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STATUTORY INSTRUMENTS

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**2018 No. 1115**

**The Financial Regulators' Powers (Technical Standards  
etc.) (Amendment etc.) (EU Exit) Regulations 2018**

**PART 2**

EU Exit Instruments

**Division of responsibilities**

- 4.—(1) This regulation applies if—
- (a) either condition A, B or C is satisfied; and
  - (b) condition D is satisfied.
- (2) Condition A is that the PRA proposes to exercise the power in regulation 3 to modify an EU Regulation specified in Part 4 of the Schedule, and the PRA—
- (a) proposes, in modifying the EU Regulation, to make separate provision for—
    - (i) PRA-authorized persons (within the meaning of section 2B(5) of the Financial Services and Markets Act 2000);
    - (ii) persons connected to them; or
    - (iii) a specified category of persons within paragraph (i) or (ii), or
  - (b) considers that the EU Regulation may need to be modified to make such provision in future (whether under the power in regulation 3 or otherwise).
- (3) Condition B is that the Bank of England proposes to exercise the power in regulation 3 to modify an EU Regulation specified in Part 5 of the Schedule, and the Bank of England—
- (a) proposes, in modifying the EU Regulation, to make separate provision for—
    - (i) central counterparties;
    - (ii) central securities depositories;
    - (iii) financial counterparties or non-financial counterparties within the meaning of the EMIR regulation; or
    - (iv) a specified category of persons within paragraph (i), (ii) or (iii), or
  - (b) considers that the EU Regulation may need to be modified to make such provision in future (whether under the power in regulation 3 or otherwise).
- (4) Condition C is that the FCA proposes to exercise the power in regulation 3 to modify an EU Regulation specified in Part 4 or Part 5 of the Schedule, and the FCA—
- (a) proposes, in modifying the EU Regulation, to make separate provision for—
    - (i) persons regulated solely by the FCA;
    - (ii) persons connected to them; or
    - (iii) a specified category of persons within paragraph (i) or (ii), or

- (b) considers that the EU Regulation may need to be modified to make such provision in future (whether under the power in regulation 3 or otherwise).
- (5) Condition D is that the initiating regulator considers that the separate provision referred to in paragraph (2), (3) or (4) (as the case may be) can most appropriately be made using the procedure set out in paragraph (6).
- (6) If this regulation applies, the initiating regulator must when making the proposed EU Exit instrument—
  - (a) amend the EU Regulation to divide it into two Parts—
    - (i) by re-designating the existing text as the first Part with the title of the EU Regulation followed by “(FCA)” as its heading; and
    - (ii) so as to secure the insertion of a second Part which repeats the text of the first Part and which has as its heading the title of the EU Regulation followed by—
      - (aa) “(PRA)”, where the EU Regulation is in Part 4 of the Schedule, or
      - (bb) “(Bank of England)”, where the EU Regulation is in Part 5 of the Schedule; and
  - (b) insert a provision at the beginning of each Part identifying the persons to whom that Part is to apply;
  - (c) make the modifications referred to in the opening words of conditions A, B or C (as the case may be) to the first Part of the EU Regulation (where the initiating regulator is the FCA) or to the second Part of the EU Regulation (where the initiating regulator is the PRA or the Bank of England).
- (7) The initiating regulation must consult with the other appropriate regulator in relation to the EU Regulation in question on the provision referred to in paragraph (6)(b).
- (8) In this regulation, “the initiating regulator”—
  - (a) if condition A (but not condition C) is satisfied, means the PRA;
  - (b) if condition B (but not condition C) is satisfied, means the Bank of England;
  - (c) if condition C is satisfied (whether or not condition A or B is also satisfied), means the FCA.
- (9) Where an EU Regulation has been amended by an EU Exit Instrument pursuant to paragraph (6)—
  - (a) the first Part of the EU Regulation is to be treated as falling within Part 1 of the Schedule; and
  - (b) the second Part of the EU Regulation is to be treated as falling within—
    - (i) Part 2 of the Schedule, where the EU Regulation originally fell within Part 4 of the Schedule; or
    - (ii) Part 3 of the Schedule, where the EU Regulation originally fell within Part 5 of the Schedule;
  - (c) neither the first Part nor the second Part of the EU Regulation may be modified by any regulator (under the power in regulation 3 or otherwise) which is not the appropriate regulator for that Part.