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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

The Investment Exchanges, Clearing  
Houses and Central Securities Depositories  
(Amendment) (EU Exit) Regulations 2019

PART 3

Amendments of the 2000 Act coming into force on exit day

**Amendments of Part 18 of the 2000 Act**

4. Part 18 of the 2000 Act (recognised investment exchanges, clearings houses and CSDs)(1) is amended in accordance with regulations 5 to 9.

**Amendments of Part 18, Chapter 1: Exemption**

5.—(1) Chapter 1 is amended as follows.

(2) In section 285 (exemption for recognised bodies etc.)(2)—

(a) in subsection (1), for paragraphs (f) and (g) substitute—

“(g) “third country CSD” means a central securities depository, established in a country other than the United Kingdom, which is recognised by the Bank of England pursuant to Article 25 of the CSD regulation.”;

(b) omit subsections (3E) and (3F);

(c) in subsection (3G), for “ESMA” substitute “the Bank of England”;

(d) in subsection (3H), omit “, an EEA CSD”.

(3) In section 285A (powers exercisable in relation to recognised bodies)(3), in subsection (2) for “, recognised CSDs and EEA CSDs” substitute “and recognised CSDs”.

(4) Omit section 287A (application by an investment exchange: persons connected with an applicant)(4).

(5) In section 288A (application by a central securities depository)(5), for “and any directly applicable EU regulation made under that Article” substitute “, and any technical standards originally made or adopted under that Article which are retained direct EU legislation and any technical standards made under that Article by the Bank on or after exit day,”.

(6) In section 289 (applications: supplementary)(6), in subsection (5), for the words from “derive” to the end, substitute—

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(1) The heading of Part 18 was amended by [S.I. 2017/1064](#).

(2) Subsections (1)(f) and (g), and (3E) to (3H) were inserted by [S.I. 2017/1064](#).

(3) Section 285A was inserted by section 29(1) of the Financial Services Act 2012 and subsection (2) was amended by [S.I. 2017/1064](#).

(4) Section 287A was inserted by [S.I. 2017/701](#).

(5) Section 288A was inserted by [S.I. 2017/1064](#).

(6) Subsection (5) was inserted by [S.I. 2017/1064](#).

“derive from any of the following—

- (a) the CSD Regulation;
  - (b) any EU regulation, originally made under the CSD regulation, which is retained direct EU legislation;
  - (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the CSD regulation on or after exit day.”(7).
- (7) In section 290 (recognition orders)(8), for subsection (1A) substitute—
- “(1A) In the case of an application for an order declaring the applicant to be a recognised investment exchange, the reference in subsection (1) to the recognition requirements applicable in its case includes a reference to requirements contained in any of the following—
- (a) any EU regulation, originally made under the markets in financial instruments directive, which is retained direct EU legislation;
  - (b) any EU regulation, originally made under the markets in financial instruments regulation, which is retained direct EU legislation;
  - (c) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the markets in financial instruments regulation on or after exit day.”.
- (8) In section 292 (overseas investment exchanges and overseas clearing houses)(9) for subsection (3)(a)(ii) substitute—
- “(ii) requirements contained in any of the following—
- (aa) any EU regulation, originally made under the markets in financial instruments directive, which is retained direct EU legislation;
  - (bb) any EU regulation, originally made under the markets in financial instruments regulation, which is retained direct EU legislation;
  - (cc) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the markets in financial instruments regulation on or after exit day;”.
- (9) In section 293 (notification requirements)(10)—
- (a) in subsection (3), at the end insert “as that directive had effect immediately before exit day”;
  - (b) in subsection (7A), for “an EEA CSD” substitute “a third country CSD, in relation to any services referred to in the Annex to the CSD regulation which the third country CSD provides in the United Kingdom”.
- (10) In section 293A (information: compliance with EU requirements)(11)—
- (a) in the heading, for “EU” substitute “specified”;
  - (b) in subsection (1), for “qualifying EU provision” substitute “qualifying provision”;
  - (c) in subsection (2), for “an EEA CSD” substitute “a third country CSD”;
  - (d) in subsection (3), for “any directly applicable EU regulation made under the CSD regulation” substitute “, any EU regulation originally made under the CSD regulation

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(7) 1978 c. 30.

