

## SCHEDULE 1

Regulation 2

### Equivalence determinations

#### *Benchmarks Regulation*

**9.**—(1) For the purposes of Article 30(2) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (“Regulation (EU) 2016/1011”)(1), to determine that the legal framework and supervisory practice of an EEA state ensures that—

- (a) administrators authorised or registered in that EEA state comply with binding requirements which are equivalent to the requirements under Regulation (EU) 2016/1011, in particular taking account of whether the legal framework and supervisory practice of an EEA state ensures compliance with the International Organisation of Securities Commissions’ (“IOSCO”) principles for financial benchmarks or, where applicable, with the IOSCO principles for Oil Price Reporting Agencies (“OPRAs”); and
- (b) the binding requirements are subject to effective supervision and enforcement on an on-going basis in that EEA state.

(2) For the purposes of Article 30(3) of Regulation (EU) 2016/1011, to determine that—

- (a) binding requirements in an EEA state with respect to specific administrators or specific benchmarks or families of benchmarks are equivalent to the requirements under Regulation (EU) 2016/1011, in particular taking account of whether the legal framework and supervisory practice of an EEA state ensures compliance with—
  - (i) the IOSCO principles for financial benchmarks or,
  - (ii) where applicable, with the IOSCO principles for OPRAs; and
- (b) such specific administrators or specific benchmarks or families of benchmarks are subject to effective supervision and enforcement on an on-going basis in that EEA state.

#### *Capital Requirements Regulation*

**10.** For the purpose of determining capital requirements under Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (“CRR”), to determine whether an EEA state applies—

- (a) prudential supervisory and regulatory requirements at least equivalent to those applied in the United Kingdom, for the purposes of Article 107(3) of CRR;
- (b) supervisory and regulatory arrangements at least equivalent to those applied in the United Kingdom, for the purposes of Articles 114(7), 115(4), 116(5), 132(3) and 142(2) of CRR.

#### *Credit Rating Agencies Regulation*

**11.**—(1) For the purposes of Article 5 of Regulation (EC) 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (“CRAR”)(2), to determine whether the legal and supervisory framework of an EEA state ensures that credit rating agencies authorised or registered in that EEA state—

(1) OJ L 171, 29.6.2016.

(2) OJ L 302, 17.11.2009, p. 1, as amended by Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies OJ L 146, 31.5.2013, p. 1–33.

- (a) comply with legally binding requirements which are equivalent to the requirements resulting from CRAR; and
  - (b) are subject to effective supervision and enforcement in that EEA state.
- (2) A third-country legal and supervisory framework may be considered equivalent to CRAR for the purposes of paragraph (1) only if that framework fulfils at least the following conditions—
- (a) credit rating agencies in that EEA state are subject to authorisation or registration and are subject to effective supervision and enforcement on an ongoing basis;
  - (b) credit rating agencies in that EEA state are subject to legally binding rules which are equivalent to those set out in Articles 6 to 12 of and Annex I to CRAR; and
  - (c) the regulatory regime in that EEA state prevents interference by the supervisory authorities and other public authorities of that EEA state with the content of credit ratings and methodologies.

#### *EMIR*

- 12.**—(1) For the purposes of Article 2A of EMIR, to determine that a third-country market complies with legally binding requirements which are—
- (a) equivalent to the requirements laid down in the law of the United Kingdom which were relied on by the United Kingdom immediately before exit day to implement Title III of EMIR; and
  - (b) subject to effective supervision and enforcement in that EEA state on an ongoing basis for the purposes of Article 2A(1) of EMIR.
- (2) For the purposes of Article 13 of EMIR, to determine that the legal, supervisory and enforcement arrangements of an EEA state—
- (a) are equivalent to the requirements laid down under Articles 4, 9, 10 and 11 of EMIR;
  - (b) ensure protection of professional secrecy that is equivalent to that set out in that Regulation; and
  - (c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that EEA state.

#### *Markets in Financial Instruments*

**13.**—(1) For the purposes of Article 23 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (“MiFIR”) and paragraph 8 of Schedule 3 to MIFIR, to determine whether the legal and supervisory framework of an EEA state ensures that a trading venue or regulated market, as appropriate, authorised in that country complies with legally binding requirements which are equivalent to the requirements resulting from MAR, Title II of MiFIR, and the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Title III of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments<sup>(3)</sup> and [Directive 2004/109/EC](#) of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (“Transparency Directive”)<sup>(4)</sup>, in accordance with paragraph 8(2) of Schedule 3 to Regulation (EU) 600/2014, and which are subject to effective supervision and enforcement in that EEA state.

(3) OJ L 173, 12.6.2014, p. 349–496.

(4) OJ L390, 31.12.2004, p.38.

