
DRAFT STATUTORY INSTRUMENTS

2019 No.

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

PART 4

Amendments of the principal Regulations coming into force on exit day

Amendments of the principal Regulations

18. The principal Regulations are amended as follows.

Amendments of regulation 3

19.—(1) Regulation 3 (interpretation)(1) is amended as follows.

(2) In paragraph (1)—

(a) for the definition of “algorithmic trading” substitute—

““algorithmic trading” means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;”;

(b) omit the definition of “branch”;

(c) in the definition of “commodity derivatives”, for “Article 4.1.50 of the markets in financial instruments directive” substitute “Article 2(1)(30) of the markets in financial instruments regulation”;

(d) omit the definitions of “competent authority” and “credit institution”;

(e) in the definition of “depository receipts”, for “Article 4.1.45 of the markets in financial instruments directive” substitute “Article 2(1)(25) of the markets in financial instruments regulation”;

(f) for the definition of “derivative” substitute—

““derivative” has the meaning given in Article 2(1)(29) of the markets in financial instruments regulation;”;

(g) for the definition of “direct electronic access” substitute—

““direct electronic access” means an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access);”;

- (h) for the definition of “emission allowances” substitute—

““emission allowances” has the meaning given in paragraph 11 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;”;

- (i) in the definition of “exchange traded fund”, for “Article 4.1.46 of the markets in financial instruments directive” substitute “Article 2(1)(26) of the markets in financial instruments regulations”;
- (j) in the definition of “financial instrument”, for “Article 4.1.15 of the markets in financial instruments directive” substitute “Article 2(1)(9) of the markets in financial instruments regulation”;

- (k) for the definition of “group” substitute—

““group” means a parent undertaking and all its subsidiary undertakings, and for those purposes, “parent undertaking” and “subsidiary undertaking” have the same meaning as in section 420 of the Act;”;

- (l) for the definition of “high frequency algorithmic trading technique” substitute—

““high-frequency algorithmic trading technique” means an algorithmic trading technique characterised by—

- (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry—
- (i) co-location;
 - (ii) proximity hosting; or
 - (iii) high-speed direct electronic access;
- (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and
- (c) high message intraday rates which constitute orders, quotes or cancellations;”;

- (m) for the definition of “liquid market” substitute—

““liquid market” means a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instrument—

- (a) the average frequency and size of transactions over a range of market conditions, having regard to the nature and cycle of products within the class of financial instrument;
- (b) the number and type of market participants, including the ratio of market participants to traded instruments in a particular product;
- (c) the average size of spreads, where available;”;

- (n) after the definition of “market contract”, insert the following definition—

- ““market operator” has the meaning given in Article 2(1)(10) of the markets in financial instruments regulation;”;
- (o) for the definition of “matched principal trading” substitute—
- ““matched principal trading” means a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction;”;
- (p) in the definition of “multilateral system”, for “Article 4.1.19 of the markets in financial instruments directive” substitute “Article 2(1)(11) of the markets in financial instruments regulation”;
- (q) for the definition of “multilateral trading facility” substitute—
- ““multilateral trading facility” means a UK multilateral trading facility within the meaning given in Article 2(1)(14A) of the markets in financial instruments regulation;”;
- (r) after the definition of “the Northern Ireland Order”, insert—
- ““organised trading facility” means a UK organised trading facility within the meaning given in Article 2(1)(15A) of the markets in financial instruments regulation;
- “qualifying credit institution” has the meaning given in section 417 of the Act, and for the purposes of that definition, “Part 4A permission” and “the regulated activity of accepting deposits” have the same meaning as in the Act;”;
- (s) for the definition of “regulated market” substitute—
- ““regulated market” means a UK regulated market within the meaning of Article 2(1)(13A) of the markets in financial instruments regulation;”;
- (t) for the definition of “senior management” substitute—
- ““senior management” means natural persons who exercise executive functions within an investment firm, a market operator or a data reporting services provider and who are responsible, and accountable to the management body, for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;”;
- (u) for the definition of “SME growth market” substitute—
- ““SME growth market” means a multilateral trading facility that is registered as an SME growth market in accordance with Part 5.10 of the Market Conduct sourcebook;”;
- (v) in the definition of “sovereign debt”, for “Article 4.1.61 of the markets in financial instruments directive” substitute “Article 2(1)(46) of the markets in financial instruments regulation”;
- (w) in the definition of “structured finance products”, for “Article 4.1.48 of the markets in financial instruments directive” substitute “Article 2(1)(28) of the markets in financial instruments regulation”;
- (x) in the definition of “systematic internaliser”, for “Article 4.1.20 in the markets in financial instruments directive” substitute “Article 2(1)(12) of the markets in financial instruments regulation”;

- (y) in the definition of “third country firm”, for “Article 4.1.57 of the markets in financial instruments directive” substitute “Article 2(1)(42) of the markets in financial instruments regulation”;
- (z) in the definition of “transferable securities”, for “Article 4.1.44 of the markets in financial instruments directive” substitute “Article 2(1)(24) of the markets in financial instruments regulation”;
- (aa) omit the definition of “UK firm”.
- (3) After paragraph (1A) insert—
 - “(1B) Any reference in these Regulations to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under the 2000 Act as the sourcebook has effect on exit day.”.

