annex 1 of the markets in financial instruments directive relating to a financial instrument, the condition set out in subsection (7A) is also satisfied; and”.

(3) After subsection (7) insert—

“(7A) The condition mentioned in subsection (1)(aa) is that—

(a) the service is provided in an incidental manner in the course of a professional activity for the purposes of the markets in financial instruments directive; and

(b) the professional activity concerned is the provision of professional services.

(7B) In subsection (7A) a service is provided in an incidental manner in the course of a professional activity for the purposes of the markets in financial instruments directive if the applicable conditions are satisfied.

(7C) The applicable conditions for the purposes of subsection (7B) are those set out in Article 4(a) to (c) of Commission Regulation (EU) 2017/565 of 25 April 2016 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<sup>(82)</sup>.”.

#### **Amendments to Part 23 (public record, disclosure of information and co-operation)**

**44.**—(1) Section 347 (the record of authorised persons etc) is amended as follows.

(2) In subsection (1)(a) for the “and” after paragraph (hb)<sup>(83)</sup> insert—

“(hc) appointed representative to whom subsection (2C) applies; and”.

(3) In subsection (2A)<sup>(84)</sup>—

(a) in paragraph (a) after “subsection (1A)” insert “or (1AA)”; and

(b) in paragraph (c)<sup>(85)</sup> for “23.3” substitute “29.3”.

(4) After subsection (2B)<sup>(86)</sup> insert—

“(2C) This subsection applies to an appointed representative of an authorised person who has a Part 4A permission by virtue of regulation 4 or 7 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX).”.

(5) After subsection (3) insert—

<sup>(82)</sup> OJ L 87, 31.3.2017, p. 1.

<sup>(83)</sup> Paragraph (hb) was inserted by [S.I. 2015/910](#).

<sup>(84)</sup> Subsection (2A) was inserted by [S.I. 2007/126](#).

<sup>(85)</sup> Paragraph (c) was amended by paragraph 16(2) of Schedule 12 to the Financial Services Act 2012.

<sup>(86)</sup> Subsection (2B) was inserted by [S.I. 2015/910](#).

*Status: This is the original version (as it was originally made).*

“(3A) But if a person ceases to be a person to whom one of the paragraphs of subsection (1) applies as a result of—

- (a) a cancellation of that person’s Part 4A permission under section 55J(6)(87) because one or more of the conditions in 55K(1)(b) to (d) was met; or
- (b) a cancellation of that person’s Part 4A permission to carry on regulated activities as an exempt investment firm under section 55J(1) to (3) because—
  - (i) the person has contravened a requirement imposed on that person by or under the Act for the purposes of Article 3.2(a) of the markets in financial instruments directive; and
  - (ii) one or more of the conditions mentioned in Article 8(b) to (d) of the directive was met;

the power conferred by subsection (3) is not exercisable for a period of five years from the date on which the person ceased to be a person to whom subsection (1) applied.

(3B) Where the power conferred by subsection (3) is not exercisable in respect of an entry in the record as a result of subsection (3A) the FCA must—

- (a) make a note in the record that it considers the person to whom the entry relates has ceased to be person to whom one of the paragraphs of subsection (1) applies as a result of a cancellation of that person’s Part 4A permission for a reason mentioned in subsection (3A)(a) or (b); and
- (b) state why it considers that is the case.”.

(6) At the end of subsection (4)(b) insert “in any case where it has not already done so under subsection (3B)”.

(7) In subsection (8A)(88) at the appropriate place insert—

““exempt investment firm” means an authorised person who—

- (a) is an investment firm; and
- (b) has a Part 4A permission;

but to whom Title II of the markets in financial instruments directive does not apply by virtue of Article 3 of the directive..”.

#### **Amendments to Part 26 (notices)**

**45.** In section 391 (publication) —

- (a) in subsection (4A)(89) for “and 391C” substitute “, 391C and 391D”; and
- (b) in subsection (7B)(90)—

- (i) at the end of paragraph (c) omit “or”;
- (ii) in paragraph (d) after “by” insert “or under”; and
- (iii) at the end of paragraph (d) insert—

“; or

- (e) by or under the markets in financial instruments regulation and any directly applicable EU regulation made under it.”.

(87) Section 55J(6) was inserted by section 11(2) of the Financial Services Act 2012.

(88) Subsection (8A) was inserted by section 34(3) of the Financial Services (Banking Reform) Act 2013.

(89) Subsection (4A) inserted by S.I. 2013/3115 and amended by S.I. 2015/1755 and 2016/225.

(90) Subsection (7B) was inserted by S.I. 2012/916.



46. After section 391C(91) (publication: special provisions relating to the UCITs directive), insert—

**“Publication: special provisions relating to the markets in financial instruments directive**

**391D.**—(1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure to which Article 71 of the markets in financial instruments directive applies.

(2) Where a regulator publishes information under section 391(4) or (5) about a matter to which a supervisory notice or decision notice relates and the person to whom the notice is given refers the matter to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(3) Subject to subsections (4), (5), and (8) where a regulator gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Subject to subsection (7) and (8), information about a matter to which a final notice relates must be published in accordance with subsection (5) where—

- (a) a regulator considers it to be disproportionate to publish the identity of a legal person on whom the sanction or measure is imposed following an assessment by the regulator of the proportionality of publishing the person’s identity;
- (b) a regulator considers it to be disproportionate to publish the personal data of an individual on whom the sanction or measure is imposed following an assessment by the regulator of the proportionality of publishing the personal data; or
- (c) the publication of information under subsection (3) would jeopardise the stability of the financial markets or an ongoing investigation.

(5) Where subsection (4) applies, a regulator must—

- (a) defer the publication of the information about a matter to which a final notice relates until such time as subsection (4) ceases to apply; or
- (b) publish the information on an anonymous basis if publication on that basis would ensure the effective protection of any anonymised personal data in the information.

(6) Where subsection (5)(b) applies, the regulator may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(7) The regulator may make arrangements for the postponed publication of any personal data that is anonymised in information it publishes under subsection (5)(b) if—

- (a) publication of the data is postponed for a reasonable period of time; and
- (b) the regulator considers that subsection (5)(b) will no longer apply in respect of that data at the time of the postponed publication.

(8) Information about a matter to which a final notice relates must not be published if publication in accordance with subsection (5) is considered by the regulator insufficient to ensure—

- (a) that the stability of the financial markets would not be put in jeopardy; or

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(91) Section 391C was inserted by [S.I. 2016/225](#).

*Status: This is the original version (as it was originally made).*

(b) that the publication of the information would be proportionate with regard to sanctions or measures which are considered by the regulator to be of a minor nature.

(9) Where a regulator publishes information in accordance with subsections (2) to (7), the regulator must—

(a) ensure the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998<sup>(92)</sup> requires the information to be retained for a different period; and

(b) promptly report the information to ESMA.”.

47. After section 395(13)(bbza)<sup>(93)</sup> (the FCA’s and PRA’s procedures) insert—

“(bbzb) section 122IA;”.

#### **Amendments to Part 27 (offences)**

48. In section 398(1A)<sup>(94)</sup> (Misleading FCA or PRA: residual cases)—

(a) after paragraph (b) insert—

“(ba) the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX);”;

(b) at the end of paragraph (e)<sup>(95)</sup> omit “or”; and

(c) after paragraph (e) insert—

“(ea) any directly applicable EU regulation made under the markets in financial instruments directive;

(eb) the markets in financial instruments regulation and any directly applicable EU regulation made under it; or”.

#### **Amendments to Part 28 (miscellaneous)**

49. Omit sections 405<sup>(96)</sup> (directions) to 408 (EFTA firms).

50. Omit sections 412A<sup>(97)</sup> (approval and monitoring of trade-matching and reporting systems) and 412B<sup>(98)</sup> (procedure for approval, suspension and withdrawal).

#### **Amendments to Part 29 (interpretation)**

51.—(1) Section 417(1)<sup>(99)</sup> is amended as follows.

(2) For the definition of “investment services and activities” substitute—

““investment services and activities” has the meaning given by Article 4.1.2 (definitions) of the markets in financial instruments directive, read with Articles 5 to 8 of the Commission Delegated Regulation (EU) 2017/565 on [Directive 2014/65/EU](#) of the European Parliament and of the Council as regarding organisational requirements and operational conditions for investment firms and defined terms for the purposes of that Directive;”.

<sup>(92)</sup> 1998 c.29.

<sup>(93)</sup> Section 395(13)(bbza) was inserted by S.I. 2016/680.

<sup>(94)</sup> Section 398(1A) was inserted by S.I. 2013/1733.

<sup>(95)</sup> Paragraph (e) was amended by S.I. 2015/1882 and S.I. 2016/680.

<sup>(96)</sup> Section 405 was amended by S.I. 2007/126, paragraph 1 and 21(1) to (4) of Schedule 18 to the Financial Services Act 2012, 2015/575, and 2006/3221

<sup>(97)</sup> Section 412A was inserted by S.I. 2007/126 and amended by paragraph 38 of Schedule 8 to the Financial Services Act 2012.

<sup>(98)</sup> Section 412B was inserted by S.I. 2007/126 and amended by paragraph 38 of Schedule 8 to the Financial Services Act 2012.

<sup>(99)</sup> Section 417(1) was amended by S.I. 2007/126; there are other amendments but none is relevant.

