

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 5

TRANSITIONAL PROVISIONS: INTRAGROUP TRANSACTIONS

New exemptions from certain clearing obligations and risk-management obligations

82.—(1) This regulation applies to an OTC derivative contract where—

- (a) one of the counterparties is a UK counterparty;
- (b) the other counterparty is a non-UK counterparty; and;
- (c) the contract would be an intragroup transaction if the Treasury were to make an equivalence determination in respect of the third country in which the non-UK counterparty is established.

(2) Where this regulation applies, the UK counterparty may after exit day—

- (a) apply to the FCA for; or
- (b) notify the FCA of its intention to apply,

an exemption in accordance with the provision of the EMIR regulation to which the exemption relates as if the Treasury had made an equivalence determination in respect of the third country in which the non-UK counterparty is established.

(3) Notwithstanding—

- (a) paragraph 2(b) of Article 4; and
- (b) paragraphs 8 and 9 of Article 11,

the FCA may authorise or, as the case may be, object to, the exemptions specified in those provisions (as read with Chapter 3 of Regulation 2016/2251) pursuant to the application or notification referred to in paragraph (2).

(4) The exemptions mentioned in paragraph (3) apply, subject to regulation 84, until the relevant day specified in regulation 83.

(5) Paragraph (8) applies where one or both of the counterparties—

- (a) has applied before exit day to a competent authority for an exemption from an obligation as specified in paragraph (6) or (7); or
- (b) has notified a competent authority before exit day of its intention to apply an exemption from an obligation as specified in either of those paragraphs.

(6) The obligations specified in this paragraph are—

- (a) the clearing obligation in a case where the application or notification relates to an exemption which would apply by virtue of—

- (i) paragraph 2 of Article 3 of Regulation 2015/2205 as it had effect immediately before exit day;
 - (ii) paragraph 2 of Article 3 of Regulation 2016/592 as it had effect immediately before exit day; or
 - (iii) paragraph 2 of Article 3 of Regulation 2016/1178 as it had effect immediately before exit day; or
 - (b) certain requirements of the risk-management obligation in a case where the application or notification relates to an exemption which would apply by virtue of paragraph 2 of Article 36 of Regulation 2016/2251, or paragraph 3 of Article 37 of that Regulation as they had effect immediately before exit day.
- (7) The obligations specified in this paragraph are—
- (a) the clearing obligation in a case where the application or notification relates to an exemption which would apply by virtue of paragraph 2(a) of Article 4 as it had effect immediately before exit day; or
 - (b) certain requirements of the risk management obligation in a case where the application or notification relates to an exemption which would apply by virtue of paragraph 6, 7 or 10 of Article 11 as they had effect immediately before exit day.
- (8) Where this paragraph applies, the application or notification to the competent authority is to be treated after exit day as if it were an application or, as the case may be, a notification to the FCA by the UK counterparty for the purposes of paragraph (2).
- (9) Where it appears to the FCA that the application or notification referred to in paragraph (5) does not meet the requirements of the EMIR regulation and Chapter 3 of Regulation 2016/2251 to which the exemption relates, the FCA may request that the UK counterparty provides such further information as is necessary to enable the FCA to ascertain whether those requirements are complied with.
- (10) Paragraphs 11 and 12 of Article 11 have effect for the purposes of the exemptions, or partial exemptions, applying by virtue of paragraph (3)(b) as they have effect in relation to exemptions or partial exemptions applying by virtue of paragraph 8 or 9 of Article 11 (as read with Chapter 3 of Regulation 2016/2251).
- (11) In this regulation, “competent authority” means a regulatory authority which is responsible for the authorisation and supervision of counterparties in its territory.