Amendments to the Schedule

- 20.**—(1) The Schedule is amended as follows.
- (2) In paragraph 2B (management body: significant exchanges)—
 - (a) in sub-paragraph (2)(b)(ii), omit the words following “qualifying holding”;
 - (b) after sub-paragraph (6), insert—
 - “(7) In sub-paragraph (2)(b)(ii)—
 - “qualifying holding” means a direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights, as set out in Articles 9 and 10 of [Directive 2004/109/EC](#), taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;
 - “[Directive 2004/109/EC](#)” means [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.”.
 - (3) In paragraph 3B (halting trading), in sub-paragraph (4), for “in an EEA state” substitute “in the United Kingdom”.
 - (4) In paragraph 3C (direct electronic access)—
 - (a) in sub-paragraph (a)—
 - (i) for paragraph (i) substitute—
 - “(i) an investment firm which has permission under Part 4A of the Act to carry on a regulated activity which is any of the investment services or activities;”;
 - (ii) for paragraph (ii) substitute—
 - “(ii) a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits;”;
 - (iii) for paragraph (iii) substitute—
 - “(iii) is a person who falls within regulation 30(1A) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 and has permission under Part 4A of the Act to carry on a regulated activity which is any of the investment services or activities;”;
 - (iv) in sub-paragraph (iv), omit “or 47.3 (equivalence decisions)”;
 - (b) in sub-paragraph (c)—

- (i) after “requirements of” insert “any provisions of the law of the United Kingdom relied on by the United Kingdom before exit day to implement”;
 - (ii) after “service” insert “, as those provisions have effect on exit day, in the case of rules made by the FCA under the Act, and as amended from time to time, in all other cases”.
- (5) In paragraph 3G (tick size regimes)—
- (a) for sub-paragraph (1)(b) substitute—
 - “(b) any financial instrument for which technical standards are adopted by the FCA under paragraphs 24 and 25 of Part 2 of Schedule 3 to the markets in financial instruments regulation which is traded on that trading venue.”;
 - (b) for sub-paragraph (3) substitute—
 - “(3) The tick size regime must comply with Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds.”.
- (6) In paragraph 3H (synchronisation of business clocks), for the words from “regulatory technical standards” to the end substitute “Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks”.
- (7) In paragraph 7B (access to the exchange’s facilities)—
- (a) in sub-paragraph (2), for “credit institution” substitute “qualifying credit institution” in both places it occurs;
 - (b) omit sub-paragraph (4).
- (8) In paragraph 7BB (position reporting)—
- (a) in sub-paragraph (2)(a), for the words “a delegated act” to “directive” substitute “article 83 (position reporting) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive”;
 - (b) in sub-paragraph (4)—
 - (i) in paragraph (a), for “credit institution” substitute “qualifying credit institution”;
 - (ii) for paragraph (b) substitute—
 - “(b) an investment fund, either as an undertaking for collective investment in transferable securities within the meaning of section 236A of the Act, an AIF or an AIFM within the meaning of regulations 3 and 4 respectively of the Alternative Investment Fund Managers Regulations 2013;”(2);
 - (iii) for paragraph (c) substitute—
 - “(c) another financial institution, including an insurance undertaking within the meaning of section 417 of the Act, a reinsurance undertaking within the meaning of section 417 of the Act, and an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993;”(3);

(2) [S.I. 2013/1773](#).

(3) [1993 c.48](#). Section 1 was amended by section 239 of the Pension Schemes Act [2004 \(c. 35\)](#) and [S.I. 2007/3014](#).

- (c) in sub-paragraph (5), omit “and ESMA”.
- (9) In paragraph 7C (access to central counterparty, clearing and settlement facilities), omit sub-paragraph (3).
- (10) In paragraph 9 (complaints), in sub-paragraph (6)—
- (a) omit “and” at the end of paragraph (c);
 - (b) for paragraph (d) substitute—
 - “(d) any EU regulation originally made under the markets in financial instruments directive or the markets in financial instruments regulation which is retained direct EU legislation; and
 - (e) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the markets in financial instruments regulation on or after exit day.”.
- (11) In paragraph 9ZB (specific requirements for regulated markets; admission of financial instruments to trading), in sub-paragraph (6)—
- (a) in the definition of “the disclosure obligations”, for paragraphs (b), (c) and (d) substitute—
 - “(b) those provisions of Part 6 of the Act and Part 6 rules (within the meaning of section 73A of the Act) which were relied on by the United Kingdom before exit day to implement—
 - (i) Articles 3, 5, 7, 8, 14 and 16 of [Directive 2003/71/EC](#) of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading;
 - (ii) Articles 4 to 6, 14 and 16 to 19 of [Directive 2004/109/EC](#) of the European Parliament and of the Council of 15 December 2004 relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; as they have effect on exit day in the case of Part 6 rules;
 - (c) any EU regulation, originally made under any of the provisions mentioned in paragraphs (a), (b)(i) and (b)(ii), which is retained direct EU legislation;
 - (d) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under any of the provisions mentioned in paragraphs (a), (b)(i) and (b)(ii) on or after exit day.”;
 - (b) omit the words from “and the legislation” to the end of the sub-paragraph.
- (12) In paragraph 9ZC (specific requirements for regulated markets: access to a regulated market)
- (a) for sub-paragraph (a) substitute—
 - “(a) an investment firm which has permission under Part 4A of the Act to carry on a regulated activity which is an investment service or activity;”;
 - (b) for sub-paragraph (b) substitute—
 - “(b) a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits;”.
- (13) In paragraph 9A (operation of a multilateral trading facility or an organised trading facility), for sub-paragraph (2) substitute—
- “(2) An exchange operating a multilateral trading facility or an organised trading facility must comply with those requirements of—