- (3) Insert the following definition in the appropriate places—  
““markets in financial instruments regulation” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2004 on markets in financial instruments;”;
- 52.** In section 422A(4)(a)(**100**) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.
- 53.** In section 424A(5)(b)(**101**) (investment firm) for “4.1.20” substitute “4.1.55”.

### **Amendments to Schedule 3 (EEA passport rights)**

- 54.**—(1) Schedule 3 (EEA passport rights) is amended as follows.
- (2) For paragraph 4C(**102**) substitute—  
“(4C) “The markets in financial instruments directive” means [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.”.
- (3) In paragraph 11A(**103**) for “4.1.25” substitute “4.1.29”.
- (4) In paragraph 12(3)(**104**) after “5(a)”, insert “or (b)”.
- (5) In paragraph 14(1)(ba)(**105**) for “31.5” substitute “34.6”.
- (6) In paragraph 20(4BA)(**106**) for “31.6” substitute “34.7”.
- (7) In paragraph 20A(**107**)—  
(a) after “investment firm” in both places, insert “or UK credit institution”; and  
(b) after sub-paragraph (2) insert—  
“(3) In this paragraph “UK credit institution” means a UK firm—  
(a) which is a credit institution; and  
(b) whose EEA right derives from the markets in financial instruments directive.”.

### **Amendments to Schedule 10A (liability of issuers)**

- 55.** In paragraph 8(1) of Schedule 10A(**108**) (liability of issuers in connection with published information)—  
(a) in paragraph (a)—  
(i) for “4.1.18” substitute “4.1.44”; and  
(ii) for “4.1.19” substitute “4.1.17”; and  
(b) in paragraph (b)—  
(i) for “4.1.14” substitute “4.1.21”; and  
(ii) for “4.1.15” substitute “4.1.22”.

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(**100**) Section 422A(4)(a) was inserted by [S.I. 2009/534](#).

(**101**) Section 424A(5)(b) was inserted by [S.I. 2006/2975](#).

(**102**) Paragraph 4C was inserted by [S.I. 2006/2975](#).

(**103**) Paragraph 11A was inserted by [S.I. 2007/126](#).

(**104**) Paragraph 12(3) was inserted by [S.I. 2007/126](#).

(**105**) Paragraph 14(1)(ba) was inserted by [S.I. 2007/126](#) and amended by paragraph 3(2) of Schedule 4 to the Financial Services Act 2012.

(**106**) Paragraph 20(4BA) was inserted by [S.I. 2007/126](#) and amended by paragraph 11(2) of Schedule 4 to the Financial Services Act 2012.

(**107**) Paragraph 20A was inserted by [S.I. 2007/126](#).

(**108**) Schedule 10A was inserted by [S.I. 2010/1192](#).

## SCHEDULE 3

Regulation 50(2)

Amendments to secondary legislation made under the Financial Services and Markets Act 2000

**The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001**

1.—(1) The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(**109**) are amended as follows.

(2) In regulation 3(1)(**110**) (interpretation)—

- (a) in the definition of “branch” for “Article 4.1.26” substitute “Article 4.1.30”;
- (b) omit the definition of “the Commission Regulation”;
- (c) in the definition of “financial instrument” for “Article 4.1.17” substitute “Article 4.1.15”;
- (d) in the definition of “multilateral trading facility” for “Article 4.1.15” substitute “Article 4.1.22”;
- (e) in the definition of “regulated market” for “Article 4.1.14” substitute “Article 4.1.21”;
- (f) in the definition of “transferable securities” for “Article 4.1.18” substitute “Article 4.1.44”;
- (g) at the appropriate places insert—

““algorithmic trading” has the meaning given in Article 4.1.39 of the markets in financial instruments directive;”;

““certificates” has the meaning given in Article 2.1.27 of the markets in financial instruments regulation;”;

““commodity derivatives” has the meaning given in Article 4.1.50 of the markets in financial instruments directive;”;

““depository receipts” has the meaning given in Article 4.1.45 of the markets in financial instruments directive;”;

““derivative” means a financial instrument defined in Article 4.1.44(c) of the markets in financial instruments directive and listed in Section C(4) to (10) of Annex 1 to that directive;”;

““direct electronic access” has the meaning given in Article 4.1.41 of the markets in financial instruments directive;”;

““emission allowances” has the same meaning as in the markets in financial instruments directive;”;

““exchange-traded fund” has the meaning given in Article 4.1.46 of the markets in financial instruments directive;”;

““group” has the meaning given in Article 4.1.34 of the markets in financial instruments directive;”;

““high-frequency algorithmic trading technique” has the meaning given in Article 4.1.40 of the markets in financial instruments directive;”;

““liquid market” has the meaning given in Article 4.1.25 of the markets in financial instruments directive;”;

““management body” in relation to an exchange means—

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(109) S.I. 2001/995.

(110) Regulation 3 was amended by S.I. 2006/3386 and 2013/3115. There are other amendments but none is relevant.

- (a) the board of directors, or if there is no such board, the equivalent body responsible for the management of the exchange; and
- (b) any other person who effectively directs the business of the exchange;”;
- ““matched principal trading” has the meaning given in Article 4.1.38 of the markets in financial instruments directive;”;
- ““multilateral system” has the meaning given as in Article 4.1.19 of the markets in financial instruments directive;”;
- ““senior management” has the meaning given by Article 4.1.37 of the markets in financial instruments directive;”;
- ““SME growth market” has the meaning given by Article 4.1.12 of the markets in financial instruments directive;”;
- ““sovereign debt” has the meaning given by Article 4.1.61 of the markets in financial instruments directive;”;
- ““structured finance products” has the meaning given in Article 4.1.48 of the markets in financial instruments directive;”;
- ““systematic internaliser” has the meaning given in Article 4.1.20 of the markets in financial instruments directive;”;
- ““third country firm” has the meaning given in Article 4.1.57 of the markets in financial instruments directive;”.

(3) After regulation 10 (revocation of recognition) insert—

**“FCA rules**

**11.** The FCA may make rules for the purposes of these Regulations.”.

(4) For paragraph 2(3) of the Schedule(**111**) (suitability) substitute—

“(3) The members of the management body must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties.”.

(5) After paragraph 2 of the Schedule insert—

*“Management body*

**2A.—**(1) The composition of the management body of an exchange must reflect an adequately broad range of experience.

(2) The management body must possess adequate collective knowledge, skills and experience in order to understand the exchange’s activities and main risks.

(3) Members of the management body must—

- (a) commit sufficient time to perform their functions on the management body;
- (b) act with honesty, integrity and independence of mind; and
- (c) effectively—
  - (i) assess and challenge, where necessary, the decisions of the senior management; and
  - (ii) oversee and monitor decision-making.

(4) The management body must—

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(111) Paragraph 2(3) was inserted by [S.I. 2006/3386](#).

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- (a) define and oversee the implementation of governance arrangements that ensure the effective and prudent management of the exchange in a manner which promotes the integrity of the market, which at least must include—
    - (i) the segregation of duties in the organisation; and
    - (ii) the prevention of conflicts of interest;
  - (b) monitor and periodically assess the effectiveness of the exchange’s governance arrangements; and
  - (c) take appropriate steps to address any deficiencies found as a result of the monitoring under paragraph (b).
- (5) An exchange must—
- (a) devote adequate human and financial resources to the induction and training of members of the management body;
  - (b) ensure that the management body has access to the information and documents it requires to oversee and monitor management decision-making; and
  - (c) notify the FCA of the identity of all the members of its management body.
- (6) An exchange and, if it has a nomination committee, its nomination committee must engage a broad set of qualities and competences when recruiting persons to the management body, and for that purpose have a policy promoting diversity on the management body.
- (7) The number of directorships a member of the management body can hold at the same time must take into account individual circumstances and the nature, scale and complexity of the exchange’s activities.

*Management body: significant exchanges*

- 2B.**—(1) If an exchange is significant the following requirements apply to the management body—
- (a) members of the management body must not at the same time hold positions exceeding more than one of the following combinations—
    - (i) one executive directorship with two non-executive directorships (or where so authorised by the FCA under regulation 44(1), three non-executive directorships); or
    - (ii) four non-executive directorships (or where so authorised by the FCA under regulation 44(1), five non-executive directorships); and
  - (b) the management body must have a nomination committee unless it is prevented by law from selecting and appointing its own members.
- (2) For the purposes of sub-paragraph (1)(a)—
- (a) any directorship in which the person represents the United Kingdom is not counted;
  - (b) executive or non-executive directorships—
    - (i) held within the same group, or
    - (ii) held within the same undertaking where the exchange holds a qualifying holding within the meaning of Article 4.1.31 of the markets in financial instruments directive,
 shall be counted as a single directorship; and
  - (c) any directorship in an organisation which does not pursue predominantly commercial objectives is not counted.

- (3) The nomination committee referred to in sub-paragraph (1)(b) must—
- (a) be composed of members of the management body who do not perform an executive function in the exchange;
  - (b) identify and recommend to the exchange persons to fill management body vacancies;
  - (c) at least annually assess the structure, size, composition and performance of the management body and make recommendations to the management body;
  - (d) at least annually assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;
  - (e) periodically review the policy of the management body for the selection and appointment of senior management and make recommendations to the management body; and
  - (f) be able to use any forms of resource it deems appropriate, including external advice.

(4) In performing its functions under sub-paragraph (3) the nomination committee must take account of the need to ensure that the management body's decision-making is not dominated by—

- (a) any one individual; or
- (b) a small group of individuals,

in a manner that is detrimental to the interests of the exchange as a whole.