(8) Subsection (1A) was inserted by S.I. 2007/126 and amended by S.I. 2017/701.

(9) Subsection (3)(a) was substituted by S.I. 2017/701.

(10) Subsection (3) was amended by paragraph 10(2) of Schedule 8 to the Financial Services Act 2012, S.I. 2017/1064 and 2018/135; subsection (7A) was inserted by S.I. 2017/1064.

(11) Section 293A was substituted by paragraph 11 of Schedule 8 to the Financial Services Act 2012, and renumbered by S.I. 2017/1064, which inserted subsections (2) and (3).

which is retained direct EU legislation, or any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the CSD regulation on or after exit day”.

(11) In section 294 (modification or waiver of rules)(**12**), in subsection (7), for “an EEA CSD” substitute “a third country CSD”.

(12) In section 295A (on-site inspection of EEA CSDs)(**13**)—

- (a) in the heading, for “EEA” substitute “United Kingdom branches of third country”;
- (b) in subsection (1)—
  - (i) for “Article 24(1) of the CSD regulation (co-operation in relation to branches of EEA CSDs)” substitute “Article 25(11) of the CSD regulation”;
  - (ii) for “an EEA CSD” substitute “a third country CSD”;
- (c) omit subsection (2).

(13) In section 296 (appropriate regulator’s power to give directions)(**14**)—

- (a) in subsection (1A)—
  - (i) for the words “any directly applicable EU regulation” substitute “any qualifying provision”;
  - (ii) after “description specified)” insert “for the purposes of this subsection”;
- (b) omit subsection (1B);
- (c) in subsection (2), omit “or EEA CSD”;
- (d) omit subsection (2B).

(14) In section 297 (revoking recognition)(**15**)—

- (a) in subsection (2A), in paragraph (c)—
  - (i) for “a directly applicable EU regulation” substitute “any qualifying provision”;
  - (ii) after “description specified)” insert “for the purposes of this subsection”;
- (b) omit subsection (6).

(15) In section 298 (directions and revocation: procedure)(**16**)—

- (a) in subsection (6), in paragraph (aa), omit “or an EEA CSD” and “or EEA CSD”;
- (b) in subsection (6A), omit paragraph (ab);
- (c) in subsection (7A), omit “or EEA CSD”;
- (d) omit subsection (7B);
- (e) omit subsection (9).

(16) In section 300A (power of appropriate regulator to disallow excessive regulatory provision)(**17**), in subsection (3)(a), omit “EU law or”.

## **Amendments of Part 18, Chapter 1A: Control over recognised investment exchange**

6.—(1) Chapter 1A (control over recognised investment exchange) is amended as follows.

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(12) Subsection (7) was inserted by [S.I. 2017/1064](#).

(13) Section 295A was inserted by [S.I. 2017/1064](#).

(14) Subsections (1A), (1B) and (2B) were inserted by [S.I. 2007/126](#); subsections (1A) and (2) were amended by paragraphs 14(3) (a) and (b) and (4) of Schedule 8 to the Financial Services Act 2012 and [S.I. 2017/1064](#).

(15) Subsection (2A) was inserted by [S.I. 2007/126](#) and amended by paragraph 15(3) of Schedule 8 to the Financial Services Act 2012 and [S.I. 2013/504](#) and [2017/1064](#). Subsection (6) was inserted by [S.I. 2012/916](#) and amended by paragraph 15(5) of Schedule 8 to the Financial Services Act 2012.

(16) Subsections (6)(aa), (6A)(ab), (7A), (7B) and (9) were inserted by [S.I. 2017/1064](#)

(17) Section 300A was inserted by section 1 of the Investment Exchanges and Clearing Houses Act 2006 ([c. 55](#)). Subsection (3) was amended by [S.I. 2011/1043](#).

