

SCHEDULE 2

Regulation 50(1)

Amendments to the Financial Services and Markets Act 2000

1. The Act is amended as follows.

Amendments to Part 3 (authorisation and exemption)

2.—(1) Section 39 (exemption of appointed representatives) is amended as follows.

(2) In subsection (1ZA)(1) after “(1A)” insert “, (1AA)”.

(3) In the opening words of subsection (1A)(a)(2) for “or a credit institution” substitute “, a credit institution, or a person mentioned in Article 3.1 (optional exemptions) of the markets in financial instruments directive”.

(4) After subsection (1A) insert—

“(1AA) This subsection applies to a person—

- (a) if the person’s principal is an investment firm or a credit institution, and
- (b) so far as the business for which the person’s principal has accepted responsibility is selling, or advising clients on, structured deposits as defined by Article 4.1.43 (definitions) of the markets in financial instruments directive,

unless the person is entered on the applicable register.”

(5) In subsection (1B)(3)—

(a) in the opening words at the beginning insert “In subsections (1A) and (1AA)”;

(b) in paragraph (a)—

- (i) omit the words from “which” to “appoint tied agents”;
- (ii) for “Article 23” substitute “Article 29”; and
- (iii) at the end insert “and”; and

(c) omit paragraph (b) (with the “and” following it).

(6) In subsection (7)(a)(4) for “4.1.25” substitute “4.1.29”.

(7) In subsection (8)(5), in the definition of “competent authority” for “4.1.22” substitute “4.1.26”.

3.—(1) Section 39A(6) (certain tied agents operating outside the United Kingdom) is amended as follows.

(2) In subsection (6)—

(a) for paragraph (c)(7) substitute—

“(c) enters into a relevant contract with an agent who is not entered on—

- (i) the record maintained by the FCA by virtue of section 347(1)(ha), or
- (ii) the register of tied agents of another EEA State maintained pursuant to Article 29 of the markets in financial instruments directive;” and

(1) Subsection (1ZA) was inserted by [S.I. 2015/910](#).

(2) Subsection (1A) was inserted by [S.I. 2007/126](#) and amended by [S.I. 2015/910](#).

(3) Subsection (1B) was inserted by [S.I. 2007/126](#) and amended by paragraph 5(2) of Schedule 18 to the Financial Services Act 2012 (c.21).

(4) Subsection (7) was inserted by [S.I. 2007/126](#).

(5) Subsection (8) was inserted by [S.I. 2007/126](#).

(6) Section 39A was inserted by [S.I. 2007/126](#).

(7) Paragraph (c) was amended by paragraph 6 of Schedule 18 to the Financial Services Act 2012.

Status: This is the original version (as it was originally made).

- (b) in paragraph (d) after “record” insert “or register.”
- (3) In subsection (8)(a) for “Article 4.1.25” substitute “Article 4.1.29”.
- (4) In subsection (9) in the definition of “competent authority” for “Article 4.1.22” substitute “Article 4.1.26”.

Amendments to Part 4A (permission to carry on regulated activities)

4. After section 55K(1)(d)(8) (investment firms: particular conditions that enable cancellation) insert—

“;

- (e) that the firm has seriously or systematically infringed the markets in financial instruments regulation.”.

5.—(1) Section 55R(9) (persons connected with an applicant) is amended as follows.

(2) In subsection (2)—

- (a) in paragraph (a) after “intermediaries))” insert “or “an EEA market operator”; and
- (b) in the closing words after “the firm’s” insert “ or the market operator’s”.

(3) After subsection (3) insert—

“(3A) A person (“P”) is connected with an EEA market operator if—

- (a) P is an investment firm and is a subsidiary undertaking of the market operator, or
- (b) P is an investment firm and is a subsidiary undertaking of a parent undertaking of the market operator.

(3B) In subsection (2)—

“EEA market operator” has the meaning given in section 312D (interpretation of Chapter 3A); and

“home state regulator”, in relation to an EEA market operator, has the meaning given in section 312D.”.

(4) After subsection (6)(10) insert—

“(7) Subsection (8) applies where—

- (a) an investment firm (“C”) makes an application for permission under section 55A to carry on a regulated activity which is any of the investment services and activities;
- (b) the requirement for C to obtain permission under section 55A to carry on that activity derives from Chapter 1 of Title II of the markets in financial instruments directive; and
- (c) C is controlled by a person who also controls—
 - (i) an EEA credit institution,
 - (ii) an EEA investment firm, or
 - (iii) an EEA insurance undertaking.

(8) Before granting C’s application for permission, the regulator concerned must—

(8) Section 55K was inserted by section 11(2) of the Financial Services Act 2012.

(9) Section 55R was inserted by section 11(2) of the Financial Services Act 2012.

(10) Subsection (6) was inserted by [S.I. 2013/3115](#).

- (a) in a case falling within subsection (7)(c)(i) consult the competent authorities of the other EEA State responsible for the authorisation or supervision of the credit institution;
 - (b) in case falling within subsection (7)(c)(ii) consult the competent authority of the other EEA State responsible for the authorisation of the investment firm;
 - (c) in a case falling within subsection (7)(c)(iii), consult the competent authorities of the other EEA State responsible for the authorisation or supervision of the insurance undertaking.
- (9) In subsections (7)—
- “controls” has the same meaning as in Article 4.1.35(b)(definitions) of the markets in financial instruments directive;
- “EEA credit institution” means a credit institution, as defined by Article 4.1.27 of the markets in financial instruments directive, authorised in another EEA State pursuant to Title III of the capital requirements directive;
- “EEA insurance undertaking” means an insurance undertaking, as defined by Article 13.1 of the Solvency 2 Directive, authorised in another EEA State;
- “EEA investment firm” means an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive, authorised in another EEA State pursuant to Chapter 1 of Title II of that directive.”