- (5) In performing its function under sub-paragraph (3)(b) the nomination committee must—
- (a) evaluate the balance of knowledge, skills, diversity and experience of the management body;
  - (b) prepare a description of the roles, capabilities and expected time commitment for any particular appointment;
  - (c) decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to meet that target;
  - (d) engage a broad set of qualities and competences, and for that purpose have a policy promoting diversity on the management body.

(6) In sub-paragraph (1), “significant” in relation to an exchange means significant in terms of the size and internal organisation of the exchange and the nature, scope and complexity of the exchange's activities.”.

(6) In paragraph 3 of the Schedule(112) (systems and controls)—

- (a) for sub-paragraph (1) substitute—

“(1) The exchange must ensure that the systems and controls, including procedures and arrangements, used in the performance of its functions and the functions of the trading venues it operates are adequate, effective and appropriate for the scale and nature of its business.”;

- (b) at the end of sub-paragraph (2)(d) omit “and”;

- (c) after sub-paragraph (2)(e) insert—

- “(f) the resilience of its trading systems;
- (g) the ability to have sufficient capacity to deal with peak order and message volumes;
- (h) the ability to ensure orderly trading under conditions of severe market stress;

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(112) Paragraph 3 was amended by [S.I. 2006/3386](#).

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- (i) the effectiveness of business continuity arrangements to ensure the continuity of the exchange's services if there is any failure of its trading systems including the testing of the exchange's systems and controls;
  - (j) the ability to reject orders that exceed predetermined volume or price thresholds or which are clearly erroneous;
  - (k) the ability to ensure algorithmic trading systems cannot create or contribute to disorderly trading conditions on trading venues operated by the exchange;
  - (l) the ability to ensure disorderly trading conditions which arise from the use of algorithmic trading systems, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the exchange's trading system by a member or participant, are capable of being managed;
  - (m) the ability to ensure the flow of orders is capable of being slowed down if there is a risk of system capacity being reached;
  - (n) the ability to limit and enforce the minimum tick size which may be executed on its trading venues; and
  - (o) the requirement for members and participants to carry out appropriate testing of algorithms.
- (3) For the purposes of sub-paragraph (2)(c), the exchange must—
- (a) establish and maintain effective arrangements and procedures including the necessary resource for the regular monitoring of the compliance by their members or participants with its rules; and
  - (b) monitor orders sent including cancellations and the transactions undertaken by its members or participants under its systems in order to identify infringements of those rules, disorderly trading conditions or conduct that may indicate behaviour that is prohibited under the market abuse regulation or system disruptions in relation to a financial instrument.
- (4) For the purposes of sub-paragraph (2)(o) the exchange must provide environments to facilitate such testing.
- (5) The exchange must be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks.

#### *Market making agreements*

- 3A.—**(1) The exchange must—
- (a) have written agreements with all investment firms pursuing a market making strategy on trading venues operated by it (“market making agreements”);
  - (b) have schemes, appropriate to the nature and scale of a trading venue, to ensure that a sufficient number of investment firms enter into such agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;
  - (c) monitor and enforce compliance with the market making agreements;
  - (d) inform the FCA of the content of its market making agreements; and
  - (e) provide the FCA with any information it requests which is necessary for the FCA to satisfy itself that the market making agreements comply with paragraphs (c) and (d) of this sub-paragraph and sub-paragraph (2).



- (2) A market making agreement must specify—
  - (a) the obligations of the investment firm in relation to the provision of liquidity;
  - (b) where applicable, any obligations arising from the participation in a scheme mentioned in sub-paragraph (1)(b);
  - (c) any incentives in terms of rebates or otherwise offered by the exchange to the investment firm in order for it to provide liquidity to the market on a regular and predictable basis; and
  - (d) where applicable, any other rights accruing to the investment firm as a result of participation in the scheme referred to in sub-paragraph (1)(b).
- (3) For the purposes of this paragraph, an investment firm pursues a market making strategy if—
  - (a) the firm is a member or participant of one or more trading venues;
  - (b) the firm's strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue, or across different trading venues; and
  - (c) the result is providing liquidity on a regular and frequent basis to the overall market.

#### *Halting trading*

- 3B.**—(1) The exchange must be able to—
- (a) temporarily halt or constrain trading on any trading venue operated by it if there is a significant price movement in a financial instrument on such a trading venue or a related trading venue during a short period; and
  - (b) in exceptional cases cancel, vary, or correct, any transaction.
- (2) For the purposes of sub-paragraph (1) the exchange must ensure that the parameters for halting trading are calibrated in a way which takes into account—
- (a) the liquidity of different asset classes and sub-classes;
  - (b) the nature of the trading venue market model; and
  - (c) the types of users,
- to ensure the parameters avoid significant disruptions to the orderliness of trading.
- (3) The exchange must report the parameters mentioned in sub-paragraph (2) and any material changes to those parameters to the FCA in a format to be specified by the FCA.
- (4) If a trading venue operated by the exchange is material in terms of liquidity of the trading of a financial instrument and it halts trading in an EEA State in that instrument, it must have systems and procedures in place to ensure that it notifies the FCA.

#### *Direct electronic access*

- 3C.** Where the exchange permits direct electronic access to a trading venue it operates it must—
- (a) ensure that a member of, or participant in, the trading venue is only permitted to provide direct electronic access to the venue if the member or participant—

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- (i) is an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive (definitions), authorised in accordance with the directive;
  - (ii) is a credit institution authorised in accordance with the capital requirements directive<sup>(113)</sup>;
  - (iii) comes within Article 2.1(a), (e), (i), or (j) of the markets in financial instruments directive (exemptions) and has a Part 4A permission relating to investment services and activities;
  - (iv) is a third country firm providing the direct electronic access in the course of exercising rights under Article 46.1 (general provisions) or 47.3 (equivalence decision) of the markets in financial instruments regulation;
  - (v) is a third country firm and the provision of the direct electronic access by that firm is subject to the exclusion in article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(114)</sup>; or
  - (vi) is a third country firm which does not come within paragraph (iv) or (v) and is otherwise permitted to provide the direct electronic access under the Act;
- (b) ensure that appropriate criteria are set and applied for the suitability of persons to whom direct electronic access services may be provided;
  - (c) ensure that a member of, or participant in, the trading venue retains responsibility for adherence to the requirements of the markets in financial instruments directive in respect of orders and trades executed using the direct electronic access service;
  - (d) set appropriate standards for risk controls and thresholds on trading through direct electronic access;
  - (e) be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately from—
    - (i) other orders; or
    - (ii) trading by the member or participant providing the direct electronic access; and
  - (f) have arrangements in place to suspend or terminate the provision to a client of direct electronic access to that trading venue by a member of, or participant in, the trading venue in the case of non-compliance with this paragraph.

#### *Co-location services*

**3D.** The exchange's rules on co-location services must be transparent, fair and non-discriminatory.

#### *Fee structures*

**3E.—(1)** The exchange's fee structure, for all fees it charges including execution fees and ancillary fees and rebates it grants, must—

- (a) be transparent, fair and non-discriminatory;

<sup>(113)</sup> OJ No L 176, 27.6.2013, p.338.

<sup>(114)</sup> S.I. 2001/544; article 72 was amended by S.I. 2003/1476, 2006/2383 and 3384, 2009/1342, 2013/504 and 2015/910.

- (b) not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading conditions or market abuse; and
  - (c) impose market making obligations in individual shares or suitable baskets of shares for any rebates that are granted.
- (2) Nothing in sub-paragraph (1) prevents the exchange from—
- (a) adjusting its fees for cancelled orders according to the length of time for which the order was maintained;
  - (b) calibrating its fees to each financial instrument to which they apply;
  - (c) imposing a higher fee—
    - (i) for placing an order which is cancelled than an order which is executed;
    - (ii) on participants placing a high ratio of cancelled orders to executed orders;
    - or
    - (iii) on a person operating a high-frequency algorithmic trading technique,in order to reflect the additional burden on system capacity.

#### *Algorithmic trading*

- 3F.** The exchange must require members of and participants in trading venues operated by it to flag orders generated by algorithmic trading in order for it to be able to identify—
- (a) the different algorithms used for the creation of orders; and
  - (b) the persons initiating those orders.

#### *Tick size regimes*

- 3G.—**(1) The exchange must adopt tick size regimes in respect of trading venues operated by it in—
- (a) shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments traded on each trading venue; and
  - (b) any financial instrument for which regulatory technical standards are adopted by the European Commission pursuant to Article 49.3 or 4 of the markets in financial instruments directive which is traded on that trading venue.
- (2) The tick size regime must—
- (a) be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and
  - (b) adapt the tick size for each financial instrument appropriately.
- (3) The tick size regime must comply with any regulatory technical standards adopted by the European Commission pursuant to Article 49.3 or 4 of the markets in financial instruments directive.

#### *Synchronisation of business clocks*

- 3H.** The exchange must synchronise the business clocks it uses to record the date and time of any reportable event in accordance with regulatory technical standards adopted by

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the European Commission pursuant to Article 50 of the markets in financial instruments directive.”.