- (2) In section 301E (disregarded holdings)(**18**)—
- (a) in subsection (4)—
- (i) in paragraph (a), for “article 4.1.7 of the markets in financial instruments directive” substitute “Article 2(1)(6) of the markets in financial instruments regulation”;
- (ii) for paragraph (b) substitute—
- “(b) has a Part 4A permission to carry on a regulated activity which is any of the investment services or activities; and”;
- (b) in subsection (5), for “credit institution” substitute “qualifying credit institution”;
- (c) in subsection (6)—
- (i) in the opening words and in paragraph (b), for “credit institution” substitute “qualifying credit institution”;
- (ii) in paragraph (a), in sub-paragraph (ii), omit the words from “in accordance with” to “directive”;
- (d) in subsection (7), for “Article 2.1(b) of the UCITS directive” substitute “section 237(2)”.
- (3) In section 301M (interpretation of Chapter 1A of Part 18)(**19**), in subsection (1) omit the definition of “credit institution”.

### **Amendment of Part 18, Chapter 3A: Passport Rights**

7. Omit Chapter 3A(**20**).

### **Amendments of Part 18, Chapter 3B: disciplinary measures**

- 8.—(1) Chapter 3B is amended as follows.
- (2) In section 312E (public censure)(**21**)—
- (a) omit subsection (1A);
- (b) in subsection (2), in paragraph (c), for “qualifying EU provision”, substitute “qualifying provision”;
- (c) in subsection (3)—
- (i) in paragraph (a), for “, a recognised CSD or an EEA CSD” substitute “or a recognised CSD”;
- (ii) in paragraph (c), for “qualifying EU provision” substitute “qualifying provision”.
- (3) In section 312F (financial penalties)(**22**), omit subsection (2).
- (4) In section 312FA (central securities depositories: further disciplinary measures)(**23**), omit subsection (5).
- (5) In section 312G (proposal to take disciplinary measures)(**24**), omit subsection (5).
- (6) In section 312H (decision notice)(**25**), omit subsection (5).

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(18) Section 301E was inserted by [S.I. 2007/126](#) and substituted by [S.I. 2009/534](#); subsection (4)(a) was amended by [S.I. 2017/701](#) and subsection (7) was amended by [S.I. 2011/1613](#).

(19) Section 301M was inserted by [S.I. 2009/534](#); subsection (1) was amended by [S.I. 2013/3115](#).

(20) Chapter 3A was inserted by [S.I. 2007/126](#), and amended by section 35 of, and paragraphs 1 and 33 to 37 of Schedule 8 to, the Financial Services Act 2012, and [S.I. 2011/1043](#), [2012/916](#), and [2017/701](#).

(21) Section 312E was inserted by section 33 of the Financial Services Act 2012; subsection (1A) and paragraphs (3)(a) and (c) were inserted and amended, respectively, by [S.I. 2017/1064](#).

(22) Subsection (2) was inserted by [S.I. 2017/1064](#).

(23) Section 312FA was inserted by [S.I. 2017/1064](#).

(24) Section 312G was inserted by section 33 of the Financial Services Act 2012 and subsection (5) was inserted by [S.I. 2017/1064](#).

(25) Section 312H was inserted by section 33 of the Financial Services Act 2012 and subsection (5) was inserted by [S.I. 2017/1064](#).

(7) In section 312I (publication)(26), in paragraph (a), omit “, EEA CSD”.