Amendments to Part 6 (official listing)

6. In section 86(7)(**11**) (exempt offers to the public) for subsection (d) substitute—

- “(d) a person whom—
- (i) any relevant firm was authorised to continue to treat as a professional client immediately before 3 January 2018 by virtue of Article 71.6 (transitional provisions) of [Directive 2004/39/EC](#) on markets in financial instruments(**12**); and
 - (ii) the firm may continue to treat as a professional client from 3 January 2018 by virtue of Section II.2 of Annex II to the markets in financial instruments directive.”

7.—(1) Section 102A(**13**) (meaning of “securities” etc) is amended as follows.

(2) In subsection (3)(**14**) for the words “[Directive 2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments” substitute “the markets in financial instruments directive”.

(3) In subsection (4)(**15**) for “4.1.17” substitute “4.1.15”.

8. In section 103(1)(**16**) (interpretation of Part 6) in the definition of “regulated market” for the words “Article 4.1(14) of [Directive 2004/](#)” to the end substitute “Article 4.1.21 of the markets in financial instruments directive”.

(11) Section 86(7) was inserted [S.I. 2005/1433](#) and amended by [S.I. 2012/1538](#).

(12) OJ L145 30.4.2004 p.1.

(13) Section 102A was inserted by [S.I. 2005/1433](#).

(14) Subsection (3) was amended by paragraph 10(3) of Schedule 15 to the Companies Act 2006 ([c.46](#)).

(15) Subsection (4) was inserted by [S.I. 2016/680](#).

(16) Section 103(1) was amended by paragraph 11(2) of Schedule to the Companies Act 2006; there are other amendments but none is relevant.

Amendments to Part 8 (provisions relating to market abuse)

9.—(1) Section 122G(17) (publication of information and corrective statements by issuers) is amended as follows.

(2) In the opening words of subsection (1) after “issuer” insert “or emission allowance market participant”.

(3) For subsection (7) substitute—

“(7) In this section—

“emission allowance market participant” has the same meaning as in Article 3.1.19 (definitions) of the market abuse regulation; and

“specified” means specified by the FCA.”.

10.—(1) Section 122I(18) (power to suspend trading in financial instruments) is amended as follows.

(2) After subsection (2) insert—

“(2A) But subsection (2) does not apply if the financial instrument is an emission allowance.”.

(3) In the opening words of subsection (4) after “instrument” insert “other than an emission allowance”.

(4) After subsection (4) insert—

“(4A) A suspension of trading in a financial instrument that is an emission allowance takes effect—

(a) immediately, if the FCA states that is the case; or

(b) on such later date as the FCA specify.”.

11. After section 122I insert—

“Power to suspend auctioning of auctioned products on a recognised auction platform

122IA.—(1) The FCA may suspend the auctioning of a relevant auctioned product at an auction conducted by a recognised auction platform where it considers it necessary for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(2) If the FCA does so the recognised auction platform may refer the matter to the Tribunal.

(3) A suspension by the FCA takes place—

(a) immediately, if the FCA specify this is the case, or

(b) on such later date as the FCA specify.

(4) The FCA may—

(a) cancel a suspension under subsection (1), and

(b) impose such conditions for the cancellation to take effect as it considers appropriate.

(5) The provisions relating to the suspension and removal of financial instruments from trading set out in—

(17) Section 122G was inserted by [S.I. 2016/680](#).

(18) Section 122I was inserted by [S.I. 2016/680](#).

(a) section 313B(2) to (4)(19) (suspension or removal of financial instruments from trading: procedure), and
(b) sections 313BA (procedure following consideration of representations) to 313BC(20) (decisions on applications for revocation by institutions),
apply, with the modifications set out in subsection (6), to a suspension of the auctioning of a relevant auctioned product at an auction conducted by a recognised auction platform.

(6) The modifications referred to in subsection (5) are—

- (a) references to a requirement imposed on an institution under section 313A are to be read as references to the suspension of the auctioning of the relevant auctioned product;
- (b) references to an institution are to be read as references to the recognised auction platform;
- (c) in section 313B, the omission of—
 - (i) subsection (2)(a)(ii);
 - (ii) in subsection (3A)(d), the words “or the issuer of the financial instrument in question” and “or the issuer”;
 - (iii) in subsection (3A)(f), the words “or the issuer of the financial instrument in question”;
- (d) the omission of section 313BA(5)(b) and (8);
- (e) the omission of section 313BB(6)(b); and
- (f) the omission of section 313BC(3)(b) and (6)(b).

(7) In this section “relevant auctioned product” means an auctioned product (as defined by Article 4 (auctioned products) of the emission allowance auctioning regulation) which is an emission allowance or based on an emission allowance.”.

12. In section 123(1)(c)(i)(21) (power to impose penalties or issue censure) after “122I, ” insert “122IA,”.

13.—(1) Section 123A(22) (power to prohibit individuals from managing or dealing) is amended as follows.

(2) In subsection (1)(c) after “122I” insert “, 122IA”.

(3) In subsection (2)—

- (a) in the opening words for “either or both” substitute “one or more”; and
- (b) after paragraph (b) insert—

“(c) a temporary prohibition on the individual making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform.”.

(4) After subsection (7) insert—

“(8) For the meaning of “recognised auction platform” in this Part, see section 131AB.”.

(19) Sections 313B(2) to (4) were inserted by [S.I. 2007/126](#) and amended by [S.I. 2010/1193](#) and section 36 of the Financial Services Act 2012.

(20) Section 313BA to 313BC were inserted by [S.I. 2010/1193](#) and amended by section 36 of the Financial Services Act 2012.

(21) Section 123 was inserted by [S.I. 2016/680](#).

(22) Section 123A was inserted [S.I. 2016/680](#).

Status: This is the original version (as it was originally made).

14. In section 123B(1)(c)(**23**) (suspending permission to carry on regulated activities etc) after “122I” insert “, 122IA”.