- (7) In paragraph 4 of the Schedule(**115**) (safeguards for investors), in sub-paragraph (2)—
- (a) in paragraph (aa) omit “and non-discretionary”;
  - (b) in paragraph (ea) in both places for “financial markets” substitute “trading venues”;
  - (c) in paragraph (f) omit “(including the monitoring of transactions effected on the exchange)”;
  - (d) after paragraph (f) omit “and” and insert—
    - “(fa) it immediately reports to the FCA any significant breaches of its rules or disorderly trading conditions or conduct that may indicate behaviour which is prohibited under the market abuse regulation or system disruptions in relation to a financial instrument; and”.
- (8) Omit paragraphs 4A (provision of pre-trade information about share trading) and 4B (provision of post-trade information about share trading) of the Schedule(**116**).
- (9) Before paragraph 6 of the Schedule(**117**) insert—

*“Publication of data regarding execution of transactions*

- 4C.**—(1) The exchange must make available to the public, without any charges, data relating to the quality of execution of transactions on the trading venues operated by the exchange on at least an annual basis.
- (2) Reports must include details about price, costs, speed and likelihood of execution for individual financial instruments.”.
- (10) In paragraph 7A of the Schedule(**118**) (admission of financial instruments to trading)—
- (a) in sub-paragraph (1) for “financial market” substitute “trading venue”;
  - (b) omit sub-paragraphs (2) to (11).
- (11) In paragraph 7B of the Schedule(**119**) (access to the exchange’s facilities)—
- (a) in sub-paragraph (2)(b) for “the market” substitute “its trading venues”;
  - (b) in sub-paragraphs (2)(c), (d) and (e) and (4) for “financial market” substitute “trading venue”;
  - (c) omit sub-paragraph (3).
- (12) After paragraph 7B of the Schedule insert—

*“Position management*

- 7BA.**—(1) An exchange operating a trading venue which trades commodity derivatives must apply position management controls on that venue, which must at least enable the exchange to—
- (a) monitor the open interest positions of persons;
  - (b) access information, including all relevant documentation, from persons about—

(115) Paragraph 4 was amended by [S.I. 2006/3386](#).

(116) Paragraphs 4A and 4B were inserted by [S.I. 2006/3386](#) and amended by [S.I. 2013/472](#).

(117) Paragraph 5 was revoked by [S.I. 2005/381](#).

(118) Paragraph 7A was inserted by [S.I. 2006/3386](#) and amended by [S.I. 2011/1043](#) and [2016/680](#).

(119) Paragraph 7B was inserted by [S.I. 2006/3386](#) and amended by [S.I. 2013/472](#) and [3115](#).

- (i) the size and purpose of a position or exposure entered into;
    - (ii) any beneficial or underlying owners;
    - (iii) any concert arrangements; and
    - (iv) any related assets or liabilities in the underlying market;
  - (c) require a person to terminate or reduce a position on a temporary or permanent basis as the specific case may require and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply; and
  - (d) where appropriate, require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large or dominant position.
- (2) The position management controls must take account of the nature and composition of market participants and of the use they make of the contracts submitted to trading and must—
- (a) be transparent;
  - (b) be non-discriminatory; and
  - (c) specify how they apply to persons.
- (3) An exchange must inform the FCA of the details of the position management controls in relation to each trading venue it operates.

#### *Position reporting*

- 7BB.**—(1) This paragraph applies to an exchange operating a trading venue which trades commodity derivatives, emission allowances, or emission allowance derivatives.
- (2) The exchange must—
- (a) where it meets the minimum threshold, as specified in a delegated act adopted by the European Commission pursuant to Article 58.6 of the markets in financial instruments directive, make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives, emission allowances or emission allowance derivatives traded on the trading venue specifying—
    - (i) the number of long and short positions by such categories;
    - (ii) changes of those positions since the previous report;
    - (iii) the percentage of the total open interest represented by each category; and
    - (iv) the number of persons holding a position in each category; and
  - (b) provide the FCA with a complete breakdown of the positions held by all persons, including the members and participants and their clients, on the trading venue on a daily basis, or more frequently if that is required by the FCA.
- (3) For the weekly report mentioned in sub-paragraph (2)(a) the exchange must—
- (a) categorise persons in accordance with the classifications required under sub-paragraph (4); and
  - (b) differentiate between positions identified as—
    - (i) positions which in an objectively measurable way reduce risks directly relating to commercial activities; or
    - (ii) other positions.

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(4) The exchange must classify persons holding positions in commodity derivatives, emission allowances or emission allowance derivatives according to the nature of their main business, taking account of any applicable authorisation or registration, as—

- (a) an investment firm or credit institution;
- (b) an investment fund, either as an undertaking for collective investments in transferable securities as defined in the UCITS Directive(120), or an alternative investment fund or an alternative investment fund manager as defined in the alternative investment fund managers directive(121);
- (c) another financial institution, including an insurance undertaking, a reinsurance undertaking as defined in the Solvency 2 Directive(122) and an institution for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement(123);
- (d) a commercial undertaking; or
- (e) in the case of emission allowances or emission allowance derivatives, an operator with compliance obligations under Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community(124).

(5) The exchange must communicate the weekly report mentioned in sub-paragraph (2)(a) to the FCA and ESMA.”.

(13) In paragraph 7E of the Schedule(125) (suspension and removal of financial instruments from trading)—

- (a) the existing text becomes sub-paragraph (1);
- (b) in sub-paragraph (1), for “regulated market” substitute “trading venue”;
- (c) after sub-paragraph (1) insert—

“(2) Where the exchange suspends or removes any financial instrument from trading on a trading venue it operates it must also suspend or remove from trading on that venue any derivative that relates or is referenced to that financial instrument where that is required to support the objectives of the suspension or removal from trading of that financial instrument.

(3) Where the exchange suspends or removes any financial instrument from trading on a trading venue it operates, including any derivative in accordance with sub-paragraph (2), it must make that decision public and notify the FCA.

(4) Where following a decision made under sub-paragraph (2) the exchange lifts a suspension or readmits any financial instrument to trading on a trading venue it operates, including any derivative suspended or removed from trading in accordance with that sub-paragraph, it must make that decision public and notify the FCA.”.

(14) In paragraph 9 of the Schedule (complaints), after sub-paragraph (5) insert—

“(6) The exchange must have in place effective procedures for its employees to report potential or actual infringements of—

- (a) these Regulations,

(120) OJ No L 302, 17.11.2009, p.32.

(121) OJ No L 174, 1.7.2011, p.1.

(122) OJ No L 335, 17.12.2009, p.1.

(123) OJ No L 235, 23.9.2003, p.10.

(124) OJ No L 275, 25.10.2003, p.32.

(125) Paragraph 7E was inserted by S.I. 2006/3386.

- (b) provisions of the Act and subordinate legislation made under the Act (including rules) transposing the markets in financial instruments directive,
  - (c) the markets in financial instruments regulation, and
  - (d) directly applicable EU regulations made under the markets in financial instruments directive or the markets in financial instruments regulation, internally through a specific, independent and autonomous channel.”.
- (15) After paragraph 9 of the Schedule insert—

*“Specific requirements for regulated markets: execution of orders*

**9ZA.**—(1) An exchange must have non-discretionary rules for the execution of orders on a regulated market operated by it.

- (2) An exchange must not on a regulated market operated by it—
  - (a) execute any client orders against its proprietary capital; or
  - (b) engage in matched principal trading.

*Specific requirements for regulated markets: admission of financial instruments to trading*

**9ZB.**—(1) The rules of the exchange must ensure that all—

- (a) financial instruments admitted to trading on a regulated market operated by it are capable of being traded in a fair, orderly and efficient manner;
- (b) transferable securities admitted to trading on a regulated market operated by it are freely negotiable; and
- (c) contracts for derivatives admitted to trading on a regulated market operated by it are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.

(2) The rules of the exchange must provide that where it, without obtaining the consent of the issuer, admits to trading on a regulated market operated by it a transferable security which has been admitted to trading on another regulated market the exchange—

- (a) must inform the issuer of that security as soon as is reasonably practicable; and
- (b) may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(3) The exchange must maintain effective arrangements to verify that issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations.

(4) The exchange must maintain arrangements to assist members of or participants in a regulated market operated by it to obtain access to information made public under the disclosure obligations.

(5) The exchange must maintain arrangements to review regularly whether financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.

(6) In this paragraph—

“the disclosure obligations” are the initial, ongoing and ad hoc disclosure requirements contained in—

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- (a) Articles 17, 18 and 19 of the market abuse regulation(126);
  - (b) Articles 3, 5, 7, 8, 14 and 16 of [Directive 2003/71/EC](#) of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading(127);
  - (c) Articles 4 to 6, 14 and 16 to 19 of [Directive 2004/109/EC](#) of the European Parliament and of the Council of 15 December 2004 relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market(128); and
  - (d) EU legislation made under the provisions mentioned in paragraphs (a) to (c);
- and the legislation referred to in paragraphs (b) and (c) is given effect—
- (a) in the United Kingdom by Part 6 of the Act(129) and Part 6 rules (within the meaning of section 73A of the Act); or
  - (b) in another EEA State by legislation transposing the relevant Articles in that State.

*Specific requirements for regulated markets: access to a regulated market*

**9ZC.** The rules of the exchange about access to, or membership of, a regulated market operated by it must permit the exchange to give access to or admit to membership (as the case may be) only—

- (a) an investment firm authorised under Article 5 of the markets in financial instruments directive;
- (b) a credit institution authorised in accordance with the capital requirements directive; or
- (c) a person who—
  - (i) is of sufficient good repute;
  - (ii) has a sufficient level of trading ability, competence and experience;
  - (iii) where applicable, has adequate organisational arrangements; and
  - (iv) has sufficient resources for the role it is to perform, taking account of the exchange’s arrangements under paragraph 4(2)(d).

