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STATUTORY INSTRUMENTS

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**2020 No. 646**

**The Over the Counter Derivatives, Central Counterparties  
and Trade Repositories (Amendment, etc., and  
Transitional Provision) (EU Exit) Regulations 2020**

**PART 4**

**Amendment of Regulation (EU) No. 648/2012**

**Article 25: location regulations**

**21.** For paragraph 2c of Article 25 (recognition of a third-country CCP) substitute—

“**2c.** The Treasury may make regulations in respect of a third-country CCP to be known as location regulations.

Location regulations may be made for the purpose of requiring that some or all of the clearing services of the third-country CCP may only be provided to clearing members and trading venues established in the United Kingdom by the CCP after it has been authorised in accordance with Article 14.

The Treasury may only make location regulations—

- (a) having received a recommendation from the Bank of England (see paragraph 2ca);
- (b) following compliance with the procedural requirements of paragraph 2cb.

Where a third-country CCP is already providing clearing services to clearing members or trading venues established within the United Kingdom, the requirement which may be imposed by virtue of the second subparagraph may only come into force after a period of time specified in the location regulations has elapsed (“adaptation period”).

Location regulations including an adaptation period may specify—

- (a) conditions with which the third-country CCP must comply in order to continue to provide clearing services or activities described in the location regulations during the adaptation period;
- (b) measures that must be taken during the adaptation period, in order to limit the potential costs to clearing members and their clients, in particular those established in the United Kingdom.

**2ca.** The Bank of England may recommend that the Treasury make location regulations under paragraph 2c if it considers that a third-country CCP, or some of its clearing services, are of such substantial systemic importance to the United Kingdom that the CCP should not be recognised under paragraph 1.

The recommendation must be in writing.

The recommendation must include advice—

- (a) explaining how compliance with the conditions set out in paragraph 2b would not sufficiently address the financial stability risk for the United Kingdom;
- (b) describing the characteristics of the clearing services provided by the CCP, including the liquidity and physical settlement requirements associated with the provision of such services;
- (c) providing a quantitative technical assessment of the costs and benefits and consequences of a decision not to recognise the CCP to provide certain clearing services or activities, taking into account—
  - (i) the existence of potential alternative substitutes for the provision of the clearing services concerned in the currencies concerned to clearing members, and to the extent the information is available, their clients and indirect clients established in the United Kingdom;
  - (ii) the potential consequences of including the outstanding contracts held at the CCP within the scope of the location direction;
- (d) where relevant, addressing the duration of the adaptation period mentioned in the fourth subparagraph of paragraph 2c and any conditions or measures the Bank of England proposes to be included in the location regulations (see the fifth subparagraph of paragraph 2c).

**2cb.** Before the Treasury make location regulations under paragraph 2c, they must send a statement in writing to the third-country CCP concerned.

The statement must—

- (a) state that the Treasury propose to make location regulations in respect of the CCP;
- (b) provide a summary of the Treasury’s reasons for proposing to make the regulations;
- (c) be accompanied by a copy of the Bank of England’s recommendation given under paragraph 2ca;
- (d) specify a reasonable period within which the CCP may make representations.

The Treasury must have regard to any representations made within the period specified in the statement.

Where the Treasury make location regulations, they must—

- (a) send a copy of the regulations to—
  - (i) the third-country CCP concerned;
  - (ii) the Bank of England;
  - (iii) the Financial Conduct Authority, and
- (b) publish the regulations on their website.”.