15. In section 124(10)(**24**) (statement of policy) in paragraph (c)(i) of the definition of “relevant person” after “122I,” insert “122IA,”.

16.—(1) Section 129(**25**) (power of the court to impose administrative sanctions in cases of market abuse) is amended as follows.

(2) In subsection (7), in the definition of “temporary prohibition”—

(a) at the end of paragraph (a) omit “or”;

(b) after paragraph (b) insert—

“; or

(c) making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform.”.

(3) After subsection (7) insert—

“(8) For the meaning of “recognised auction platform” in this Part, see section 131AB.”.

17. In section 131AB (**26**) (interpretation)—

(a) in the definition of “financial instrument” for “4.1(17)” substitute “4.1.15”; and

(b) at the appropriate places insert—

““emission allowance” has the meaning given in Article 3.1.19 (definitions) of the market abuse regulation;”;

““recognised auction platform” has the meaning given in regulation 1(3) of the Recognised Auction Platform Regulations 2011 (S.I. 2011/2699);”.

Amendments to Part 9A (rules and guidance)

18. In section 137R(5)(b)(**27**) (financial promotion rules)—

(a) in sub-paragraph (i) for “paragraphs 1 to 8 of Article 19” substitute “Articles 24 (general principles and information to clients) and 25 (assessment of suitability and appropriateness and reporting to clients)”;

(b) for sub-paragraph (ii)(**28**) substitute—

“(i) any delegated act adopted under Article 24.13 or 25.8 of that directive.”.

Amendments to Part 12 (control over authorised persons)

19. In section 184(4)(a)(**29**) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.

(23) Section 123B was inserted by S.I. 2016/680.

(24) Section 124(10) was inserted by S.I. 2016/680.

(25) Section 129 was inserted by S.I. 2016/680.

(26) Section 131AB was inserted by S.I. 2016/680.

(27) Section 137R was inserted by section 24(1) of the Financial Services Act 2012.

(28) Sub-paragraph (ii) was amended by S.I. 2015/910.

(29) Section 184 was inserted by S.I. 2009/534.

Amendments to Part 13 (incoming firms: intervention by FCA or PRA)

20.—(1) Section 194A(**30**) (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: appropriate regulator primarily responsible for securing compliance) is amended as follows.

(2) In subsection (1)(b)(**31**) for “62.2” substitute “86.2”.

(3) In subsection (3)—

(a) at the end of paragraph (a) omit “or”;

(b) after paragraph (a) insert—

“(aa) by or under any provision of the markets in financial instruments regulation; or”; and

(c) in paragraph (b)—

(i) for “Community” substitute “EU”; and

(ii) after “directive” insert “or the markets in financial instruments regulation”.

21.—(1) Section 195A(**32**) (contravention by relevant EEA firm etc of directive requirements: home state regulator primarily responsible for securing compliance) is amended as follows.

(2) In subsection (1)(a)(**33**) for “62.1 or 62.3” substitute “86.1 or 86.3”.

(3) In subsection (2), insert—

(a) at the end of paragraph (a) omit “or”;

(b) after paragraph (a) insert—

“(aa) by or under any provision of the markets in financial instruments regulation; or”; and

(c) in paragraph (b)—

(i) for “Community” substitute “EU”; and

(ii) after “directive” insert “or the markets in financial instruments regulation”.

Amendments to Part 14 (disciplinary measures)

22. In section 206A(1B)(**34**) (suspending permission to carry on regulated activities etc) after “122I,” insert “122IA,”.

Amendments to Part 15 (the financial services compensation scheme)

23.—(1) Section 213 (the compensation scheme) is amended as follows.

(2) In subsection (1)(**35**)—

(a) at the end of paragraph (a) omit “or”;

(b) after paragraph (a) insert—

(30) Section 194A was inserted by [S.I. 2007/126](#).

(31) Subsection (1)(b) was amended by paragraph 33(2) of Schedule 4 to the Financial Services Act 2012.

(32) Section 195A was inserted by [S.I. 2007/126](#) and amended by [S.I. 2011/1613](#).

(33) Subsection (1) was amended by paragraph 35(2) of Schedule 4 to the Financial Services Act 2012; there are other amendments but none is relevant.

(34) Section 206A was inserted by section 9 of the Financial Services Act 2010 ([c.28](#)) and subsection (1B) was inserted by [S.I. 2016/680](#).

(35) Subsection (1) was amended by paragraph 3(2) and (3)(a) and (b) of Schedule 10 to the Financial Services Act 2012.

Status: This is the original version (as it was originally made).

- “(aa) relevant exchanges are unable, or likely to be unable, to satisfy claims made against them in connection with a regulated activity relating to a trading facility carried on by the exchange, or”;
- (c) in paragraph (b) after “relevant persons” insert “or relevant exchanges”.
- (3) In subsection (3)—
- (a) for paragraphs (a) and (b) substitute—
- “(a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with—
- (i) a regulated activity carried on (whether or not with permission) by relevant persons; and
- (ii) a regulated activity relating to a trading facility carried on (whether or not in accordance with any requirements relating to that activity resulting from section 286) by relevant exchanges; and
- (b) to have power to impose levies for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks)—
- (i) on authorised persons, or any class of authorised person;
- (ii) on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or any class of such exchanges; or
- (iii) on authorised persons and on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or on any class of such persons and exchanges.”.
- (4) For subsection (4) substitute—
- “(4) The compensation scheme may provide for the scheme manager to have power to impose levies—
- (a) on authorised persons, or any class of authorised person;
- (b) on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or any class of such exchanges; or
- (c) on authorised persons and on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or on any class of such persons and exchanges,
- for the purpose of recovering the cost (whenever incurred) of establishing the scheme.”.
- (5) For subsection (5)(36) substitute—
- “(5) In making any provision of the scheme by virtue of subsection (3)(b), the regulators must take account of the desirability of ensuring that the amount of the levies imposed on a particular —
- (a) class of authorised person;
- (b) class of recognised investment exchange carrying on a regulated activity relating to a trading facility; or
- (c) class of authorised person and of recognised investment exchanges carrying on a regulated activity relating to a trading facility;
- reflects, so far as is practicable, the amount of claims made, or likely to be made in respect of that class of person, exchange, or persons and exchanges.”.

