

<p>Title: The Markets in Financial Instruments (Equivalence) (United States of America) (Commodity Futures Trading Commission) Regulations 2024</p> <p>SI No: 2024/638</p> <p>Other departments or agencies: N/A</p> <p>Contact for enquiries: Roisin.Gadd@hmtreasury.gov.uk</p>	<p>De minimis assessment</p>
<p>Cost of Preferred (or more likely) Option</p> <p>No additional direct cost on business</p>	<p>Date: 10/05/2024</p> <p>Type of regulation: Domestic</p> <p>Date measure comes into force: 04/06/2024</p> <p>Net cost EANDCB business per year</p> <p>No additional direct cost</p>

1. What is the problem under consideration? Why is government intervention necessary?

The Derivatives Trading Obligation (DTO) is set out in Article 28(4) of the Markets in Financial Instruments Regulation (Regulation EU 600/2014 as assimilated into UK law) (MiFIR).¹

The obligation requires financial counterparties, and some non-financial counterparties, to conclude transactions of certain classes of derivative only on specified UK trading venues or specified trading venues in an overseas jurisdiction that have been determined equivalent. Derivatives are contracts between two or more parties, the value of which are based on an underlying asset.

The DTO aims to increase transparency of derivatives trading and market integrity, by improving information on prices and liquidity in the derivatives markets.

The equivalence decision for the Commodity Futures Trading Commission (CFTC) establishes that designated contract markets (DCMs) and swap execution facilities (SEFs) established in the United States of America (USA) and authorised by the CFTC are subject to legally binding requirements which are equivalent to the requirements for UK trading venues. The decision also verifies that such DCMs and SEFs are subject to effective supervision and enforcement by the CFTC.

Having the USA approved as an equivalent overseas jurisdiction for these purposes ensures that UK counterparties can continue to trade the derivatives instruments that are subject to trading obligations on DCMs and SEFs in the USA and authorised by the CFTC.

A decision was made by the European Commission in December 2017 to grant equivalence to USA CFTC trading venues under Article 28(4) of MiFIR on the basis that the CFTC’s regulation and supervision of authorised DCMs and SEFs is equivalent to the requirements in UK MiFIR.² This decision was assimilated into UK law pursuant to section 3(1) of the European Union (Withdrawal) Act 2018.

The UK considers that the CFTC’s regime for regulating and supervising the trading venues it authorises is still equivalent to the requirements of UK MiFIR, on an outcomes basis. However, since the original EU equivalence decision, several additional DCMs and SEFs established in the USA

¹ <https://www.legislation.gov.uk/eur/2014/600/article/28>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D2238&from=EN>

obtained authorisation from the CFTC to operate as regulated markets or amended their names. The original decision therefore needs to be revoked and re-enacted with an updated annex to reflect these changes in order to maintain the original intention of the policy.

2. What are the policy objectives and the intended effects?

This SI will ensure all UK firms can continue to trade derivatives instruments that are subject to trading obligations on DCMs and SEFs in the USA and authorised by the CFTC.

To ensure that the list of authorised USA CFTC trading venues in the UK is up to date, the annex of DCMs and SEFs deemed equivalent must be updated.

Having an outdated list of venues would disadvantage UK firms as they would not be able to fulfil the DTO on all the USA CFTC venues that HMT deem to be equivalent.

3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option

A Statutory instrument is the only way to update the Annex in the UK's MiFIR Article 28 equivalence decision for the CFTC. HMT will keep this list under review and will propose updates when necessary.

The alternative, of doing nothing, would mean UK firms could not fulfil the DTO by using certain DCMs and SEFs that HM Treasury considers to meet equivalence requirements to UK MIFIR, on an outcomes basis.

4. Please justify why the net impacts (i.e., net costs or benefits) to business will be less than £5 million a year.

This SI will not impose any significant requirements, or costs or burdens upon UK businesses.

This legislation amends an existing equivalence decision rather than introducing a new decision. Therefore, this amendment does not in and of itself cause costs or benefits as DCMs and SEFs added to the annex will not be required to undertake any new activities or costs; rather, it means that UK firms can continue trading derivative contracts on the specified venues in the annex and fulfil their obligations under the DTO by doing so.

5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

- a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**

No

- b) **Disproportionate burdens on small businesses**

No. This SI itself does not change or create disproportionate burdens on small businesses.

- c) **Significant gross effects despite small net impacts**

No

- d) **Significant wider social, environmental, financial or economic impacts**

No

- e) **Significant novel or contentious elements**

No

Sign-off for de minimis assessment: SCS

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Deputy Director, Securities and Markets HM Treasury

Signed: *Tom Duggan*

Deputy Director, Better Regulation Unit HM Treasury

Signed: *Jonathan Edwards*

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***Bim Afolami***

Date: 10/05/2024