*Multilateral systems*

**9ZD.** An exchange must only operate a multilateral system as a regulated market, a multilateral trading facility or an organised trading facility.”

- (16) In paragraph 9A of the Schedule(130) (operation of a multilateral trading facility)—
  - (a) in the heading insert at the end “or an organised trading facility”;
  - (b) in sub-paragraph (1), after “multilateral trading facility” insert “or an organised trading facility”;
  - (c) in sub-paragraph (2)—
    - (i) after “multilateral trading facility” insert “or an organised trading facility”;

(126) OJ No L 173, 12.6.2014, p.1.

(127) OJ No L 345, 31.12.2003, p.64.

(128) OJ No L 390, 31.12.2004, p.38.

(129) 2000 c.8; section 73A was inserted by [S.I. 2005/381](#) and amended by section 16 of the Financial Services Act 2012, paragraph 3 of Schedule 15 to the Companies Act 2006 and [S.I. 2005/1433](#) and [2016/680](#).

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



- (ii) for paragraph (b) substitute—
  - “(b) any directly applicable EU regulation made under Chapter I,”;
- (d) after sub-paragraph (3) insert—
  - “(4) An exchange operating a multilateral trading facility or an organised trading facility must provide the FCA with a detailed description of—
    - (a) the functioning of the multilateral trading facility or organised trading facility;
    - (b) any links to another trading venue owned by the same exchange or to a systematic internaliser owned by the same exchange; and
    - (c) a list of the facility’s members, participants and users.
  - (5) Any multilateral trading facility or an organised trading facility operated by the exchange must have at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation.”.
- (17) After paragraph 9A of the Schedule insert—

*“Specific requirements for multilateral trading facilities: execution of orders*

- 9B.**—(1) An exchange must have non-discretionary rules for the execution of orders on a multilateral trading facility operated by it.
- (2) An exchange must not on a multilateral trading facility operated by it—
  - (a) execute any client orders against its proprietary capital; or
  - (b) engage in matched principal trading.

*Specific requirements for multilateral trading facilities: access to a facility*

- 9C.** The rules of the exchange about access to, or membership of, a multilateral trading facility operated by it must permit the exchange to give access to or admit to membership (as the case may be) only to—
  - (a) an investment firm authorised under Article 5 of the markets in financial instruments directive;
  - (b) a credit institution authorised in accordance with the capital requirements directive; or
  - (c) a person who—
    - (i) is of sufficient good repute;
    - (ii) has a sufficient level of trading ability, competence and experience;
    - (iii) where applicable, has adequate organisational arrangements; and
    - (iv) has sufficient resources for the role it is to perform, taking account of the financial arrangements the exchange has established in order to guarantee the adequate settlement of transactions.

*Specific requirements for multilateral trading facilities: disclosure*

- 9D.**—(1) The rules of the exchange must provide that where it, without obtaining the consent of the issuer, admits to trading on a multilateral trading facility operated by it a transferable security which has been admitted to trading on a regulated market, the exchange

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may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(2) The exchange must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of a multilateral trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.

(3) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

#### *SME growth markets*

**9E.**—(1) An exchange operating a multilateral trading facility which has registered that facility as an SME growth market in accordance with Article 33 of the markets in financial instruments directive (an “exchange-operated SME growth market”) must comply with rules made by FCA for the purposes of this paragraph.

(2) An exchange-operated SME growth market must not admit to trading a financial instrument which is already admitted to trading on another SME growth market unless the issuer of the instrument has been informed of the proposed admission to trading and has not objected.

(3) Where an exchange-operated SME growth market exchange admits a financial instrument to trading in the circumstances of sub-paragraph (2), that exchange-operated SME growth market may not require the issuer of the financial instrument to demonstrate compliance with—

- (a) any obligation relating to corporate governance, or
- (b) the disclosure obligations.

(4) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

#### *Specific requirements for organised trading facilities: execution of orders*

**9F.**—(1) An exchange operating an organised trading facility must—

- (a) execute orders on that facility on a discretionary basis in accordance with sub-paragraph (4);
- (b) not execute any client orders on that facility against its proprietary capital or the proprietary capital of any entity that is part of the same group or legal person as the exchange unless in accordance with sub-paragraph (2);
- (c) not operate a systematic internaliser within the same legal entity;
- (d) ensure that the organised trading facility does not connect with a systematic internaliser in a way which enables orders in an organised trading facility and orders or quotes in a systematic internaliser to interact; and
- (e) ensure that the organised trading facility does not connect with another organised trading facility in a way which enables orders in different organised trading facilities to interact.

(2) An exchange may only engage in—

- (a) matched principal trading on an organised trading facility operated by it in respect of—
  - (i) bonds,

- (ii) structured finance products,
- (iii) emission allowances, and
- (iv) derivatives which have not been declared subject to the clearing obligation in accordance with Article 5 of the EMIR regulation(131),

where the client has consented to that; or

- (b) dealing on own account on an organised trading facility operated by it, otherwise than in accordance with paragraph (a), in respect of sovereign debt instruments for which there is not a liquid market.

(3) If the exchange engages in matched principal trading in accordance with sub-paragraph (2)(a) it must establish arrangements to ensure compliance with the definition of matched principal trading in Article 4.1.38 of the markets in financial instruments directive.

(4) The discretion which the exchange must exercise in executing a client order may only be the discretion mentioned in sub-paragraph (5) or in sub-paragraph (6) or both.

(5) The first discretion is whether to place or retract an order on the organised trading facility.

(6) The second discretion is whether to match a specific client order with other orders available on the organised trading facility at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the client and in accordance with the exchange's obligations under Article 27 of the markets in financial instruments directive.

(7) Where the organised trading facility crosses client orders the exchange may decide if, when and how much of two or more orders it wants to match within the system.

(8) Subject to the requirements of this paragraph, with regard to a system that arranges transactions in non-equities, the exchange may facilitate negotiation between clients so as to bring together two or more potentially comparable trading interests in a transaction.

(9) The exchange must comply with rules made by the FCA as to how Articles 24, 25, 27 and 28 of the markets in financial instruments directive apply to its operation of an organised trading facility.

(10) Nothing in this paragraph prevents an exchange from engaging an investment firm to carry out market making on an independent basis on an organised trading facility operated by the exchange provided the investment firm does not have close links with the exchange.

(11) In this paragraph—

“close links” has the meaning given in Article 4.1.35 of the markets in financial instruments directive;

“investment firm” has the meaning given in Article 4.1.1 of the markets in financial instruments directive;

“non-equities” means bonds, structured finance products, emission allowances and derivatives traded on a trading venue to which Article 8(1) of the markets in financial instrument regulation applies.

#### *Specific requirements for organised trading facilities: disclosure*

**9G.—**(1) The rules of the exchange must provide that where it, without obtaining the consent of the issuer, admits to trading on an organised trading facility operated by it a transferable security which has been admitted to trading on a regulated market, the exchange

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(131) OJ No L 201, 27.7.2012, p.1.

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may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(2) The exchange must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of an organised trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.

(3) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

*Specific requirements for organised trading facilities: FCA request for information*

**9H.**—(1) An exchange must, when requested to do so, provide the FCA with a detailed explanation in respect of an organised trading facility operated by it, or such a facility it proposes to operate, of—

- (a) why the organised trading facility does not correspond to and cannot operate as a multilateral trading facility, a regulated market or a systematic internaliser;
- (b) how discretion will be exercised in executing client orders, and in particular when an order to the organised trading facility may be retracted and when and how two or more client orders will be matched within the facility; and
- (c) its use of matched principal trading.

(2) Any information required under sub-paragraph (1) must be provided to the FCA in the manner which it considers appropriate.

*Provision of data reporting services*

**9I.** An exchange providing data reporting services must comply with Title V of the markets in financial instruments directive.”

(18) In paragraph 21A of the Schedule(**132**) (access to central counterparty, clearing and settlement facilities) omit sub-paragraph (3).

(19) In paragraph 31 of the Schedule(**133**) (access to central counterparty, clearing and settlement facilities) omit sub-paragraph (3).

**Financial Services and Markets Act 2000 (Regulated Activities) Order 2001**

**2.** In article 53(1C)(b)(i) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**134**) (advising on investments) after “security” insert “, structured deposit”.

**Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001**

**3.**—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(**135**) are amended as follows.

- (2) In regulation 2 (descriptions of business for which appointed representatives are exempt)—
  - (a) in paragraph (1)(a)(**136**) for “or relevant investments” substitute “, relevant investments or structured deposits”;

(132) Paragraph 21A was inserted by [S.I. 2006/3386](#) and amended by [S.I. 2013/504](#).

(133) Paragraph 31 was inserted by [S.I. 2013/504](#).

(134) [S.I. 2001/544](#); article 53(1C)(b)(i) was inserted by [S.I. 2017/500](#).

(135) [S.I. 2001/1217](#).

(136) Paragraph (1)(a) was amended by [S.I. 2003/1476](#).