(36) Subsection (5) was amended by paragraph 3(2) of Schedule 10 to the Financial Services Act 2012.

(6) After subsection (11)(37) insert—

“(12) In this Part (except in sections 220 and 224) “relevant exchange” means a body corporate or unincorporated association which was a recognised investment exchange carrying on a regulated activity relating to a trading facility at the time the act or omission giving rise to the claim against it, or against a successor falling within subsection (1)(b), took place.

(13) In this Part “regulated activity relating to a trading facility” means—

- (a) the regulated activity of operating a multilateral trading facility; or
- (b) the regulated activity of operating an organised trading facility.”

24. In section 214(1)(38)(general)—

(a) in paragraph (a)—

- (i) after “person” insert “or relevant exchange”; and
- (ii) after “him” insert “or it”;

(b) in paragraph (aa)(39) after “person” insert “or relevant exchange”.

25.—(1) Section 215(40) (rights of the scheme in insolvency) is amended as follows.

(2) In subsection (3) for the words from “a company” to the end substitute—

“—

(a) a company or partnership which is a relevant person; or

(b) a body corporate or unincorporated association which is a relevant exchange;

the scheme manager has the same rights as are conferred on the regulators by section 362.”

(3) In subsection (4) after “relevant person” insert “or relevant exchange”.

26.—(1) Section 218A(41) (regulators power to require information) is amended as follows.

(2) In subsection (1)(42) after “authorised persons” insert “or recognised investment exchanges carrying on a regulated activity relating to a trading facility”.

(3) In subsection (3) after paragraph (a) insert—

“(aa) to recognised investment exchanges mentioned in subsection (1) generally or only to specified exchanges or classes of exchange;”.

27.—(1) Section 220(43) (scheme manager’s power to inspect information held by liquidator etc.) is amended as follows.

(2) In subsection (1) after “relevant person” insert “or insolvent relevant exchange”.

(3) In subsection (3)—

- (a) in paragraph (a) after “relevant person” insert “or insolvent relevant exchange”; and
- (b) in paragraph (b) after “relevant person” insert “or insolvent relevant exchange”.

(4) In subsection (5)—

(37) Subsection (11) was inserted by [S.I. 2011/16/13](#).

(38) Section 214 was amended by paragraph 4 of Schedule 10 to the Financial Services Act 2012; there are other amendments but none is relevant.

(39) Paragraph (aa) was inserted by paragraph 4 of Schedule 10 to the Financial Services Act 2012.

(40) Section 215 was amended by paragraph 54(2) of the Enterprise Act 2002 ([c.40](#)), [S.I. 2005/1455](#), and paragraph 5 of Schedule 10 to the Financial Services Act 2012; there are other amendments but none is relevant.

(41) Section 218A was inserted by section 176(1) of the Banking Act 2009.

(42) Subsection (1) was inserted by [S.I. 2015/486](#).

(43) Section 220 was amended by section 123(3) of the Banking Act 2009, [S.I. 2009/805](#), and [S.I. 2016/1034](#).

Status: This is the original version (as it was originally made).

- (a) after ““relevant person”” insert “and “relevant exchange””; and
- (b) for “has” substitute “have”.

28.—(1) Section 224 (scheme manager’s power to inspect documents held by Official Receiver etc) is amended as follows.

(2) In subsection (1)(**44**) in the opening words after “relevant person” insert “or relevant exchange”.

(3) After subsection (4) insert—

“(4A) In this section “relevant exchange” means a body corporate or unincorporated association carrying on a regulated activity relating to a trading facility at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place.”.

Amendments to Part 18 (recognised investment exchanges and clearing houses)

29. Omit section 286(4A) to (4E)(**45**) (qualification for recognition).

30. After section 287(**46**) (application by an investment exchange) insert—

“Application by an investment exchange: persons connected with an applicant

287A.—(1) Subsection (2) applies where—

- (a) a body corporate or unincorporated association (“A”) makes an application under section 287 for an order declaring it to be a recognised investment exchange; and
- (b) A is—
 - (i) connected with an EEA credit institution or EEA insurance undertaking; or
 - (ii) controlled by a person who also controls an EEA credit institution or EEA insurance undertaking.

(2) Before making a recognition order declaring A to be a recognised investment exchange under section 290, the FCA must consult the competent authority responsible for the supervision of the EEA credit institution or EEA insurance undertaking.

(3) A is connected with an EEA credit institution or EEA insurance undertaking if—

- (a) A is a subsidiary undertaking of the EEA credit institution or EEA insurance undertaking; or
- (b) A is a subsidiary undertaking of a parent undertaking of the EEA credit institution or EEA insurance undertaking.

(4) In this section—

“control” has the same meaning as in Article 4.1.35(b) (definitions) of the markets in financial instruments directive;

“EEA credit institution” means a credit institution (as defined by Article 4.1.27 of the markets in financial instruments directive) authorised in another EEA State under the capital requirements directive;

“EEA insurance undertaking” means an insurance undertaking (as defined by Article 13.1 of the Solvency 2 Directive) authorised in another EEA State.”.

(44) Subsection (1) was amended by paragraph 15 of Schedule 10 to the Financial Services Act 2012.

(45) Subsections (4A) to (4E) were inserted by [S.I. 2006/2975](#) and amended by paragraph 2(3) of Schedule 8 to the Financial Services Act 2012.

(46) There are amendments to section 287 but none is relevant.

31. In section 290(1A)(**47**) (recognition orders)—

- (a) for “Community” substitute “EU”; and
- (b) at the end insert “or the markets in financial instruments regulation”.