#### **Amendment of Part 18, Chapter 4: Interpretation**

9. In section 313 (interpretation of Part 18)(27), in subsection (1)—

- (a) omit the definition of “EEA CSD”;
- (b) in the definition of “the EMIR regulation”(28), for the words from “reference” to the end, substitute—

“reference to requirements contained in or to functions under the EMIR regulation includes a reference (as the case may be) to requirements contained in or to functions under—

  - (a) any EU regulation, originally made under the EMIR regulation, which is retained direct EU legislation; or
  - (b) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the EMIR regulation on or after exit day;”;
- (c) for the definition of “multilateral trading facility” substitute—

““multilateral trading facility” means a UK multilateral trading facility as defined by Article 2(1)(14A) of the markets in financial instruments regulation;”;
- (d) for the definition of “organised trading facility” substitute—

““organised trading facility” means a UK organised trading facility as defined by Article 2(1)(15A) of the markets in financial instruments regulation;”;
- (e) for the definition of “regulated market” substitute—

““regulated market” means a UK regulated market as defined by Article 2(1)(13A) of the markets in financial instruments regulation;”.

#### **Amendments of Part 18A of the 2000 Act**

10.—(1) Part 18A of the 2000 Act (suspension and removal of financial instruments from trading)(29) is amended as follows.

(2) In section 313CA (suspension or removal of financial instruments from trading: notification and trading on other venues)(30), for subsection (4) substitute—

“(4) The FCA must publish a decision of any of the following kinds in such a manner as the FCA considers appropriate—

- (a) a decision to impose a requirement under section 313A;
- (b) a decision to revoke a requirement imposed under section 313A;
- (c) a decision to impose, or to revoke or not to impose, a requirement under subsection (2).

(5) Subsection (4) does not require a decision to be published if it has already been published under section 313B(2)(b) or 313BE(5).”.

(3) In section 313CB (suspension or removal of a financial instrument from trading by a trading venue: FCA duties)(31)—

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(26) Section 312I was inserted by section 33 of the Financial Services Act 2012 and paragraph (a) was amended by S.I. 2017/1064.

(27) In subsection (1), the definition of “EEA CSD” was inserted by S.I. 2017/1064; the definition of “the EMIR regulation” was inserted by S.I. 2013/504; the definition of “multilateral trading facility”, and “regulated market” were inserted by S.I. 2007/126 and amended by S.I. 2017/701; the definition of “organised trading facility” was inserted by S.I. 2017/701.

(28) The definition is amended before exit day by regulation 3(b) of these Regulations.

(29) Part 18A was inserted by S.I. 2007/126.

(30) Section 313CA was inserted by S.I. 2017/701.

(31) Section 313CB was inserted by S.I. 2017/701.

- (a) for subsection (5) substitute—
  - “(5) The FCA must publish any decision to impose, or to revoke or not to impose, a requirement under subsection (2) in such a manner as the FCA considers appropriate.”;
- (b) in subsection (6), for paragraph (c) substitute—
  - “(c) a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits.”.
- (4) Omit section 313CC (suspension or removal of a financial instrument from trading in another EEA state: FCA duties)(**32**).
- (5) In section 313D (interpretation of Part 18A)(**33**)—
  - (a) in subsection (1)—
    - (i) omit the definition of “competent authority”;
    - (ii) in the definition of “derivative”, for the words from “points (4)” to “directive” substitute “paragraphs 4 to 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)”(**34**);
    - (iii) for the definition of “financial instrument” substitute—
      - ““financial instrument” means an instrument specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;”;
    - (iv) in the definition of “institution”, for paragraphs (c) and (d) substitute—
      - “(c) a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits, when carrying out investment services or activities; or
      - (d) a qualifying credit institution other than one that has Part 4A permission to carry on the regulated activity of accepting deposits;”;
    - (v) in the definition of “regulatory information service”, omit paragraph (b) and the “or” that precedes it;
    - (vi) for the definitions of “systematic internaliser” and “trading venue” substitute—
      - ““systematic internaliser” has the meaning given in Article 2(1)(12) of the markets in financial instruments regulation;
      - “trading venue” means a UK trading venue, as defined by Article 2(1)(16A) of the markets in financial instruments regulation.”;
  - (b) in subsection (2)—
    - (i) for paragraph (a) (including the “or” at the end) substitute—
      - “(a) it is established in the United Kingdom; or”;
    - (ii) in paragraph (b)—
      - (aa) in sub-paragraph (i), for “Article 4.1.30 of the directive” substitute “Article 2(1)(20) of the markets in financial instruments regulation”;
      - (bb) in sub-paragraph (ii), for the words from “section 313CA(2)” to the end substitute “section 313CA(2) or 313CB(2)”.

