
STATUTORY INSTRUMENTS

2018 No. 1403

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

PART 4

Amendment of EU Regulations

CHAPTER 1

Amendment of Markets in Financial Instruments Regulation

Transparency for trading venues

27.—(1) In Article 4—

- (a) in paragraph 1, for “Competent authorities shall be able to” substitute “The FCA may”;
- (b) in paragraph 3—
 - (i) in the first subparagraph, in point (c)—
 - (aa) for “or [Directive 2014/65/EU](#)” substitute “, Commission Delegated Regulation (EU) 2017/565 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, the Markets in Financial Instruments Regulations 2017 or rules or relevant technical standards made by the FCA”;
 - (bb) for “competent authority” substitute “FCA”;
 - (cc) insert at the end “(and for these purposes, “relevant technical standards” mean technical standards made by the FCA under this Regulation)”;
 - (ii) in the second sub-paragraph, for “a competent authority” and “that competent authority” in each case substitute “the FCA”;
- (c) for paragraph 4, substitute—

“4. The FCA must monitor the application of any waivers granted under paragraph 1 and publish an annual report on how they are applied in practice.”;
- (d) in paragraph 5—
 - (i) in the first subparagraph—
 - (aa) for “A competent authority” substitute “The FCA”;
 - (bb) omit “, either on its own initiative or upon request by another competent authority,”;
 - (ii) omit the second subparagraph;
- (e) in paragraph 6—

- (i) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
 - (ii) omit the second and third subparagraphs;
 - (f) omit paragraph 7.
- (2) In Article 5—
- (a) in paragraph 1—
 - (i) in points (a) and (b), for “across the Union”, both times it occurs, substitute “across the relevant area”;
 - (ii) in point (b), for “overall Union trading” substitute “overall trading in the relevant area”;
 - (b) in paragraph 2—
 - (i) at the beginning, insert “Subject to paragraph 3A”;
 - (ii) for “has exceeded” substitute “appears to the FCA to have exceeded”;
 - (iii) for “the competent authority that authorised the use of those waivers by that venue” substitute “the FCA”;
 - (iv) for “ESMA” substitute “the FCA”;
 - (c) in paragraph 3—
 - (i) at the beginning, insert “Subject to paragraph 3A”;
 - (ii) after “across the Union” the first time it occurs, substitute “across the relevant area”;
 - (iii) for “has exceeded” substitute “appears to the FCA to have exceeded”;
 - (iv) for “all competent authorities” substitute “the FCA”;
 - (v) for “the Union” the second time it occurs, substitute “the United Kingdom”;
 - (d) after paragraph 3, insert—
 - “**3A.** Paragraphs 2 and 3 do not apply during the period (“the transitional period”)—
 - (a) of four years beginning with exit day; or
 - (b) ending on the day directed by the Treasury, where this is earlier.
 - 3B.** During the transitional period, the FCA may suspend the use of a waiver provided for in Article 4(1)(a) and 4(1)(b)(i) for a period of up to six months to ensure that its use does not unduly harm price formation if the FCA considers it necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.
 - 3C.** The FCA may renew a suspension imposed under paragraph 3B at the end of the six-month period referred to in that paragraph if it considers that the conditions which led it to impose a suspension still exist at that date.
 - 3D.** In deciding whether to suspend the use of a waiver under paragraph 3B, or to renew a suspension under paragraph 3C, the FCA—
 - (a) must also take into account—
 - (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA;
 - (ii) the thresholds applying under Article 5 of this Regulation as it has effect in the European Union; and
 - (iii) the most recent information published by ESMA under Article 5(4), 5(5) and 5(6) before exit day;

(b) may take into account—

- (i) any relevant information produced under Article 3, or under equivalent pre-trading transparency requirements in other jurisdictions, about the use of the waiver in the United Kingdom, or under equivalent waiver arrangements in any other country, in relation to the financial instrument; and
- (ii) any relevant information available in relation to trading volumes in the financial instrument concerned, whether in the United Kingdom or in any other country.

3E. In deciding whether to issue a direction terminating the transitional period, the Treasury must take into account whether the FCA is able to carry out its functions relating to transparency under this Regulation and its implementing measures (as amended under the European Union (Withdrawal) Act 2018)(1).”;

(e) in paragraph 4—

- (i) for “ESMA” substitute “After the transitional period, the FCA”;
- (ii) for “five working days” substitute “ten working days”;
- (iii) for “Union trading” substitute “trading in the relevant area”;
- (iv) for “across the Union” substitute “across the relevant area”;

(f) in paragraph 5—

- (i) for “the Union” substitute “the relevant area”;
- (ii) for “ESMA” substitute “the FCA”;
- (iii) for “five working days” substitute “ten working days”;

(g) in paragraph 6—

- (i) for “Union trading”, both times it appears, substitute “trading in the relevant area”;
- (ii) for “ESMA” substitute “the FCA”;
- (iii) for “five working days” substitute “ten working days”;

(h) in paragraph 8—

- (i) omit the first sentence;
- (ii) for “competent authorities”, substitute “the FCA”;

(i) in paragraph 9—

(i) in the first subparagraph—

- (aa) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
- (bb) for “across the Union” substitute “across the relevant area”;

(ii) omit the second and third subparagraphs.

(j) after paragraph 9, insert—

“**10.** For the purposes of this Article, “the relevant area” consists of the United Kingdom and those countries or regions specified by the FCA by direction in accordance with Article 50B.

11. The FCA may only give a direction under paragraph 10 specifying that a country or region is in the relevant area in relation to one or more financial instruments for the

purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess the volume of trading in the financial instruments concerned in that country or region.”.