32. In section 292(3)(**48**) (overseas investment exchanges and overseas clearing houses), for paragraph (a) substitute—

- “(a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with—
 - (i) recognition requirements, other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph, and
 - (ii) requirements contained in any directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation;”.

33. In section 301E(4)(a)(**49**) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.

34.—(1) Section 312A(**50**) (exercise of passport rights by EEA market operator) is amended as follows.

(2) In subsection (1)(**51**) for “regulated market or specified multilateral trading facility” substitute “trading venue”.

(3) In subsection (2) for “market or facility” substitute “venue”.

35.—(1) Section 312B(**52**) (removal of passport rights from EEA market operator) is amended as follows.

(2) In subsection (1)(**53**) for “regulated market or multilateral trading facility” substitute “trading venue”.

(3) In subsection (2)(**54**)—

- (a) at the end of paragraph (b) omit “or”;
- (b) for paragraph (c) substitute—
 - “(c) by the markets in financial instruments regulation; or
 - (d) by any directly applicable EU regulation made under that directive or that regulation”.

36.—(1) Section 312C(**55**) (exercise of passport rights by recognised investment exchange) is amended as follows.

(2) In subsection (1) for “regulated market or multilateral trading facility” substitute “trading venue”.

(3) In subsection (5)(**56**)—

- (a) in paragraph (a)—

(47) Subsection (1A) was inserted by [S.I. 2007/126](#).

(48) Section 292(3)(a) was amended by [S.I. 2006/2975](#).

(49) Section 301E(4)(a) was inserted by [S.I. 2007/126](#) and amended by [S.I. 2009/534](#).

(50) Section 312A was inserted by [S.I. 2007/126](#).

(51) Subsection (1) was amended by paragraph 33 of Schedule 8 to the Financial Services Act 2012.

(52) Section 312B was inserted by [S.I. 2007/126](#).

(53) Subsection (1) was amended by paragraph 34 of Schedule 8 to the Financial Services Act 2012.

(54) Subsection (2) was amended by [S.I. 2011/1043](#).

(55) Section 312C was inserted by [S.I. 2007/126](#).

(56) Subsection (5) was amended by paragraph 35 of Schedule 8 to the Financial Services Act 2012.

Status: This is the original version (as it was originally made).

- (i) for “31.6” substitute “34.7”; and
 - (ii) after “multilateral trading facility”, insert “or an organised trading facility”; and
 - (b) in paragraph (b) for “42.6” substitute “53.6”.
- (4) In subsection (7) for “4.1.22” substitute “4.1.26”.
- 37.** In section 312D(**57**) (interpretation of Chapter 3A of Part 18)—
- (a) in the definition of “the applicable provision”—
 - (i) in paragraph (a) for “Article 31.5” substitute “or an organised trading facility, Article 34.6”; and
 - (ii) in paragraph (b) for “42.6” substitute “53.6”;
 - (b) in the definition of “EEA market operator” for “4.1.13” substitute “4.1.18”; and
 - (c) in the definition of “home state regulator” for “4.1.22” substitute “4.1.26”.
- 38.** In section 313(1)(**58**) (interpretation of Part 18)—
- (a) in the definition of “multilateral trading facility” for “4.1.15” substitute “4.1.22”;
 - (b) after the definition of “multilateral trading facility” insert—
 - ““organised trading facility” has the meaning given in Article 4.1.23 of the markets in financial instruments directive;”;
 - (c) in the definition of “regulated market” for “4.1.14” substitute “4.1.21”;
 - (d) after the definition of “revocation order” insert—
 - ““trading venue” means a multilateral trading facility, a regulated market or an organised trading facility.”.

Amendments to Part 18A (suspension and removal of financial instruments from trading)

- 39.** In section 313A(3)(**59**) (FCA’s power to require suspension or removal of financial instruments from trading) for the words “regulated market” to the end substitute “trading venue”.
- 40.** Omit section 313C(**60**) (notification in relation to suspension or removal of a financial instrument from trading).
- 41.** After section 313C insert—

“Suspension or removal of financial instruments from trading: notification and trading on other venues

- 313CA.**—(1) The FCA must take the steps in subsection (2) to (4) if it imposes a requirement on an institution under section 313A to—
- (a) suspend or remove a financial instrument from trading; or
 - (b) suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading to support the objectives of a suspension or removal mentioned in paragraph (a).
- (2) The FCA must require any trading venue or systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the

(57) Section 312D was inserted by [S.I. 2007/126](#).

(58) Section 313(1) was amended by [S.I. 2007/126](#); there are other amendments but none is relevant.

(59) Section 313A(3) was inserted by [S.I. 2007/126](#).

(60) Section 313C was inserted by [S.I. 2007/126](#) and amended by section 36(a) Financial Services Act 2012 and by [S.I. 2010/1193](#) and [2012/916](#).

instrument or derivative from trading if a suspension or removal mentioned in subsection (1) was due to—

- (a) suspected market abuse;
- (b) a take-over bid; or
- (c) the non-disclosure of inside information about the issuer or the instrument.

(3) But the FCA is not obliged to impose a requirement under subsection (2) if it could cause significant damage to the interests of investors or the orderly functioning of the market.

(4) The FCA must—

- (a) inform ESMA and the competent authorities of every other EEA State of—
 - (i) a decision to impose a requirement under section 313A;
 - (ii) a decision to revoke a requirement imposed under section 313A;
 - (iii) a decision to impose, not to impose, or to revoke a requirement under subsection (2); and
- (b) publish a decision mentioned in paragraph (a)(i) to (iii) in such a manner as it considers appropriate unless the decision has already been published under section 313B(2)(b) or 313BE(5).

Suspension or removal of a financial instrument from a trading by a trading venue: FCA duties

313CB.—(1) The FCA must take the steps in subsections (2), (4), and (5) if a person specified in subsection (6) operating a trading venue in the United Kingdom informs the FCA it has made a decision—

- (a) to suspend or remove a financial instrument from trading on the trading venue because the instrument no longer complies with the venue's rules, or
- (b) to suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading on the trading venue to support the objectives of a suspension or removal mentioned in paragraph (a).