- (b) in paragraph (1A)(**137**), for “an EEA investment firm or an EEA credit institution” substitute “a person who has a Part 4A permission for the purposes of the capital requirements directive or the markets in financial instruments directive, an EEA investment firm, or an EEA credit institution”; and
  - (c) in paragraph (1B)(**138**), for “1.10 and 1.17” substitute “1.9 and 1.15”.
- (3) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives)—
- (a) in the closing words of paragraph (2)(**139**) for “or a relevant investment” substitute “, a relevant investment or a structured deposit”.
  - (b) for paragraph (6)(**140**) substitute—
    - “(6) In the case of a representative to whom section 39(1A) or (1AA) of the Act applies (“R”), it is a prescribed requirement for the purposes of section 39(1)(a)(ii), except where paragraph (1A) applies, that the contract between the principal and R must—
    - (a) where section 39(1A) of the Act applies to R, contain a provision that R is only permitted to provide the services and carry on the activities referred to in Article 4.1.29 (definitions) of the markets in financial directive while R is entered on the applicable register; or
    - (b) where section 39(1AA) of the Act applies to R, contain a provision that R is only permitted to sell, or advise clients on, structured deposits as defined by Article 4.1.43 of that directive while R is entered on the applicable register.”.

#### **Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001**

4.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**141**) are amended as follows.

- (2) In regulation 2(**142**) (interpretation)—
  - (a) in the definition of “EEA competent authority”, after “the EMIR regulation” omit “, the market abuse regulation”;
  - (b) omit the definition of “market abuse regulation information”;
  - (c) in the definition of “markets in financial instruments directive information” after “markets in financial instruments directive” insert “and the markets in financial instruments regulation”;
  - (d) in the definition of “single market information” after “markets in financial instruments directive” insert “, the markets in financial instruments regulation”; and
  - (e) in the definition of “single market restrictions”—
    - (i) in paragraph (a) for “54 and 58” substitute “76 and 81”;
    - (ii) at the end of paragraph (m), after “;” insert “and”; and
    - (iii) omit paragraph (n).
- (3) In regulation 8 (disclosure of single market information)—

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(**137**) Paragraph (1A) was inserted by [S.I. 2006/3414](#) and further amended by [S.I. 2017/488](#).

(**138**) Paragraph (1B) was inserted by [S.I. 2006/3414](#).

(**139**) The closing words of paragraph (2) were amended by [S.I. 2003/1476](#); there are other amendments but none is relevant.

(**140**) Paragraph (6) was inserted by [S.I. 2006/3414](#).

(**141**) [S.I. 2001/2188](#).

(**142**) Regulation 2 was amended by [S.I. 2006/3413](#), [2010/2628](#), [2012/916](#), [2013/472](#), and [2013/3115](#); there are other amendments but none is relevant.

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- (a) in paragraph (b)—
    - (i) in sub-paragraph (i) for “article 63” substitute “article 88”; and
    - (ii) in sub-paragraph (ii)(**143**) for “article 58.1” substitute “article 81.1”;
  - (b) at the end of paragraph (d) insert “and”; and
  - (c) omit paragraph (e).
- (4) In regulation 9 (disclosure by regulators or regulator workers to certain other persons) —
- (a) in paragraph (1) after “(3F),” omit “(3G),”;
  - (b) in paragraph (2), for “, (2C) or (2D)” substitute “or (2C)”;
  - (c) in paragraph (2ZA)(**144**) for “article 63” substitute “article 88”;
  - (d) omit paragraph (2D)(**145**);
  - (e) in paragraph (3A)(a)(**146**) for “article 58.1” substitute “article 81.1”; and
  - (f) omit paragraph (3G)(**147**).
- (5) In regulation 11 (disclosure of confidential information not subject to single market restrictions)—
- (a) in paragraph (d)—
    - (i) in sub-paragraph (i)(**148**) for “article 63” substitute “article 88”;
    - (ii) in sub-paragraph (ii)(**149**) for “article 58.1” substitute “article 81.1”; and
  - (b) omit paragraph (h).
- (6) After regulation 12(4) (disclosure by and to a Schedule 1 or 2 person or disciplinary proceedings authority) insert—
- “(5) This regulation does not permit the disclosure of information if—
- (a) the information is confidential information received by the FCA in the course of discharging its functions as a competent authority under the market abuse regulation or any directly applicable EU regulation made under the market abuse regulation; and
  - (b) the disclosure of the information contravenes the market abuse regulation.”.

### **Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001**

5.—(1) The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(**150**) are amended as follows.

(2) In regulation 1(2)(**151**) (citation, commencement and interpretation), in the definition of “tied agent”, for “4.1.25” substitute “4.1.29”.

(3) In regulation 3(2ZA)(**152**) (contents of regulator’s notice), for “31.5” substitute “34.6”.

(143) Paragraph (b)(ii) was amended by S.I. 2013/504 and 2014/3348.

(144) Paragraph (2ZA)(a) was inserted by S.I. 2013/1773.

(145) Paragraph (2D) was inserted by S.I. 2016/680.

(146) Paragraph (3A)(a) was inserted by S.I. 2006/3413.

(147) Paragraph (3G) was inserted by S.I. 2016/680.

(148) Regulation 11(d)(i) was inserted by S.I. 2006/3413.

(149) Regulation 11(d)(ii) was inserted by S.I. 2006/3413 and amended by S.I. 2011/1613.

(150) S.I. 2001/2511, amended by S.I. 2006/3385 and 3414; there are other amendments but none is relevant.

(151) Regulation 1(2) was amended by S.I. 2006/3385; there are other amendments but none is relevant.

(152) Regulation 3(2ZA) was inserted by S.I. 2006/3385.

### **Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013**

6.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(**153**) is amended as follows.

(2) In article 2 (qualifying EU provisions: general)—

(a) after paragraph (2)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(b) in paragraph (5) for “2A(6)(d)”(**154**) substitute “2AB(3)(d)”(**155**).

(c) after paragraph (6)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(d) after paragraph (8)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”.

(3) In article 3 (qualifying EU provisions: disciplinary measures)—

(a) after paragraph (2)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(b) in paragraph (3)(a) after “directive” insert “or the markets in financial instruments regulation”.

(4) In article 4 (qualifying EU provisions etc: recognised investment exchanges and clearing houses)—

(a) after paragraph (3)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(b) after paragraph (5)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(c) after paragraph (7)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”.

(5) In article 5 (qualifying EU provisions: injunctions and restitution)—

(a) after paragraph (2)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(b) in paragraph (5)(a) after “directive” insert “or the markets in financial instruments regulation”.

(6) In article 6 (qualifying EU provisions: fees)—

(a) after paragraph (2)(a) insert—

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**(153)** [S.I. 2013/419](#).

**(154)** Section 2A(6) was inserted by section 6(1) of the Financial Services Act 2012 and amended by section 12 of the Bank of England and Financial Services Act 2016.

**(155)** Section 2AB(3)(d) was inserted by section 12 Bank of England and Financial Services Act [2016 \(c. 14\)](#).

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- “(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;
- (b) after paragraph (4)(a) insert—
- “(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”.

### **Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013**

7. After regulation 55 of the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013(156) (transitional and saving provisions: designation orders under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999) insert—

#### **“Transitional provisions: markets in financial instruments provisions**

**55A.**—(1) The FCA may grant an exemption in accordance with Article 95(2) of the [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

(2) The FCA must notify ESMA whenever it grants an exemption under paragraph (1).”.

### **Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 2013**

8. In article 3(2)(c)(i) of the Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 2013(157) (dealing in investments as principal: designation by the PRA), for “31” substitute “34”.

### **Financial Services and Markets Act 2000 (Ring-Fenced Bodies and Core Activities) Order 2014**

9. In article 10(5)(b) of the Financial Services and Markets Act 2000 (Ring-Fenced Bodies and Core Activities) Order 2014(158) (declaration of eligibility: determining assets held by an individual) for “4.1(18)” substitute “4.1(44)”.

## SCHEDULE 4

Regulation 50(3)

### Amendments to other primary legislation

#### **Building Societies Act 1986**

1. In section 81B(1) of the Building Societies Act 1986(159) (interpretation of Part 8), in the definition of “regulated market”, for the words from “Article” to “2004” substitute “Article 4.1.21 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

(156) S.I. 2013/504.

(157) S.I. 2013/556.

(158) S.I. 2014/1960.

(159) 1986 c.53; section 81B(1) was inserted by S.I. 2004/3380 and amended by S.I. 2007/126.



### **Finance Act 1991**

2. In section 116(4)(aa) of the Finance Act 1991(**160**) (investment exchanges and clearing houses: stamp duty), for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Friendly Societies Act 1992**

3.—(1) The Friendly Societies Act 1992(**161**) is amended as follows.

(2) In section 69A(4)(**162**) (duty to prepare individual accounts), for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

(3) In section 69E(5)(**163**) (duty to prepare group accounts), for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Data Protection Act 1998**

4. In paragraph 6(3) of Schedule 7 (miscellaneous exemptions) to the Data Protection Act 1998(**164**), in the definition of “instrument”, for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Competition Act 1998**

5. In paragraph 3(5) of Schedule 3 (general exclusions) to the Competition Act 1998(**165**) in paragraph (a) of the definition of “EEA regulated market”, for the words from “Article” to “2004” substitute “Article 56 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Terrorism Act 2000**

6.—(1) Schedule 3A to the Terrorism Act 2000(**166**) (regulated sector and supervisory authorities) is amended as follows.

(2) In paragraph 1(5)(a)(**167**) for “point 14” substitute “point 21”.

(3) In paragraph 3(1)(**168**), in the definition of “the Markets in Financial Instruments Directive”, for the words from “2004/36/EC” to “2004” substitute “2014/65/EU of the European Parliament and of the Council of 15 May 2014”.