- (3) In Article 7—
- (a) in paragraph 1—
 - (i) in the first subparagraph, for “Competent authorities” substitute “The FCA”;
 - (ii) in the second subparagraph, for “the competent authorities” substitute “the FCA”;
 - (iii) in the third subparagraph, in the first sentence, for “competent authority’s” substitute “FCA’s”;
 - (iv) in the third subparagraph, in the second sentence—
 - (aa) for “ESMA” substitute “The FCA”;
 - (bb) for the words from “shall submit” to the end, substitute “must publish an annual report on how they are applied in practice.”;
 - (v) omit the fourth subparagraph;
 - (b) in paragraph 2—
 - (i) in the opening words—
 - (aa) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
 - (bb) for “under Article 64 of [Directive 2014/65/EU](#)” substitute “under regulation 14 of the Data Reporting Services Regulations 2017(2)”;
 - (ii) omit the second and third sub-paragraphs.
- (4) In Article 9—
- (a) in paragraph 1, for “Competent authorities” substitute “The FCA”;
 - (b) omit paragraph 2;
 - (c) in paragraph 2a, for “Competent authorities” substitute “The FCA”;
 - (d) for paragraph 3, substitute—

“3. The FCA may withdraw a waiver granted under paragraph 1 if it observes that the waiver is being used in a way that deviates from its original purpose or if it considers that the waiver is being used to circumvent the requirements established in this Article.”;
 - (e) in paragraph 4—
 - (i) in the first subparagraph—
 - (aa) insert at the beginning “As”;
 - (bb) for “may” substitute “the FCA may”;
 - (cc) after “specified threshold”, the first time it occurs, insert “or if paragraph 4A applies”;
 - (dd) for “relevant competent authority” substitute “FCA”;
 - (ii) in the second subparagraph, for “relevant competent authority” substitute “FCA”;
 - (iii) omit the third subparagraph;
 - (f) after paragraph 4, insert—

“4A. During the transitional period referred to in Article 5(3A), the FCA may suspend the obligations referred to in Article 8 in relation to a financial instrument or class of

financial instrument for a specified period if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.

4B. In deciding whether to suspend those obligations—

- (a) the FCA must also take into account—
 - (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and
 - (ii) the most recent specified threshold published before exit day on the basis of calculations under Article 16 of Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives⁽³⁾;
- (b) the FCA may also take into account any other relevant information available in relation to liquidity in the relevant class of financial instrument concerned, whether in the United Kingdom or in any other country.”;
- (g) in paragraph 5—
 - (i) in the opening words for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
 - (ii) in point (a)—
 - (aa) for “Member States” substitute “the FCA”;
 - (bb) for “the Union” substitute “the relevant area”;
 - (iii) in point (d), in the second subparagraph, for “ESMA shall” substitute “the FCA must”;
 - (iv) omit the subparagraphs following point (e);
- (h) after paragraph 5, insert—

“**5A.** For the purposes of this Article, “the relevant area” consists of the United Kingdom and those countries or regions specified by the FCA by direction in accordance with Article 50B.

5B. The FCA may only give a direction under paragraph 5A specifying that a country or region is within the relevant area in relation to one or more financial instruments for the purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess the volume of trading in the financial instruments concerned in that country or region.”;

- (i) in paragraph 6—
 - (i) in the first subparagraph—
 - (aa) for “ESMA shall develop draft regulatory” substitute “the FCA may make”;
 - (bb) for “ESMA shall” the second time it occurs, substitute “the FCA must”;
 - (ii) omit the second and third subparagraphs.
- (5) In Article 11—
 - (a) in paragraph 1—
 - (i) in the first subparagraph, for “Competent authorities” substitute “The FCA”;

(3) OJ L87, 31.3.2017, p.229.

- (ii) in the second subparagraph, for “the competent authorities” substitute “the FCA”;
- (iii) in the third subparagraph—
 - (aa) for “competent authority’s” substitute “FCA’s”;
 - (bb) for the second sentence, substitute “The FCA must monitor the application of those arrangements for deferred trade-publication and must publish an annual report on how they are applied in practice.”;
- (b) in paragraph 2—
 - (i) in the first subparagraph—
 - (aa) insert at the beginning, “As”;
 - (bb) for “may” substitute “the FCA may”;
 - (cc) after “Article 9(5)(a)” insert “or if paragraph 2A applies”;
 - (dd) for “relevant competent authority” substitute “FCA”;
 - (ii) in the second subparagraph, for “relevant competent authority” substitute “FCA”;
 - (iii) omit the third subparagraph;
- (c) after paragraph 2, insert—

“**2A.** During the transitional period referred to in Article 5(3A), the FCA may suspend the obligations referred to in Article 10 in relation to a financial instrument or class of financial instrument for a specified period if the FCA considers that it is necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.

2B. In deciding whether to suspend those obligations—

 - (a) the FCA must also take into account—
 - (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and
 - (ii) the most recent specified threshold published before exit day on the basis of calculations under Article 13 of Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives⁽⁴⁾;
 - (b) the FCA may also take into account any relevant information available in relation to liquidity in the relevant class of financial instrument concerned, whether in the United Kingdom or in any other country.”
- (d) in paragraph 3, for “Competent authorities” substitute “The FCA”;
- (e) in paragraph 4—
 - (i) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
 - (ii) for “Article 64 of [Directive 2014/65/EU](#)” substitute “regulation 14 of the Data Reporting Services Regulations 2017⁽⁵⁾”;
 - (iii) omit the second and third subparagraphs.
- (6) In Article 12, in paragraph 2—

(4) OJ L87, 31.3.2017, p.229.

(5) [S.I. 2017/699](#).

- (a) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
 - (b) omit the second and third subparagraphs.
- (7) In Article 13, in paragraph 2, for “The Commission shall adopt delegated acts in accordance with Article 50 clarifying” substitute “The Treasury may by regulations clarify”.