(2) The FCA must require any other trading venue or any systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the instrument or derivative from trading if a suspension or removal mentioned in subsection (1) was due to—

- (a) suspected market abuse;
- (b) a take-over bid; or
- (c) the non-disclosure of inside information about the issuer or the instrument.

(3) But the FCA is not obliged to impose a requirement under subsection (2) if it could cause significant damage to the interests of investors or the orderly functioning of the market.

(4) The FCA must revoke a requirement imposed under subsection (2) if the person mentioned in subsection (1) informs the FCA it has lifted the suspension mentioned in that subsection.

(5) The FCA must—

- (a) inform ESMA and the competent authorities of every other EEA State of any decision to impose, not to impose, or to revoke a requirement under subsection (2),

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- (b) provide ESMA and those competent authorities with an explanation if the decision is not to impose a requirement under subsection (2) because subsection (3) applies, and
 - (c) publish any decision mentioned in paragraph (a) in such a manner as it considers appropriate.
- (6) The specified persons for the purposes of subsection (6) are—
- (a) a recognised investment exchange,
 - (b) an investment firm with a Part 4A permission to carry on a regulated activity which is any of the investment services and activities,
 - (c) a credit institution authorised under the capital requirements directive.

**Suspension or removal of a financial instrument from trading in another EEA state:
FCA duties**

313CC.—(1) The FCA must take the steps in subsections (2) and (3) if the FCA is informed that a competent authority of another EEA State has made a decision to—

- (a) suspend or remove a financial instrument from trading on a trading venue or systematic internaliser in that State for the purposes of—
 - (i) Article 32.2 (suspension and removal of financial instruments from trading on an MTF or OTF) of the markets in financial instruments directive;
 - (ii) Article 52.2 (suspension and removal of financial instruments from trading on a regulated market) of the directive, or
 - (iii) Article 69.2(m) or (n) (supervisory powers) of the directive, or
- (b) suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading on a trading venue or systematic internaliser in that State for those purposes.

(2) The FCA must require any trading venue or systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the instrument or derivative from trading if the suspension or removal was due to—

- (a) suspected market abuse;
- (b) a take-over bid; or
- (c) the non-disclosure of inside information about the issuer or the instrument.

(3) The FCA must revoke a requirement imposed under subsection (2) if the competent authority of the other EEA State informs the FCA it has lifted the suspension or removal mentioned in subsection (1).

(4) For the purposes of subsection (1) the FCA is informed of a decision mentioned in subsection (1)(a) or (b) when the competent authority that made the decision, the competent authority of any other EEA State, or ESMA informs the FCA of the decision for the purposes of Article 32.2 or 52.2 of the markets in financial instrument directive.”.

42.—(1) Section 313D(61) (interpretation of Part 18A) is amended as follows.

(2) The existing text becomes subsection (1).

(3) In subsection (1)—

- (a) in the definition of “financial instrument” for “4.1.17” substitute “4.1.15”;

(61) Section 313D was inserted by [S.I. 2007/126](#); there are amendments to this section but none is relevant.

- (b) omit the definition of “multilateral trading facility”;
 - (c) omit the definition of “regulated market”; and
 - (d) in the appropriate places, insert—
 - ““competent authority” has the meaning given in Article 4.1.26 (definitions) of the markets in financial instruments directive;”;
 - ““derivative” means a derivative referred to in points (4) to (10) of Section C of Annex 1 to the markets in financial instruments directive;”;
 - ““non-disclosure of inside information” means a failure to disclose inside information, as defined by Article 7 (inside information) of the market abuse regulation, in contravention of Article 17 (public disclosure of inside information) of that Regulation;”;
 - ““market abuse” means a contravention of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or 15 (prohibition of market manipulation) of the market abuse regulation;”;
 - ““systematic internaliser” has the meaning given in Article 4.1.20 of the markets in financial instruments directive;”;
 - ““trading venue” has the meaning given in Article 4.1.24 of the markets in financial instruments directive.”.
- (4) After subsection (1) insert—
- “(2) In this Part a trading venue or systematic internaliser falls under the FCA’s jurisdiction if—
 - (a) the United Kingdom is the home Member State (as defined by Article 4.1.55 of the markets in financial instruments directive) of—
 - (i) in the case of a trading venue which is a regulated market (as defined by Article 4.1.21 of the directive), the regulated market;
 - (ii) in the case of a trading venue which is a multilateral trading facility (as defined by Article 4.1.22 of the directive), the person operating the facility;
 - (iii) in the case of a trading venue which is an organised trading facility (as defined by Article 4.1.23 of the directive), the person operating the facility;
 - or
 - (iv) in the case of a systematic internaliser, the systematic internaliser; or
 - (b) in the case of a systematic internaliser does not fall within the FCA’s jurisdiction by virtue of paragraph (a)—
 - (i) it has established a branch (as defined by Article 4.1.30 of the directive) in the United Kingdom; and
 - (ii) the FCA considers that it is necessary to impose a requirement on the systematic internaliser under section 313CA(2), 313CB(2), or 313CC(2) for the purposes of Article 32.2 or 52.2 of the markets of the markets in financial instruments directive.”.

Amendments to Part 20 (provision of financial services by members of the professions)

- 43.**—(1) Section 327 (exemption from general prohibition) is amended as follows.
- (2) In subsection (1)—
 - (a) at the end of paragraph (a) omit “and”;
 - (b) after paragraph (a) insert—

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“(aa) where the activity is the provision of a service listed in Section A of Annex 1 of the markets in financial instruments directive relating to a financial instrument, the condition set out in subsection (7A) is also satisfied; and”.

