
DRAFT STATUTORY INSTRUMENTS

2018 No.

**The Over the Counter Derivatives, Central Counterparties
and Trade Repositories (Amendment, etc., and
Transitional Provision) (EU Exit) Regulations 2018**

PART 3

AMENDMENT AND REVOCATION OF RETAINED DIRECT EU LEGISLATION

CHAPTER 1

AMENDMENT OF THE EMIR REGULATION

Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP

21.—(1) Article 11 is amended as follows.

- (2) In paragraph 5, for “same Member State” substitute “United Kingdom”.
- (3) Omit paragraphs 6 and 7;
- (4) In paragraph 8, for “Union”, in both places where it appears, substitute “United Kingdom”.
- (5) In paragraph 9, in the first sub-paragraph, for “Union” substitute “United Kingdom”.
- (6) Omit paragraph 10.
- (7) Omit the second sub-paragraph of paragraph 11.
- (8) In paragraph 12, for “Union” in both places where it appears, “United Kingdom”.
- (9) For paragraph 13 substitute—

“**13.** The Bank of England shall regularly monitor the activity in derivatives not eligible for clearing in order to identify cases where a particular class of derivatives may pose systemic risk. The FCA and the PRA shall regularly monitor the activity in derivatives not eligible for clearing in order to prevent regulatory arbitrage between cleared and non-cleared derivative transactions.

In particular—

- (a) the Bank of England shall —
 - (i) take action in accordance with paragraph 3 of Article 5; and
 - (ii) review the technical standards on margin requirements laid down in Article 41;
 - (b) the FCA and the PRA shall review the technical standards on margin requirements laid down in paragraph 15.”.
- (10) In paragraph 14—
- (a) for the words from the beginning to “regulatory” where it first appears substitute “The FCA may make”;

- (b) in point (c), for “paragraphs 7, 9 and 10” substitute “paragraph 9”;
 - (c) omit point (e);
 - (d) omit from “ESMA shall submit” to the end of the paragraph.
- (11) After paragraph 14 insert—
- “**14A.** The FCA may make technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the United Kingdom or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 12.”
- (12) For paragraph 15 substitute—
- “**15.** The PRA may make technical standards for financial counterparties that are PRA-authorised persons and the FCA may make technical standards for all other cases, specifying the risk-management procedures, including the levels and type of collateral and segregation arrangements, required for compliance with paragraph 3.”
- (13) After paragraph 15 insert—
- “**16.** The FCA may make technical standards specifying the procedures for the counterparties and the relevant competent authorities to be followed when applying exemptions under paragraphs 8 and 9.
- 17.** The PRA may make technical standards in respect of financial counterparties that are PRA-authorised persons in respect of United Kingdom to United Kingdom intragroup exemptions (see paragraph 5) and the FCA may make technical standards in all other cases, specifying the applicable criteria referred to in paragraphs 5, 8 and 9, including in particular what should be considered as a practical or legal impediment to the prompt transfer of own funds and repayment of liabilities between the counterparties.”