- (a) any provisions of the law of the United Kingdom relied on by the United Kingdom before exit day to implement Chapter 1 of Title II of the markets in financial instruments directive—
 - (i) as they have effect on exit day, in the case of rules made by the FCA under the Act, and
 - (ii) as amended from time to time, in all other cases;
- (b) any EU regulation originally made under Chapter 1 of the markets in financial instruments directive which is retained direct EU legislation, or any subordinate legislation (within the meaning of the Interpretation Act 1978) made under those provisions on or after exit day,

which are applicable to a market operator operating such a facility.”.

(14) In paragraph 9C (specific requirements for multilateral trading facilities: access to a facility)

- (a) for sub-paragraph (a) substitute—
 - “(a) an investment firm which has permission under Part 4A of the Act to carry on a regulated activity which is an investment service or activity;”;
- (b) for sub-paragraph (b) substitute—
 - “(b) a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits.”;

(15) In paragraph 9E (SME growth markets), in sub-paragraph (1)—

- (a) omit the words “a multilateral trading facility which has registered that facility as” and “in accordance with Article 33 of the markets in financial instruments directive”;
- (b) after “paragraph” insert “as they have effect on exit day”.

(16) In paragraph 9F (specific requirements for organised trading facilities: execution of orders)

- (a) in sub-paragraph (3), omit “in Article 4.1.38 of the markets in financial instruments directive”;
- (b) in sub-paragraph (6), for “under Article 27 of the markets in financial instruments Directive” substitute—
 - “under—
 - (a) section 11.2A of the Conduct of Business sourcebook,
 - (b) Articles 64 to 66 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive,
 - (c) Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions, and
 - (d) Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.”;
- (c) in sub-paragraph (9), after “FCA” insert “as they have effect on exit day”;

- (d) in sub-paragraph (11)—
- (i) in the definition of “close links”, for “Article 4.1.35 of the markets in financial instruments directive” substitute “Article 2(1)(21) of the markets in financial instruments regulation”;
 - (ii) in the definition of “investment firm”, for “Article 4.1.1 of the markets in financial instruments directive” substitute “Article 2(1A) of the markets in financial instruments regulation”.
- (17) In paragraph 9I (provision of data reporting services), for “with Title V of the markets in financial instruments directive” substitute—
- “with—
- (a) the Data Reporting Services Regulations 2017(4);
 - (b) the requirements of Chapter 9 of the Market Conduct sourcebook;
 - (c) Chapter 6 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
 - (d) Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers;
 - (e) Commission Implementing Regulation (EU) 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications pursuant to [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments.”.
- (18) In paragraph 9J (reporting of infringements), in sub-paragraph (1), for “and any directly applicable EU regulation made under that regulation” substitute “, any EU regulation originally made under the CSD regulation 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,”.
- (19) In paragraph 21A (access to central counterparty, clearing and settlement facilities), omit sub-paragraph (2).
- (20) In paragraph 31 (access to central counterparty, clearing and settlement facilities), omit sub-paragraph (2).
- (21) In paragraph 31A (reporting of infringements), in sub-paragraph (1), for “and any directly applicable EU regulation made under that regulation” substitute “, any EU regulation originally made under the CSD regulation 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,”.
- (22) In paragraph 37 (requirements of the CSD regulation), for “and any directly applicable EU regulation made under that regulation” substitute “, any EU regulation originally made under the CSD regulation 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”.
- (23) In paragraph 38 (access to settlement facilities), omit sub-paragraph (2).
- (24) In paragraph 39 (reporting of infringements), in sub-paragraph (1), for “and any directly applicable EU regulation made under that regulation” substitute “, any EU regulation originally made

under the CSD regulation 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.”

(25) In paragraph 40 (investment services and activities), in sub-paragraph (1), for paragraphs (a) and (b) substitute—

“(a) provisions of the law of the United Kingdom relied on by the United Kingdom before exit day to implement the markets in financial instruments directive, except for Articles 5 to 8, 9(1), (2) and (4) to (6) and 10 to 13 of that directive—

(i) as those implementing provisions have effect on exit day, in the case of rules made by the FCA or the Prudential Regulatory Authority under the Act, and

(ii) as amended from time to time, in all other cases; and

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