(3) After subsection (7) insert—

“(7A) The condition mentioned in subsection (1)(aa) is that—

- (a) the service is provided in an incidental manner in the course of a professional activity for the purposes of the markets in financial instruments directive; and
- (b) the professional activity concerned is the provision of professional services.

(7B) In subsection (7A) a service is provided in an incidental manner in the course of a professional activity for the purposes of the markets in financial instruments directive if the applicable conditions are satisfied.

(7C) The applicable conditions for the purposes of subsection (7B) are those set out in Article 4(a) to (c) of Commission Regulation (EU) 2017/565 of 25 April 2016 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⁽⁶²⁾.”.

Amendments to Part 23 (public record, disclosure of information and co-operation)

44.—(1) Section 347 (the record of authorised persons etc) is amended as follows.

(2) In subsection (1)(a) for the “and” after paragraph (hb)⁽⁶³⁾ insert—

“(hc) appointed representative to whom subsection (2C) applies; and”.

(3) In subsection (2A)⁽⁶⁴⁾—

- (a) in paragraph (a) after “subsection (1A)” insert “or (1AA)”; and
- (b) in paragraph (c)⁽⁶⁵⁾ for “23.3” substitute “29.3”.

(4) After subsection (2B)⁽⁶⁶⁾ insert—

“(2C) This subsection applies to an appointed representative of an authorised person who has a Part 4A permission by virtue of regulation 4 or 7 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX).”.

(5) After subsection (3) insert—

“(3A) But if a person ceases to be a person to whom one of the paragraphs of subsection (1) applies as a result of—

- (a) a cancellation of that person’s Part 4A permission under section 55J(6)⁽⁶⁷⁾ because one or more of the conditions in 55K(1)(b) to (d) was met; or
- (b) a cancellation of that person’s Part 4A permission to carry on regulated activities as an exempt investment firm under section 55J(1) to (3) because—
 - (i) the person has contravened a requirement imposed on that person by or under the Act for the purposes of Article 3.2(a) of the markets in financial instruments directive; and
 - (ii) one or more of the conditions mentioned in Article 8(b) to (d) of the directive was met;

⁽⁶²⁾ OJ L 87, 31.3.2017, p. 1.

⁽⁶³⁾ Paragraph (hb) was inserted by [S.I. 2015/910](#).

⁽⁶⁴⁾ Subsection (2A) was inserted by [S.I. 2007/126](#).

⁽⁶⁵⁾ Paragraph (c) was amended by paragraph 16(2) of Schedule 12 to the Financial Services Act 2012.

⁽⁶⁶⁾ Subsection (2B) was inserted by [S.I. 2015/910](#).

⁽⁶⁷⁾ Section 55J(6) was inserted by section 11(2) of the Financial Services Act 2012.

the power conferred by subsection (3) is not exercisable for a period of five years from the date on which the person ceased to be a person to whom subsection (1) applied.

(3B) Where the power conferred by subsection (3) is not exercisable in respect of an entry in the record as a result of subsection (3A) the FCA must—

- (a) make a note in the record that it considers the person to whom the entry relates has ceased to be person to whom one of the paragraphs of subsection (1) applies as a result of a cancellation of that person's Part 4A permission for a reason mentioned in subsection (3A)(a) or (b); and
- (b) state why it considers that is the case.”.

(6) At the end of subsection (4)(b) insert “in any case where it has not already done so under subsection (3B)”.

(7) In subsection (8A)(68) at the appropriate place insert—

““exempt investment firm” means an authorised person who—

- (a) is an investment firm; and
- (b) has a Part 4A permission;

but to whom Title II of the markets in financial instruments directive does not apply by virtue of Article 3 of the directive..”.

Amendments to Part 26 (notices)

45. In section 391 (publication) —

(a) in subsection (4A)(69) for “and 391C” substitute “, 391C and 391D”; and

(b) in subsection (7B)(70)—

- (i) at the end of paragraph (c) omit “or”;
- (ii) in paragraph (d) after “by” insert “or under”; and
- (iii) at the end of paragraph (d) insert—

“; or

(e) by or under the markets in financial instruments regulation and any directly applicable EU regulation made under it.”.

46. After section 391C(71) (publication: special provisions relating to the UCITs directive), insert—

“Publication: special provisions relating to the markets in financial instruments directive

391D.—(1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure to which Article 71 of the markets in financial instruments directive applies.

(2) Where a regulator publishes information under section 391(4) or (5) about a matter to which a supervisory notice or decision notice relates and the person to whom the notice is given refers the matter to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(68) Subsection (8A) was inserted by section 34(3) of the Financial Services (Banking Reform) Act 2013.

(69) Subsection (4A) inserted by [S.I. 2013/3115](#) and amended by [S.I. 2015/1755](#) and [2016/225](#).

(70) Subsection (7B) was inserted by [S.I. 2012/916](#).

(71) Section 391C was inserted by [S.I. 2016/225](#).

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(3) Subject to subsections (4), (5), and (8) where a regulator gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Subject to subsection (7) and (8), information about a matter to which a final notice relates must be published in accordance with subsection (5) where—

- (a) a regulator considers it to be disproportionate to publish the identity of a legal person on whom the sanction or measure is imposed following an assessment by the regulator of the proportionality of publishing the person’s identity;
- (b) a regulator considers it to be disproportionate to publish the personal data of an individual on whom the sanction or measure is imposed following an assessment by the regulator of the proportionality of publishing the personal data; or
- (c) the publication of information under subsection (3) would jeopardise the stability of the financial markets or an ongoing investigation.

(5) Where subsection (4) applies, a regulator must—

- (a) defer the publication of the information about a matter to which a final notice relates until such time as subsection (4) ceases to apply; or
- (b) publish the information on an anonymous basis if publication on that basis would ensure the effective protection of any anonymised personal data in the information.

