
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 4

SPECIFIC PROVISION FOR TRADE REPOSITORIES

CHAPTER 3

APPLICATION OF THE FSMA FOR THE PURPOSES OF THIS
PART, THE EMIR REGULATION AND THE TRATP REGULATIONS

Application of Part 11 of the FSMA (information gathering and investigations)

75.—(1) Part 11 of the FSMA (information gathering and investigations), other than sections 165A, 165B, 165C, 169A and 173, applies with respect to the discharge by the FCA of its functions under this Part and the EMIR regulation as it applies with respect to the discharge by the FCA of its functions under the FSMA but with the following modifications.

(2) In Part 11—

- (a) each reference to the FSMA includes a reference to this Part and the EMIR regulation;
- (b) each reference to a section or Part of the FSMA is a reference to that section or Part as applied by this Part;
- (c) each reference to an authorised person is a reference to a trade repository registered or recognised in accordance with Title 6 of the EMIR regulation;
- (d) omit each reference to the PRA;
- (e) each reference to a regulator, however phrased, is a reference to the FCA, and each reference to either regulator is a reference to the FCA only.

(3) Before section 165 insert—

“Part 11 Interpretation

164A. In this Part—

“the 2018 Regulations” means the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018;

“the TRATP Regulations” means the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018.”

(4) In section 165 (regulators’ power to require information: authorised persons etc.)—

- (a) omit subsections (4)(b), (7)(b) to (e) and (8A);

- (b) after subsection (7)(e) insert--
 - “(f) by the FCA, to impose requirements on related third parties to whom the trade repositories have outsourced operational functions or activities to provide all information that is necessary in order to carry out the trade repository’s duties.”.
- (5) In section 166 (reports by skilled persons), omit subsections (10) and (11).
- (6) In section 166A (appointment of skilled person to collect and update information)—
 - (a) for subsection (1) substitute—
 - “(1) This section applies if the FCA considers that a person has contravened a requirement imposed by or under the EMIR regulation to collect, and keep up to date, information of a description specified in that Regulation.”;
 - (b) omit subsection (10).
- (7) In section 167 (appointment of persons to carry out general investigations)—
 - (a) for subsection (1) substitute—
 - “(1) If it appears to the FCA that there is good reason for doing so, the FCA may appoint one or more competent persons to conduct an investigation on its behalf into—
 - (a) the nature, conduct or state of the business of a person in respect of whom a requirement is imposed by or under the TRATP Regulations, Part 4 of the 2018 Regulations or the EMIR regulation;
 - (b) a particular aspect of that business; or
 - (c) the ownership or control of a person subject to the TRATP Regulations, Part 4 of the 2018 Regulations or the EMIR regulation.”;
 - (b) omit subsections (2)(c) and (3A);
 - (c) for subsection (4) substitute—
 - “(4) The power conferred by this section may be exercised in relation to a person who was formerly a person subject to the TRATP Regulations or the EMIR regulation but only in relation to—
 - (a) a business carried on when the person was a person subject to the TRATP Regulations, Part 4 of the 2018 Regulations or the EMIR regulation; or
 - (b) the ownership or control of a person who was formerly a person subject to the TRATP Regulations, Part 4 of the 2018 Regulations or the EMIR regulation at any time when the person was a person subject to the TRATP Regulations, Part 4 of the 2018 Regulations or the EMIR regulation.”;
 - (d) in subsection (5), for “regulated activities” substitute “trade repository activities within the meaning given in Part 4 of the 2018 Regulations”;
 - (e) omit subsections (5A) and (6);
 - (8) In section 168 (appointment of persons to carry out investigations in particular cases)—
 - (a) for subsection (1) substitute—
 - “(1) Subsection (3) applies if it appears to the FCA that there are circumstances suggesting that a person—
 - (a) may be guilty of an offence under section 398, as applied by regulation 80 of the 2018 Regulations;
 - (b) may be guilty of an offence under section 177, as applied by regulation 78 of the 2018 Regulations;
 - (c) may have contravened a requirement imposed by or under—

- (i) this Act as applied by Part 4 of the 2018 Regulations;
 - (ii) Part 4 of the 2018 Regulations; or
 - (ii) the EMIR regulation.”;
- (b) omit subsections (2), (4) and (5);
- (c) for subsection (6) substitute—
 - “(6) “Investigating authority” means the FCA.”.
- (9) In section 169 (investigations etc. in support of overseas regulator)—
 - (a) omit subsection (2A);
 - (b) for subsection (13) substitute—
 - “(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA under the EMIR regulation and Part 4 of the 2018 Regulations.”.
- (10) In section 170 (investigations: general)—
 - (a) each reference to the investigating authority is a reference to the FCA;
 - (b) in subsection (1), omit “or (5)”;
 - (c) for subsection (3) substitute—
 - “(3) Subsections (2) and (9) do not apply if the investigator is appointed as a result of section 168(1) and the FCA believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated.”.
 - (d) omit subsection (10).
- (11) In section 171 (powers of persons appointed under section 167) omit subsections (3A) and (7);
- (12) In section 172 (additional power of persons appointed as a result of section 168(1) or (4)) omit “or (4)” both in the heading and in subsection (4).
- (13) In section 174 (admissibility of statements made to investigators)—
 - (a) in subsection (2), omit “or in proceedings in relation to action to be taken against that person under section 123 to which this section applies”;
 - (b) omit subsection (3A);
 - (c) in subsection (4), omit the words from “or (5),” to the end;
 - (d) in subsection (5), omit “,173”.
- (14) In section 175 (information and documents: supplemental provisions), in subsection (8), omit “or (5)”.
- (15) In section 176 (entry of premises under warrant)—
 - (a) for subsection (1) substitute—
 - “(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the FCA or an investigator that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.”;
 - (b) in subsection (3)(a), omit “or an appointed representative”;
 - (c) in subsection (10), omit “or (5)”;
 - (d) in subsection (11)—
 - (i) in paragraph (a), omit “87C, 87J,” and “,165A, 169A”;

(ii) in paragraph (b), omit “,173”.