### **Proceeds of Crime Act 2002**

7.—(1) Schedule 9 to the Proceeds of Crime Act 2002(**169**) (regulated sector and supervisory authorities) is amended as follows.

(2) In paragraph 1(5)(a)(**170**) for “point 14” substitute “point 21”.

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(**160**) [1991 c.31](#); section 116(4)(aa) was inserted by paragraph 7(2) of Schedule 21 to the Finance Act 2007 ([c.11](#)).

(**161**) [1992 c.40](#).

(**162**) Section 69A(4) was inserted by [S.I. 2005/2211](#) and amended by [S.I. 2007/126](#).

(**163**) Section 69E(5) was inserted by [S.I. 2005/2211](#) and amended by [S.I. 2007/126](#).

(**164**) [1998 c.29](#); paragraph 6(3) was amended by [S.I. 2002/1555](#) and [S.I. 2007/126](#); there are other amendments but none is relevant.

(**165**) [1998 c.41](#); paragraph 3(5) was amended by [S.I. 2007/126](#).

(**166**) [2000 c.11](#); Schedule 3A was inserted by the Anti-terrorism, Crime and Security Act 2001 ([c.24](#)).

(**167**) Paragraph 1(5)(a) was inserted by [S.I. 2007/3288](#).

(**168**) Paragraph 3(1) was inserted by [S.I. 2007/3288](#) and amended by [S.I. 2015/575](#); there are other amendments but none is relevant.

(**169**) [2002 c.29](#).

(**170**) Paragraph 1(5)(a) was inserted by [S.I. 2007/3287](#).

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(3) In paragraph 3(1)(171), in the definition of “the Markets in Financial Instruments Directive”, for the words from “2004/39/EC” to “2004” substitute “2014/65/EU of the European Parliament and of the Council of 15 May 2014”.

### **Income Tax (Trading and Other Income) Act 2005**

8. In section 381E(3) of the Income Tax (Trading and Other Income) Act 2005(172) (exception for returns from certain shares) for the words from “Directive” to “4.1(14)” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments (see Article 4.1.21)”.

### **Companies Act 2006**

9.—(1) The Companies Act 2006(173) is amended as follows.

(2) In section 474(1)(174) (minor definitions for Part 15), in the definition of “MiFID investment firm”—

- (a) for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”;
- (b) at the end of paragraph (a) insert “and”; and
- (c) for paragraphs (b) and (c) substitute—

“(b) a company which is an exempt investment firm as defined by regulation 8 (meaning of “exempt investment firm” in Chapter 1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX);”.

(3) In section 494A(175) (interpretation), in the definition of “transferable securities”, for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”.

(4) In section 519A(2)(176) (meaning of “public interest company”, “non-public interest company” and “exempt reasons”), for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”.

(5) In section 539(177) (minor definitions), in the definition of “MiFID investment firm”—

- (a) for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”;
- (b) at the end of paragraph (a) insert “and”; and
- (c) for paragraphs (b) and (c) substitute—

“(b) a company which is an exempt investment firm as defined by regulation 8 (Meaning of “exempt investment firm” in Chapter 1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX);”.

(6) In section 853E(6)(178) (duty to notify trading status of shares) for the definition of “relevant market” substitute—

““relevant market” means—

(171) Paragraph 3(1) was inserted by [S.I. 2007/3287](#) and amended by [S.I. 2015/575](#); there are other amendments but none is relevant.

(172) [2005 c.5](#); section 381E(3) was inserted by paragraph 3 of Schedule 12 to the Finance Act [2013 \(c.29\)](#).

(173) [2006 c.46](#).

(174) Section 474(1) was amended by [S.I. 2007/2932](#); there are other amendments but none is relevant.

(175) Section 494A was inserted by [S.I. 2016/649](#); there are amendments to this section but none is relevant.

(176) Section 519A(2) was inserted by section 18(3) of the Deregulation Act [2015 \(c.20\)](#) and amended by [S.I. 2016/649](#).

(177) Section 539 was amended by [S.I. 2007/2932](#); there are other amendments but none is relevant.

(178) Section 853E(6) was inserted by section 92 of the Small Business, Enterprise and Employment Act [2015 \(c.26\)](#).

- (a) a recognised investment exchange, as defined in section 285(1)(a) (exemption for recognised exemption exchanges and clearance houses) of the Financial Services and Markets Act 2000 (“the Act”); and
  - (b) any other market which is a regulated market, but not an overseas investment exchange, as defined by section 313 (interpretation of Part 18) of the Act..”.
- (7) In section 1173 (minor definitions: general)—
- (a) in subsection (1)(**179**)—
    - (i) in the definition of “regulated market” for the words from “Directive” to “4.1(14))” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments (see Article 4.1.21))”;
    - (ii) in the definition of “transferable securities”, for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”; and
  - (b) in subsection (2), in the definition of “regulated market”, for the words from “Council” to “field” substitute “[Directive 2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments”.
- (8) In section 1241(3) (meaning of “registered third country auditor” and “UK-traded non-EEA company”)—
- (a) in the definition of “regulated market”, for “Article 4.1(14) of [Directive 2004/39/EC](#)” substitute “Article 4.1.21 of [Directive 2014/65/EU](#)”; and
  - (b) in the definition of “transferable securities”, for “Article 4.1(18)” substitute “Article 4.1.44”.
- (9) In paragraph 20A of Schedule 10 (recognised supervisory bodies)(**180**) in the definition of “transferable securities” for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”.

### **Income Tax Act 2007**

- 10.** In section 274(4) of the Income Tax Act 2007(**181**) (requirements for the giving of approval) —
- (a) for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”; and
  - (b) for “Article 4.1(14)” substitute “Article 4.1.21”.

### **Counter-Terrorism Act 2008**

- 11.** In paragraph 7 of Schedule 7 (terrorist financing and money laundering) to the Counter-Terrorism Act 2008(**182**), in the definition of “the markets in financial instruments directive”, for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Corporation Tax Act 2010**

- 12.** In section 1158(4) (meaning of “investment trust”) of the Corporation Tax Act 2010(**183**) —
- (a) for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”; and

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(179) Subsection (1) was amended by [S.I. 2015/980](#); there are other amendments but none is relevant.

(180) Paragraph 20A was inserted by [S.I. 2016/649](#).

(181) [2007 c.3](#); section 274(4) was inserted by paragraph 2(2)(d) of Schedule 2 to the Finance (No. 3) Act 2010 ([c.33](#)).

(182) [2008 c.28](#); there are amendments to paragraph 7 but none is relevant.

(183) [2010 c.4](#); section 1158 was inserted by section 49(2) of the Finance Act 2011 ([c.11](#)).

(b) for “Article 4.1(14)” substitute “Article 4.1.21”.

### **Finance Act 2010**

**13.** In paragraph 45(15) of Schedule 1 (bank payroll tax) to the Finance Act 2010(**184**), for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Finance Act 2011**

**14.** In paragraph 13(4) of Schedule 19 to the Finance Act 2011(**185**) (the bank levy) in the definition of “dealing on own account”, for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Financial Services (Banking Reform) Act 2013**

**15.** In section 11(3)(b) of the Financial Services (Banking Reform) Act 2013(**186**) (review of proprietary trading: interpretation), for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

## SCHEDULE 5

Regulation 50(4)

### Amendments to other secondary legislation

### **Income Tax (Manufactured Overseas Dividends) Regulations 1993**

**1.** In regulation 5B(6) of the Income Tax (Manufactured Overseas Dividends) Regulations 1993(**187**) (chains of payments involving central counterparties), in paragraph (b) of the definition of “recognised investment exchange”, for the words from “2004/39/EC” to “April 2004” substitute “2014/65/EU of the European Parliament and of the Council of 15 May 2014”.

### **Financial Markets and Insolvency (Settlement Finality) Regulations 1999**

**2.** In regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**188**) (interpretation)—

- (a) in paragraph (b) of the definition of “institution”, for the words from “2004/39/EC” to “April 2004” substitute “2014/65/EU of the European Parliament and of the Council of 15 May 2014”;
- (b) in the definition of “securities”, for the words from “2004/39/EC” to “April 2004” substitute “2014/65/EU of the European Parliament and of the Council of 15 May 2014”.

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(184)2010 c.13.

(185)2011 c.11.

(186)2013 c.33.

(187)S.I. 1993/2004; regulation 5B(6) was inserted by S.I. 2011/2503, there are other amendments to this regulation but none is relevant.

(188)S.I. 1999/2979; regulation 2(1) was amended by S.I. 2007/126 and 2010/2993, there are other amendments to this regulation but none is relevant.

### **Uncertificated Securities Regulations 2001**

3. In paragraph 28 of Schedule 1 to the Uncertificated Securities Regulations 2001(189) (requirements for approval of a person as operator)—

- (a) omit sub-paragraph (3)(190); and
- (b) in sub-paragraph (4)(191)—
  - (i) in the definition of “branch”, for “4.1.26” substitute “4.1.30”;
  - (ii) in the definition of “financial instrument”, for “4.1.17” substitute “4.1.15”;
  - (iii) in the definition of “markets in financial instruments directive” for “2004/39/EC” substitute “2014/65/EU”; and
  - (iv) in the definition of “markets in financial instruments directive” for “21st April 2004” substitute “15 May 2014”.