(6) Where subsection (5)(b) applies, the regulator may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(7) The regulator may make arrangements for the postponed publication of any personal data that is anonymised in information it publishes under subsection (5)(b) if—

- (a) publication of the data is postponed for a reasonable period of time; and
- (b) the regulator considers that subsection (5)(b) will no longer apply in respect of that data at the time of the postponed publication.

(8) Information about a matter to which a final notice relates must not be published if publication in accordance with subsection (5) is considered by the regulator insufficient to ensure—

- (a) that the stability of the financial markets would not be put in jeopardy; or
- (b) that the publication of the information would be proportionate with regard to sanctions or measures which are considered by the regulator to be of a minor nature.

(9) Where a regulator publishes information in accordance with subsections (2) to (7), the regulator must—

- (a) ensure the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998⁽⁷²⁾ requires the information to be retained for a different period; and
- (b) promptly report the information to ESMA.”.

47. After section 395(13)(bbza)⁽⁷³⁾ (the FCA’s and PRA’s procedures) insert—

“(bbzb) section 122IA;”.

⁽⁷²⁾ 1998 c.29.

⁽⁷³⁾ Section 395(13)(bbza) was inserted by S.I. 2016/680.

Amendments to Part 27 (offences)

- 48.** In section 398(1A)(**74**) (Misleading FCA or PRA: residual cases)—
- (a) after paragraph (b) insert—
 - “(ba) the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX);”;
 - (b) at the end of paragraph (e)(**75**) omit “or”; and
 - (c) after paragraph (e) insert—
 - “(ea) any directly applicable EU regulation made under the markets in financial instruments directive;
 - (eb) the markets in financial instruments regulation and any directly applicable EU regulation made under it; or”.

Amendments to Part 28 (miscellaneous)

- 49.** Omit sections 405(**76**) (directions) to 408 (EFTA firms).
- 50.** Omit sections 412A(**77**) (approval and monitoring of trade-matching and reporting systems) and 412B(**78**) (procedure for approval, suspension and withdrawal).

Amendments to Part 29 (interpretation)

- 51.**—(1) Section 417(1)(**79**) is amended as follows.
- (2) For the definition of “investment services and activities” substitute—
 - ““investment services and activities” has the meaning given by Article 4.1.2 (definitions) of the markets in financial instruments directive, read with Articles 5 to 8 of the Commission Delegated Regulation (EU) 2017/565 on [Directive 2014/65/EU](#) of the European Parliament and of the Council as regarding organisational requirements and operational conditions for investment firms and defined terms for the purposes of that Directive;”.
 - (3) Insert the following definition in the appropriate places—
 - ““markets in financial instruments regulation” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;”;
- 52.** In section 422A(4)(a)(**80**) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.
- 53.** In section 424A(5)(b)(**81**) (investment firm) for “4.1.20” substitute “4.1.55”.

Amendments to Schedule 3 (EEA passport rights)

- 54.**—(1) Schedule 3 (EEA passport rights) is amended as follows.
- (2) For paragraph 4C(**82**) substitute—

(74) Section 398(1A) was inserted by [S.I. 2013/1733](#).

(75) Paragraph (e) was amended by [S.I. 2015/1882](#) and [S.I. 2016/680](#).

(76) Section 405 was amended by [S.I. 2007/126](#), paragraph 1 and 21(1) to (4) of Schedule 18 to the Financial Services Act 2012, [2015/575](#), and [2006/3221](#)

(77) Section 412A was inserted by [S.I. 2007/126](#) and amended by paragraph 38 of Schedule 8 to the Financial Services Act 2012.

(78) Section 412B was inserted by [S.I. 2007/126](#) and amended by paragraph 38 of Schedule 8 to the Financial Services Act 2012.

(79) Section 417(1) was amended by [S.I. 2007/126](#); there are other amendments but none is relevant.

(80) Section 422A(4)(a) was inserted by [S.I. 2009/534](#).

(81) Section 424A(5)(b) was inserted by [S.I. 2006/2975](#).

(82) Paragraph 4C was inserted by [S.I. 2006/2975](#).

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“(4C) “The markets in financial instruments directive” means [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.”.

- (3) In paragraph 11A(**83**) for “4.1.25” substitute “4.1.29”.
- (4) In paragraph 12(3)(**84**) after “5(a)”, insert “or (b)”.
- (5) In paragraph 14(1)(ba)(**85**) for “31.5” substitute “34.6”.
- (6) In paragraph 20(4BA)(**86**) for “31.6” substitute “34.7”.
- (7) In paragraph 20A(**87**)—
 - (a) after “investment firm” in both places, insert “or UK credit institution”; and
 - (b) after sub-paragraph (2) insert—
 - “(3) In this paragraph “UK credit institution” means a UK firm—
 - (a) which is a credit institution; and
 - (b) whose EEA right derives from the markets in financial instruments directive.”.

Amendments to Schedule 10A (liability of issuers)

55. In paragraph 8(1) of Schedule 10A(**88**) (liability of issuers in connection with published information)—

- (a) in paragraph (a)—
 - (i) for “4.1.18” substitute “4.1.44”; and
 - (ii) for “4.1.19” substitute “4.1.17; and
- (b) in paragraph (b)—
 - (i) for “4.1.14” substitute “4.1.21”; and
 - (ii) for “4.1.15” substitute “4.1.22”.

(**83**) Paragraph 11A was inserted by [S.I. 2007/126](#).

(**84**) Paragraph 12(3) was inserted by [S.I. 2007/126](#).

(**85**) Paragraph 14(1)(ba) was inserted by [S.I. 2007/126](#) and amended by paragraph 3(2) of Schedule 4 to the Financial Services Act 2012.

(**86**) Paragraph 20(4BA) was inserted by [S.I. 2007/126](#) and amended by paragraph 11(2) of Schedule 4 to the Financial Services Act 2012.

(**87**) Paragraph 20A was inserted by [S.I. 2007/126](#).

(**88**) Schedule 10A was inserted by [S.I. 2010/1192](#).