(2) For the purposes of Article 28 of MiFIR, to determine that the legal and supervisory framework of an EEA state ensures that a trading venue authorised in that country complies with legally binding requirements which are equivalent to the requirements for the trading venues referred to in paragraph 1(a), (b) or (c) of Article 28 of MiFIR, resulting from MiFIR, the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement [Directive 2014/65/EU](#), and Regulation (EU) No 596/2014, and which are subject to effective supervision and enforcement in that EEA state, in accordance with Article 28(4) of MiFIR.

(3) A determination made under sub-paragraph (1) may be limited to a category of trading venues.

**14.** For the purposes of Article 33 of MiFIR, to determine that the legal, supervisory and enforcement arrangements of an EEA state—

- (a) are equivalent to the requirements resulting from Articles 28 and 29 of MiFIR;
- (b) ensure protection of professional secrecy that is equivalent to that set out in MiFIR;
- (c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that EEA state.

**15.** For the purposes of Article 38(3) of MiFIR, to determine that the legal and supervisory framework of an EEA state ensures that a trading venue and CCP authorised in that EEA state complies with legally binding requirements which are equivalent to the requirements referred to in the second subparagraph of paragraph 3 of Article 38 of MiFIR and which are subject to effective supervision and enforcement in that EEA state.

**16.** For the purpose of Article 47 of MiFIR, to determine that the legal and supervisory arrangements of an EEA state ensure that firms authorised in that EEA state comply with legally binding prudential and business conduct requirements which have equivalent effect to the requirements set out in MiFIR, in the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement [Directive 2013/36/EU](#) and [Directive 2014/65/EU](#) and in the implementing measures adopted under this Regulation and under those Directives and that the legal framework of that EEA state provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes.

#### *Prospectus Directive and Transparency Directive*

**17.—(1)** For the purposes of rules made by the Financial Conduct Authority that are “prospectus rules” as defined by section 73A(4) of FSMA (“prospectus rules), to determine that a third country ensures the equivalence of prospectuses drawn up in that country with the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement the Prospectus Directive.

(2) Such equivalence may arise by reason of—

- (a) the third country’s national law, or
- (b) practices and procedures based on international standards set by international organisations including the disclosure standards of IOSCO.

(3) For the purposes of—

- (a) rules made by the FCA that are prospectus rules or “transparency rules” as defined by section 89A(5) of FSMA, and
- (b) [Commission Regulation \(EC\) No 809/2004](#) of 29 April 2004 implementing [Directive 2003/71/EC](#) of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements<sup>(5)</sup>;

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(5) OJ L 149, 30.4.2004, p.3.

to determine that the Generally Accepted Accounting Principles of a third country may be considered equivalent to UK-adopted international accounting standards within the meaning given by section 474(1) of the Companies Act 2006<sup>(6)</sup>.

(4) The determination in paragraph (3) may only be made if the financial statements drawn up in accordance with Generally Accepted Accounting Principles of the third country enable investors to make a similar assessment of the assets and liabilities, financial position, profit and losses and prospects of the issuer as financial statements drawn up in accordance with UK-adopted international accounting standards, with the result that investors are likely to make the same decisions about the acquisition, retention or disposal of securities of an issuer.

(5) For the purpose of prospectus rules, to determine that the legal and supervisory framework of a third country ensures that a regulated market authorised in that third country complies with legally binding requirements which are, for the purpose of the application of the exemption under paragraph 5 of rule 1.2.2 of the FCA Prospectus Rules, equivalent to the requirements resulting from:

- (a) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse<sup>(7)</sup>,
- (b) the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Title III of [Directive 2004/39/EC](#)<sup>(8)</sup>, and
- (c) the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement the Transparency Directive,  
and which are subject to effective supervision and enforcement in that third country.

(6) The determination in paragraph (5) may only be made if the legal and supervisory framework of the third country fulfils at least the following conditions —

- (a) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- (b) the markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
- (c) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and
- (d) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.

(7) For the purposes of rules made by the FCA that are “transparency rules” as defined by section 89A(5) of FSMA, to determine that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement [Directive 2004/109/EC](#).

### *Securities Financing Transactions Regulation*

**18.**—(1) For the purpose of Article 19(1) of SFTR, to determine that the legal and supervisory arrangements of an EEA state ensure that—

<sup>(6)</sup> 2006 c. 46 Section 474 was amended by Regulation 46 of the Adoption and Use of International Accounting Standards (Amendment) (EU Exit) Regulations 2019. [hoped to be laid and made in January]

<sup>(7)</sup> OJ L 173, 12.6.2014, p. 1–61. [[[MAR Exit SI will be laid but not made.]]]

<sup>(8)</sup> OJ L 145, 30.4.2004.

