
STATUTORY INSTRUMENTS

2018 No. 1403

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

PART 3

Amendment of secondary legislation: European Union (Withdrawal) Act 2018

CHAPTER 2

The Financial Services and Markets Act 2000
(Markets in Financial Instruments) Regulations 2017

Interpretation

7.—(1) In regulation 2(1)—

(a) for the definition of “algorithmic trading”, substitute—

““algorithmic trading” means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;”;

(b) for the definition of “ancillary services”, substitute—

““ancillary services” means any of the services and activities listed in Part 3A of Schedule 2 to the Regulated Activities Order;”;

(c) insert after the definition of “ancillary services”—

““appropriate regulator” has the meaning given in section 55A of the Act;”

(d) in the definition of “branch”, for “Article 4.1.30 (definitions) of the markets in financial instruments directive”, substitute “Article 2.1.20 of the markets in financial instruments regulation”;

(e) in the definition of “client” for “Article 4.1.9 of the markets in financial instruments directive”, substitute “Article 2.1.7 of the markets in financial instruments regulation”;

(f) in the definition of “commodity derivative” for “Article 4.1.50 of the markets in financial instruments directive”, substitute “Article 2.1.30 of the markets in financial instruments regulation”;

(g) for the definition of “competent authority”, substitute—

““competent authority” means the authority designated by regulation 3;”;

- (h) in the definition of “credit institution” for “Article 4.1.27 of the markets in financial instruments directive”, substitute “Article 2.1.19 of the markets in financial instruments regulation”;
- (i) for the definition of “derivative”, substitute—
 ““derivative” means a financial instrument referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order;”;
- (j) for the definition of “direct electronic access” substitute—
 ““direct electronic access” means an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access);”
- (k) in the definition of “emission allowance” for “point (11) of Section C of Annex 1 of the markets in financial instruments directive”, substitute “paragraph 11 of Part 1 of Schedule 2 to the Regulated Activities Order”;
- (l) omit the definition of “ESMA”;
- (m) for the definition of “financial instrument”, substitute—
 ““financial instrument” means those instruments specified in Part 1 of Schedule 2 to the Regulated Activities Order, read with Part 2 of that Schedule;”;
- (n) after the definition of “financial instrument”, insert—
 ““high-frequency algorithmic trading technique” means an algorithmic trading technique characterised by—
- (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry—
 - (i) co-location;
 - (ii) proximity hosting; or
 - (iii) high-speed direct electronic access;
 - (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and
 - (c) high message intraday rates which constitute orders, quotes or cancellations;”;
- (o) in the definition of “investment activity”, for “Section A of Annex 1 of the markets in financial instruments directive”, substitute “Part 3 of Schedule 2 to the Regulated Activities Order”;
- (p) in the definition of “investment firm”, for “Article 4.1.1 of the markets in financial instruments directive”, substitute “Article 2.1A of the markets in financial instruments regulation”;
- (q) in the definition of “investment service”, for “Section A of Annex 1 of the markets in financial instruments directive”, substitute “Part 3 of Schedule 2 to the Regulated Activities Order”;
- (r) in the definition of “investment services and activities” for “Section A of Annex 1 of the markets in financial instruments directive”, substitute “Part 3 of Schedule 2 to the Regulated Activities Order”;
- (s) for the definition of “multilateral trading facility”, substitute—

““multilateral trading facility” or “MTF”, “UK multilateral trading facility” and “EU multilateral trading facility” have the meanings given in Article 2.1.14, 2.1.14A and 2.1.14B respectively of the markets in financial instruments regulation;”;

(t) after the definition of “regulated activity” insert—

““Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(1);

“Regulation (EU) 2017/578” means Commission Delegated Regulation (EU) 2017/578 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes;

“Regulation (EU) 2017/589” means Commission Delegated Regulation (EU) 2017/589 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading;

“Regulation (EU) 2017/591” means Commission Delegated Regulation (EU) 2017/591 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives;

“SME growth market” means a MTF that is registered as an SME growth market in accordance with Part 5.10 of the Market Conduct sourcebook containing rules made by the FCA under the Act;”;

(u) for the definition of “regulated market” substitute—

““regulated market”, “UK regulated market” and “EU regulated market” have the meanings given in Article 2.1.13, 2.1.13A and 2.1.13B respectively of the markets in financial instruments regulation;”

(v) for the definition of “trading venue”, substitute—

““trading venue”, “UK trading venue” and “EU trading venue” have the meanings given in Article 2.1.16, 2.1.16A and 2.1.16B respectively of the markets in financial instruments regulation;”.

(2) After paragraph (2) of regulation 2, insert—

“(3) Unless the context otherwise requires, all references in these Regulations to—

- (a) a trading venue are to a UK trading venue;
- (b) a regulated market are to a UK regulated market;
- (c) an MTF are to a UK MTF;
- (d) an OTF are to a UK OTF; and
- (e) an EU regulated market, EU MTF or EU OTF include EU regulated markets, MTFs and OTFs in EEA countries.

(4) References in these Regulations to a “third country” (including in expressions including the words “third country”) are, except where the context otherwise requires, to be read as references to a country other than the United Kingdom.

(5) Any reference in these Regulations to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under the Act, as the sourcebook has effect on exit day.”

(3) In regulation 3—

- (a) for paragraph (1), substitute—
 - “(1) The FCA is designated to carry out all the functions of a competent authority provided for in—
 - (a) the Act;
 - (b) the markets in financial instruments regulation; and
 - (c) rules made under section 137A (the FCA general rules) of the Act or any other subordinate legislation conferring functions on the FCA made under the Act.”;
- (b) in paragraph (2)(b), omit “and Schedule 3 to the Act”;
- (c) in paragraph (4)—
 - (i) at the end of sub-paragraph (d), insert “and”;
 - (ii) omit sub-paragraph (e).