

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Financial Services and Markets Act 2023, PART 4. (See end of Document for details)

SCHEDULES

SCHEDULE 2

TRANSITIONAL AMENDMENTS

PROSPECTIVE

PART 4

AMENDMENTS TO THE FINANCIAL SERVICES AND MARKETS ACT 2000 (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2017

Introductory

- 44 The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ([S.I. 2017/701](#)) is amended in accordance with this Part of this Schedule.

Commencement Information

- II** Sch. 2 para. 44 not in force at Royal Assent, see [s. 86\(3\)](#)

Position limits for commodity derivatives

- 45 In Part 3 (position limits and position management controls in commodity derivatives), before regulation 16 insert—

FCA rules relating to position limits

- “15A(1) The FCA may by rules require relevant persons to establish and apply—
- (a) position limits in respect of specified commodity derivatives, or commodity derivatives of a specified class, that are traded on a trading venue, and
 - (b) position management controls in relation to the trading of commodity derivatives.
- (2) The power to make rules under paragraph (1) is exercisable only if the FCA considers that the rules are necessary or expedient for the purpose of advancing one or more of its operational objectives referred to in section 1B(3) of the Act.
- (3) In making rules under paragraph (1) the FCA must have regard to its competitiveness and growth objective in section 1EB of the Act.
- ”

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- (4) Rules under paragraph (1) may provide for matters that relevant persons must have regard to when establishing position limits, or position management controls, under requirements imposed by the rules.
- (5) Rules under paragraph (1) may provide for exemptions from the requirements imposed by the rules to such extent, and in such cases, as the rules may specify.
- (6) The reference in paragraph (1)(b) to position management controls includes (for example) arrangements under which—
 - (a) the open interest positions of persons can be monitored;
 - (b) information and documentation can be obtained from persons about the size of positions entered into;
 - (c) requirements can be imposed on persons to terminate or reduce positions or to provide liquidity.
- (7) The following provisions of Part 9A of the Act (rules and guidance) apply in relation to rules made by the FCA under this regulation as they apply in relation to rules made by the FCA under that Part of the Act, subject to the modification in paragraph (8)—
 - (a) section 137T (general supplementary powers);
 - (b) Chapter 2 (modification, waiver, contravention and procedural provisions), with the exception of sections 138D (actions for damages) and 138EA (matters to consider when making rules);
 - (c) section 141A (power to make consequential amendments of references to rules etc).
- (8) Section 137T applies as if the reference to authorised persons were a reference to relevant persons to whom rules under this regulation apply.
- (9) A requirement imposed by rules under this regulation is, for the purposes of section 296 of the Act (regulator’s power to give directions), to be treated as an obligation imposed under the Act.
- (10) In this Part “relevant persons” means market operators and investment firms operating a trading venue.”

Commencement Information

I2 Sch. 2 para. 45 not in force at Royal Assent, see [s. 86\(3\)](#)

- 46 (1) Regulation 16 (FCA duty to establish position limits) is amended as follows.
- (2) In the title, for “duty” substitute “power”.
 - (3) In paragraph (1)—
 - (a) for “must” substitute “may”;
 - (b) for the words from “traded” to the end substitute “to which requirements imposed by rules under regulation 15A apply”.
 - (4) After that paragraph insert—

“(1A) The power to give a direction under paragraph (1) is exercisable only if the FCA considers that it is necessary to give the direction for the

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purpose of advancing one or more of its operational objectives referred to in section 1B(3) of the Act.

(1B) Position limits established by virtue of regulation 15A do not apply to the extent that position limits established by virtue of this regulation apply instead.”

(5) Omit paragraphs (2), (3) and (5).

Commencement Information

I3 Sch. 2 para. 46 not in force at Royal Assent, see [s. 86\(3\)](#)

- 47 (1) Regulation 27 (FCA power to require information) is amended as follows.
- (2) In paragraph (1), in both of sub-paragraphs (a) and (b) omit “or over the counter contract”.
- (3) In paragraph (2) omit “or over the counter contract”.
- (4) “(3) For the purposes of this regulation a commodity derivative is a “relevant” commodity derivative if—
- (a) requirements imposed by rules under regulation 15A apply to the commodity derivative (or to commodity derivatives of that class), or
 - (b) it is a commodity derivative (or falls within a class of commodity derivatives) to which the FCA is considering making such requirements apply.”

Commencement Information

I4 Sch. 2 para. 47 not in force at Royal Assent, see [s. 86\(3\)](#)

- 48 (1) Regulation 28 (FCA power to intervene) is amended as follows.
- (2) In paragraph (1), in the words before sub-paragraph (a), for the words from “the exercise” to “regulation” substitute “advancing one or more of its operational objectives referred to in section 1B(3) of the Act”.
- (3) In paragraph (2) after “established” insert “in accordance with rules made under regulation 15A or”.
- (4) In paragraph (3) omit “or an economically equivalent over the counter contract”.

Commencement Information

I5 Sch. 2 para. 48 not in force at Royal Assent, see [s. 86\(3\)](#)

- 49 In regulation 29 (interpretation of Part 3), in paragraph (2)—
- (a) before the definition of “position” insert—
““market operator” has the same meaning as in the markets in financial instruments regulation;”;
 - (b) after the definition of “position limit” insert—
““relevant person” has the meaning given by regulation 15A(10)”.

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Commencement Information

I6 Sch. 2 para. 49 not in force at Royal Assent, see [s. 86\(3\)](#)

Commencement Information

I2 Sch. 2 para. 45 not in force at Royal Assent, see [s. 86\(3\)](#)

I3 Sch. 2 para. 46 not in force at Royal Assent, see [s. 86\(3\)](#)

I4 Sch. 2 para. 47 not in force at Royal Assent, see [s. 86\(3\)](#)

I5 Sch. 2 para. 48 not in force at Royal Assent, see [s. 86\(3\)](#)

I6 Sch. 2 para. 49 not in force at Royal Assent, see [s. 86\(3\)](#)

Consequential revocations relating to this Part

- 50 The following provisions are revoked—
- (a) paragraph 7BA of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 ([S.I. 2001/995](#));
 - (b) in the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017—
 - (i) regulation 17;
 - (ii) regulation 18;
 - (iii) regulation 19;
 - (iv) regulation 25;
 - (v) regulation 29(1);
 - (c) in [Regulation \(EU\) No 600/2014](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments—
 - (i) in Article 26(3), the last sentence;
 - (ii) in Schedule 3, paragraphs 31 and 32;
 - (d) [Commission Delegated Regulation \(EU\) 2017/591](#) 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 application of position limits to commodity derivatives.

Commencement Information

I7 Sch. 2 para. 50 not in force at Royal Assent, see [s. 86\(3\)](#)

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