### **Insurers (Reorganisation and Winding Up) Regulations 2004**

4. In regulation 44(3) of the Insurers (Reorganisation and Winding Up) Regulations 2004(192) (regulated markets)—

- (a) for “4.1.14” substitute “4.1.21”;
- (b) for “2004/39/EC” substitute “2014/65/EU”;
- (c) for “21 April 2004” substitute “15 May 2014”.

### **Credit Institutions (Reorganisation and Winding Up) Regulations 2004**

5. In regulation 31(3) of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004(193) (protection of third party purchasers)—

- (a) for “2004/39/EC” substitute “2014/65/EU”;
- (b) for “21 April 2004” substitute “15 May 2014”.

### **Occupational Pension Schemes (Investment) Regulations 2005**

6. In regulation 4(11) of the Occupational Pension Schemes (Investment) Regulations 2005(194) (investment by trustees)—

- (a) in the definition of “derivative instrument”, for “Directive 2004/39/EC” substitute “Directive 2014/65/EU”;
- (b) in paragraph (b) of the definition of “regulated market”, for “Directive 2004/39/EC” substitute “Directive 2014/65/EU”.

### **Authorised Investment Funds (Tax) Regulations 2006**

7. In regulation 14ZD(6)(b) of the Authorised Investment Funds (Tax) Regulations 2006(195) (index tracking funds), for the definition of “regulated market” substitute—

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(189) S.I. 2001/3755; paragraph 28 was inserted by S.I. 2007/124.

(190) Paragraph 28(3) was inserted by S.I. 2007/124.

(191) Paragraph 28(4) was inserted by S.I. 2007/124 and amended by S.I. 2013/3115, there are other amendments to this paragraph but none is relevant.

(192) S.I. 2004/353; regulation 44(3) was amended by S.I. 2007/126.

(193) S.I. 2004/1045; regulation 31(3) was amended by S.I. 2007/126.

(194) S.I. 2005/3378.

(195) S.I. 2006/964; regulation 14ZD(6)(b) was inserted by S.I. 2011/2192.

““regulated market” has the same meaning as in [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments (see article 4.1.21).”.

### **Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007**

**8.** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007(**196**) are revoked.

### **Payment Services Regulations 2009**

**9.** In regulation 19(15) of the Payment Services Regulations 2009(**197**) (safeguarding requirements), in the definition of “authorised custodian”—

- (a) for “[Directive 2004/39/EC](#) of 12th April 2004” substitute “[Directive 2014/65/EU](#) of 15th May 2014”;
- (b) for “Article 13” substitute “Article 16”.

### **Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009**

**10.** In article 1(3) of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009(**198**) (citation, commencement and interpretation)—

- (a) in the definition of “financial instrument”, in paragraph (a), for “Chapter VI of the Commission Regulation 1287/2006/EC” substitute “Articles 5 to 8, 10 and 11 of the Commission Delegated Regulation (EU) C(2016) 2398 of 25 April 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council”;
- (b) in the definition of “Markets in Financial Instruments Directive”, for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”;
- (c) in the definition of “transferable securities”, for “4(18)” substitute “4.44”.

### **Offshore Funds (Tax) Regulations 2009**

**11.** In regulation 12 of the Offshore Funds (Tax) Regulations 2009(**199**) (general interpretation), in the definition of “regulated market”—

- (a) for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”;
- (b) for “4.1(14)” substitute “4.1.21”.

### **Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010**

**12.** In regulation 35(2) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(**200**) (further conditions applicable to automatic enrolment schemes), in paragraph (b) of the definition of “competent authority”, for “paragraph 22 of Article 4 of [Directive 2004/39/EC](#)” substitute “paragraph 26 of Article 4 of [Directive 2014/65/EU](#)”.

(**196**) S.I. 2007/126; these Regulations were amended by S.I. 2007/763, 2007/2160, 2009/534, 2010/2628, 2011/1043, 2013/472, and 2013/3115.

(**197**) S.I. 2009/209; there are amendments to regulation 19(15) but none is relevant to these Regulations.

(**198**) S.I. 2009/322; article 1(3) was amended by S.I. 2009/1826, there are other amendments but none is relevant.

(**199**) S.I. 2009/3001; regulation 12 was amended by S.I. 2011/1211, there are other amendments but none is relevant.

(**200**) S.I. 2010/772; regulation 35(2) was inserted by S.I. 2012/1257 and amended by S.I. 2013/3115, there are other amendments but none is relevant.

### **Electronic Money Regulations 2011**

13. In regulation 21(7) of the Electronic Money Regulations 2011(201) (safeguarding option 1), in the definition of “authorised custodian”—

- (a) for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”;
- (b) for “Article 13” substitute “Article 16”.

### **Recognised Auction Platforms Regulations 2011**

14.—(1) Schedule 3 (modifications of Chapter 3A of Part 18 of the Financial Services and Markets Act 2000 in relation to recognised auction platforms and EEA market operators of auction platforms) of the Recognised Auction Platforms Regulations 2011(202) is amended as follows.

- (2) In paragraph 1(a), for “regulated market” substitute “trading venue”.
- (3) In paragraph 2(a), for “regulated market” substitute “trading venue”.
- (4) In paragraph 3—
  - (a) in sub-paragraph (a), for “regulated market” substitute “trading venue”;
  - (b) in sub-paragraph (b), for “42.6” substitute “53.6”;
- (5) In paragraph 4, for “42.6” substitute “53.6”.

### **Investment Trust (Approved Company) (Tax) Regulations 2011**

15. In regulation 45(6)(b) of the Investment Trust (Approved Company) (Tax) Regulations 2011(203) (index tracking funds), for the words from “Directive” to “(see article 4.1(14))” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments (see article 4.1.21)”.

### **Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors’ Reports) (Authorised Person) Order 2012**

16. In article 1(3) of the Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors’ Reports) (Authorised Person) Order 2012(204) (citation, coming into force and interpretation), in the definition of “regulated market” for the words from “Article” to “April 2004” substitute “Article 4.1.21 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Unauthorised Unit Trusts (Tax) Regulations 2013**

17. In regulation 23(3) (no tax charge for disposal of interests in offshore non-reporting funds: qualifying index) of the Unauthorised Unit Trusts (Tax) Regulations 2013(205) for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”.

### **Capital Requirements Regulations 2013**

18. In regulation 33 of the Capital Requirements Regulations 2013(206) (colleges of supervisors)

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(201) S.I. 2011/99; there are amendments to regulation 21(7) but none is relevant.

(202) S.I. 2011/2699.

(203) S.I. 2011/2999.

(204) S.I. 2012/1439; there are amendments to article 1(3) but none is relevant.

(205) S.I. 2013/2819.

(206) S.I. 2013/3115.



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- (a) in paragraph (4)(d), for “Articles 54 and 58 of [Directive 2004/39/EC](#)” substitute “Articles 76 and 81 of [Directive 2014/65/EU](#)”;
- (b) in paragraph (8), for “Articles 54 and 58 of [Directive 2004/39/EC](#)” substitute “Articles 76 and 81 of [Directive 2014/65/EU](#)”.

#### **Stamp Duty and Stamp Duty Reserve Tax (Exchange Traded Funds) (Exemption) Regulations 2014**

**19.** In regulation 2 of the Stamp Duty and Stamp Duty Reserve Tax (Exchange Traded Funds) (Exemption) Regulations 2014(**207**) (interpretation), in the definition of “multilateral trading facility” and “regulated market”, for the words from “Directive” to “April 2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

#### **Financial Services Act 2012 (Relevant Functions in Relation to Complaints Scheme) Order 2014**

**20.**—(1) The Financial Services Act 2012 (Relevant Functions in Relation to Complaints Scheme) Order 2014(**208**) is amended as follows.

(2) After article 2(d) (relevant functions of the FCA) insert—

“(e) its functions under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, other than its functions under regulation 32 (guidance) of those Regulations.

(f) its functions under the Data Reporting Services Regulations 2017(**209**), other than its functions under regulation 21 (guidance) of those Regulations.”.

(3) After article 2 (relevant functions of the FCA) insert—

##### **“Relevant functions of the PRA**

**3.** The functions of the PRA under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 are relevant functions for the purposes of section 85(2) of the Financial Services Act 2012.”.

#### **Public Interest Disclosure (Prescribed Persons) Order 2014**

**21.** In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014(**210**), in the entry in the second column relating to the entry in the first column for the Financial Conduct Authority—

(a) at the end of paragraph (k) omit “and”; and

(b) after paragraph (l) insert—

“(m) the conduct of persons who are subject to—

(i) Part 3 and 4 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;

(ii) the Data Reporting Services Regulations 2017; or

(iii) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.”.

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(207) S.I. 2014/911.

(208) S.I. 2014/1195.

(209) S.I. 2017/699.

(210) S.I. 2014/2418.



### **Reports on Payments to Governments Regulations 2014**

**22.** In regulation 2(1) of the Reports on Payments to Governments Regulations 2014(**211**) (interpretation), in paragraph (a) of the definition of “public interest entity” for the words from “point (14)” to “April 2004” substitute “point (21) of Article 4.1 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Public Contracts Regulations 2015**

**23.** In regulation 10(1)(e)(i) of the Public Contracts Regulations 2015(**212**) (specific exclusions for service contracts), for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”.

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(**211**) [S.I. 2014/3209](#); there are amendments to regulation 2(1) but none is relevant.

(**212**) [S.I. 2015/102](#).