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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Financial Services and Markets Act 2000  
(Amendment) (EU Exit) Regulations 2019**

**PART 3**

**Amendments to the Financial Services and Markets  
Act 2000 (Regulated Activities) Order 2001**

**Article 3 (interpretation)**

**121.**—(1) In article 3 (interpretation) paragraph (1) is amended as set out in paragraphs (2) to (13).

(2) Omit the definitions of—

“aircraft operator”**(1)**,

“auction platform”**(2)**,

“EEA AIFM”**(3)**,

“credit institution”**(4)**,

“emission allowance auctioning regulation”**(5)**,

“greenhouse gas emissions allowances”**(6)**,

“investment services and activities”**(7)**,

“operator”**(8)**,

“reception”, “transmission” and “submission”**(9)**,

“UCITS”**(10)**, and

“UK AIF”**(11)**.

(3) In the definition of “contract of insurance”**(12)**, for paragraph (f) substitute—

“(f) contracts relating to the length of human life that are regulated by or under any enactment relating to social security, in so far as they are effected or carried out at their own risk by undertakings with permission to effect or carry out contracts of long-term insurance as principals;”.

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**(1)** This definition was inserted by [S.I. 2012/1906](#).

**(2)** This definition was inserted by [S.I. 2012/1906](#).

**(3)** This definition was inserted by [S.I. 2013/1773](#).

**(4)** This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2013/3115](#) and [2017/488](#).

**(5)** This definition was inserted by [S.I. 2012/1906](#).

**(6)** This definition was inserted by [S.I. 2012/1906](#).

**(7)** This definition was substituted by [S.I. 2012/1906](#) and was amended by [S.I. 2017/488](#).

**(8)** This definition was inserted by [S.I. 2012/1906](#).

**(9)** These definitions were inserted by [S.I. 2013/1906](#).

**(10)** This definition was inserted by [S.I. 2013/1773](#).

**(11)** This definition was inserted by [S.I. 2013/1773](#).

**(12)** This definition was amended by [S.I. 2015/575](#).

(4) In the definition of “financial instrument”(13), for “Section C of Annex I to the markets in financial instruments directive (the text of which is set out in Part 1 of Schedule 2)” substitute “Part 1 of Schedule 2”.

(5) Omit the definition of “home Member State”(14) and insert in the appropriate place—

““home State”—

- (a) in relation to a qualifying credit institution, means the State in which the institution has been granted authorisation;
- (b) in relation to a legal person (other than a qualifying credit institution) that has a registered office under the person’s national law, means the State in which that office is located;
- (c) in relation to any other person, means the State in which the person’s head office is located;”.

(6) For the definition of “investment firm”(15) substitute—

““investment firm” means a person whose regular occupation or business is the provision or performance of investment services and activities on a professional basis, other than—

- (a) a person excluded by Schedule 3, read with the Commission Regulation and with Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business;
- (b) a person whose home State is not the United Kingdom and who would be excluded by Schedule 3, read with the Commission Regulation and with Commission Delegated Regulation (EU) 2017/592, if the person’s registered office (or head office, in the case of a person that is not a body corporate or a person that is a body corporate but has no registered office) was in the United Kingdom;”.

(7) For the definition of “management company”(16) substitute—

““management company” has the meaning given by section 237(2) of the Act;”.

(8) For the definition of “market operator”(17) substitute—

““market operator” means—

- (a) a person that manages or operates the business of a UK regulated market (including a person who does so as the UK regulated market itself), or
- (b) a person that would fall within paragraph (a) if the person had its registered office (or, if it does not have one, its head office) in the United Kingdom,

other than a person falling within paragraph (1A);”.

(9) For the definition of “multilateral trading facility”(18) substitute—

““multilateral trading facility” or “MTF” means—

- (a) a UK multilateral trading facility (within the meaning of Article 2.1.14A of the markets in financial instruments regulation) operated by an investment firm, a qualifying credit institution or a market operator, or
- (b) a facility which—

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(13) This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(14) This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2013/3115](#), [2015/910](#) and [2017/488](#).

(15) This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(16) This definition was substituted by [S.I. 2011/1613](#).

(17) This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

(18) This definition was inserted by [S.I. 2006/3384](#) and was amended by [S.I. 2017/488](#).

- (i) is operated by an investment firm, qualifying credit institution or market operator whose home State is not the United Kingdom, and
  - (ii) if its operator's home State was the United Kingdom, would be a UK multilateral trading facility (within the meaning of Article 2.1.14A of the markets in financial instruments regulation);”.
- (10) For the definition of “organised trading facility”(19) substitute—
  - ““organised trading facility” or “OTF” means—
  - (a) a UK organised trading facility (within the meaning of Article 2.1.15A of the markets in financial instruments regulation) operated by an investment firm, a qualifying credit institution or a market operator, or
  - (b) a facility which—
    - (i) is operated by an investment firm, qualifying credit institution or market operator whose home State is not the United Kingdom, and
    - (ii) if its operator's home State was the United Kingdom, would be a UK organised trading facility (within the meaning of Article 2.1.15A of the markets in financial instruments regulation);”.
- (11) At the appropriate places insert—
  - ““portfolio management” has the meaning given by Article 2.7 of the Commission Regulation;”;
  - ““qualifying credit institution” means a credit institution which—
  - (a) is a person who—
    - (i) has Part 4A permission to carry on the regulated activity of accepting deposits, or
    - (ii) satisfies the conditions for being given permission under Part 4A to carry on that activity, or
    - (iii) is a body corporate incorporated in the United Kingdom and would satisfy those conditions—
      - (aa) were its head office in the United Kingdom, or
      - (bb) if it has a registered office, were its registered office, or its registered office and its head office, in the United Kingdom,
  - (b) is not a friendly society,
  - (c) is not a society registered as a credit union under—
    - (i) the Co-operative and Community Benefit Societies Act 2014(20),
    - (ii) the Credit Unions (Northern Ireland) Order 1985(21), or
    - (iii) the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969(22), and
  - (d) is not a person excluded from the definition of “investment firm” by Schedule 3, read with the Commission Regulation and with Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business;”.

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(19) This definition was inserted by [S.I. 2017/488](#).

(20) [2014 c.14](#).

(21) [S.I. 1985/1205 \(N.I. 12\)](#).

(22) [1969 c. 24 \(N.I.\)](#).

- (12) In the definition of “trade repository”(23), for “ESMA” in all four places substitute “the FCA”.
- (13) At the appropriate places insert—
- ““UK regulated market” has the meaning given by Article 2.1.13A of the markets in financial instruments regulation;”;
- ““UK UCITS” has the meaning given by section 237(3) of the Act;”.
- (14) After paragraph (1) of article 3 insert—
- “(1A) A person falls within this paragraph if—
- (a) the person is excluded from the definition of “investment firm” by Schedule 3, read with the Commission Regulation and with Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business, or
- (b) the person is one whose home State is not the United Kingdom and who would be excluded from that definition by Schedule 3, read with the Commission Regulation and with Commission Delegated Regulation (EU) 2017/592, if the person had its registered office (or, if it does not have one, its head office) in the United Kingdom.”.
- (15) After paragraph (3) of article 3 insert—
- “(4) In this Order any reference 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 Act, as the sourcebook has effect on exit day.”.

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(23) This definition was substituted by [S.I. 2016/715](#).