- (a) trade repositories authorised in that EEA state comply with legally binding requirements which are equivalent to those laid down in SFTR;
  - (b) effective supervision of trade repositories and effective enforcement of their obligations takes place in that EEA state on an ongoing basis;
  - (c) guarantees of professional secrecy exist, including the protection of business secrets shared with third parties by the authorities, and those guarantees are at least equivalent to those laid down in SFTR; and
  - (d) trade repositories authorised in that EEA state are subject to a legally binding and enforceable obligation to give direct and immediate access to the data to the entities referred to in Article 12(2) of SFTR.
- (2) A determination made under sub-paragraph (1) must identify the third-country authorities that are entitled to access the data on securities financing transactions held in trade repositories established in the United Kingdom.
- (3) For the purpose of Article 21(1) of SFTR, to determine that the legal, supervisory and enforcement arrangements of an EEA state—
- (a) are equivalent to the requirements laid down in Article 4 of SFTR;
  - (b) ensure protection of professional secrecy equivalent to that laid down in that Regulation;
  - (c) are being effectively applied and enforced in an equitable and non-distortive manner in order to ensure effective supervision and enforcement in that EEA state; and
  - (d) ensure that the entities referred to in Article 12(2) of SFTR have either—
    - (i) direct access to the details on data on securities financing transactions pursuant to Article 19(1) of SFTR; or
    - (ii) indirect access to the details on securities financing transactions pursuant to Article 20 of SFTR.

#### *Short Selling Regulation*

**19.** For the purpose of Article 17 of Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps<sup>(9)</sup>, to determine that the legal and supervisory framework of an EEA state satisfies the conditions in Article 17(2) of the Short Selling Regulation.

#### *Solvency 2 Regulation*

- 20.—**(1) For the purposes of Articles 378, 379 and 380 of the Solvency 2 Regulation, to determine that—
- (a) the solvency regime of an EEA state that applies to reinsurance activities of undertakings with the head office in that EEA state is equivalent to that laid down in the relevant UK law,
  - (b) the supervisory regime of an EEA state is equivalent to that laid down in the relevant UK law, and
  - (c) the prudential regime of an EEA state is equivalent to that laid down in the relevant UK law.
- (2) The Treasury may only make a determination for the purposes of sub-paragraph (1) in relation to a country if it is satisfied that—

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<sup>(9)</sup> [S.I. 2018/1321](#).

- (a) in the case of a determination under sub-paragraph (1)(a), the criteria set out in Article 378 of the Solvency 2 Regulation are fulfilled;
  - (b) in the case of a determination under sub-paragraph (1)(b), the criteria set out in Article 379 of the Solvency 2 Regulation are fulfilled; and
  - (c) in the case of a determination under sub-paragraph (1)(c), the criteria set out in Article 380 of the Solvency 2 Regulation are fulfilled.
- (3) The Treasury may also determine that—
- (a) the solvency regime of a third country applied to reinsurance activities of undertakings with their head office in that third country is temporarily equivalent to that laid down in the relevant UK law if the criteria set out in Article 378A(5) of the Solvency 2 Regulation are fulfilled;
  - (b) the solvency regime of a third country that applies to undertakings with their head office in that third country is provisionally equivalent to that laid down in the relevant UK law if the criteria set out in Article 379A(4) of the Solvency 2 Regulation are fulfilled;
  - (c) the prudential regime of a third country that applies to undertakings the parent undertaking of which has its head office outside the United Kingdom is temporarily equivalent to that laid down in the relevant UK law if the criteria set out in Article 380A(4) of the Solvency 2 Regulation are fulfilled.
- (4) A determination of equivalence under paragraph (3) shall have effect for the period specified in Articles 378A(7), 379A(6) and (8) and 380A(6) and (7) of the Solvency 2 Regulation.
- (5) For the purposes of this paragraph—
- (a) the “relevant UK law” means United Kingdom enactments or rules which implemented the following provisions of the Solvency 2 Directive (within the meaning of Article 1(61) of the Solvency 2 Regulation)—
    - (i) in the case of a determination under paragraph (2)(a) or (3)(a), Title I of the Solvency 2 Directive,
    - (ii) in the case of a determination under paragraph (2)(b) or (3)(b), Title I, Chapter IV of the Solvency 2 Directive,
    - (iii) in the case of a determination under paragraph (2)(c) or (3)(c), Title III of the Solvency 2 Directive;
  - (b) the “Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance<sup>(10)</sup> as it had effect immediately before exit day;
  - (c) the “Solvency 2 Regulation” means Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing [Directive 2009/138/EC](#) of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance<sup>(11)</sup>.

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(10) OJ L 335, 17.12.2009, p. 1.

(11) Solvency 2 and insurance (Amendment) (EU Exit) Regulations 2019, to be laid 10 January.