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(32) Section 313CC was inserted by S.I. 2017/701.

(33) Section 313D was renumbered by S.I. 2017/701. In subsection (1), the definitions of “competent authority”, “derivative”, “systematic internaliser” and “trading venue” were inserted by S.I. 2017/701; the definition of “financial instrument” was amended by S.I. 2017/701. Subsection (2) was inserted by S.I. 2017/701.

(34) S.I. 2001/544. Schedule 2 was substituted by S.I. 2006/3384 and amended by S.I. 2017/488.

### **Amendments of Schedule 17A to the 2000 Act**

11. Schedule 17A to the 2000 Act (further provision in relation to the exercise of Part 18 functions by Bank of England)(35) is amended as follows.

#### **Amendment of Schedule 17A: rules**

12. In paragraph 10(36), in sub-paragraph (2), omit the words “, an EEA CSD”.

#### **Amendments of Schedule 17A: information gathering and investigations**

13.—(1) In paragraph 12(37), for the words from “recognised clearing house” to the end substitute “recognised clearing house or a recognised CSD”.

(2) In paragraph 13(38), omit sub-paragraph (1A).

(3) In paragraph 14(39), in sub-paragraph (2)—

(a) in paragraph (d), for “qualifying EU provision” substitute “qualifying provision”;

(b) omit paragraph (f).

#### **Amendment of Schedule 17A: co-operation**

14. After paragraph 23, insert—

##### *“Co-operation*

23A. Section 354B (co-operation) applies in relation to the Bank for the purposes of, or in the discharge of, any of its functions under—

(a) the EMIR regulation;

(b) the CSD regulation;

(c) the SFT regulation;

(d) any EU regulation, originally made under the CSD regulation or the SFT regulation, which is retained direct EU legislation; or

(e) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the CSD regulation, or the SFT regulation, on or after exit day.”

#### **Amendments of Schedule 17A: injunctions and restitution**

15.—(1) In paragraph 26(40), in sub-paragraph (2)—

(a) in paragraph (a), for “, a recognised CSD or an EEA CSD” substitute “or a recognised CSD”;

(b) in paragraph (c), for “qualifying EU provision” substitute “qualifying provision”.

(2) In paragraph 28(41)—

(a) in sub-paragraph (2)—

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(35) Schedule 17A was inserted by paragraph 1 of Schedule 7 to the Financial Services Act 2012.

(36) Sub-paragraph (2) was amended by S.I. 2017/1064.

(37) Paragraph 12 was amended by S.I. 2017/1064.

(38) Sub-paragraph (1A) was inserted by S.I. 2017/1064.

(39) Sub-paragraphs (2)(d) and (2)(f) were amended and inserted, respectively, by S.I. 2017/1064.

(40) Sub-paragraph (2)(a) was amended by S.I. 2017/1064.

(41) Sub-paragraphs (2)(a) and (4)(a) were amended by S.I. 2017/1064.



- (i) in the words before paragraph (a), for “, a recognised CSD or an EEA CSD” substitute “or a recognised CSD”;
- (ii) in paragraph (a), for “, the recognised CSD or the EEA CSD” substitute “or the recognised CSD”;
- (b) in sub-paragraph (4)(a), for “, the recognised CSD or the EEA CSD” substitute “or the recognised CSD”.

**Amendment of Schedule 17A: records**

- 16. In paragraph 32(42), for “EEA CSDs” substitute “third country CSDs”.

**Amendment of Schedule 17A: annual report**

- 17. In paragraph 33(43), for “EEA CSDs” substitute “third country CSDs”.

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(42) Paragraph 32 was amended by [S.I. 2017/1064](#).

(43) Sub-paragraph (a) was amended by [S.I. 2017/1064](#).