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STATUTORY INSTRUMENTS

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**2018 No. 1403**

**The Markets in Financial Instruments  
(Amendment) (EU Exit) Regulations 2018**

**PART 4**

**Amendment of EU Regulations**

**CHAPTER 1**

**Amendment of Markets in Financial Instruments Regulation**

**Transparency for systematic internalisers and investment firms trading OTC**

**28.—(1)** In Article 14—

- (a) in paragraph 5, for “Union” substitute “relevant area”;
- (b) after paragraph 5, insert—

“**5A.** For the purposes of this Article—

- (a) “the relevant area” consists of the United Kingdom and those countries or regions specified by the FCA by direction in accordance with Article 50B;
- (b) the FCA may only give a direction under point (a) specifying that a country or region is within the relevant area in relation to one or more financial instruments for the purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess total orders executed in the financial instruments concerned in that country or region.”;

(c) in paragraph 6—

- (i) insert at the beginning, “Unless paragraph 6A applies”;
- (ii) for “The competent authority” substitute “The FCA”;
- (iii) omit the words from “of the most relevant market” to “other similar financial instrument”;
- (iv) for “that financial instrument” substitute “each share, depositary receipt, ETF, certificate and other similar financial instrument”;
- (v) in the second sentence, for “and communicated to ESMA which shall publish the information” substitute “and published by the FCA”;

(d) after paragraph 6, insert—

“**6A.** During the transitional period referred to in Article 5(3A), the FCA may determine the class of each share, depositary receipt, ETF, certificate and other similar financial instruments otherwise than on the basis of the arithmetic average value of the orders executed in the market in that instrument, if the FCA considers that it is necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.

**6B.** In determining the class of a financial instrument as referred to in paragraph 6A—

- (a) the FCA must have regard to—
  - (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and
  - (ii) the most recent classes determined for the financial instruments in question before exit day;
- (b) the FCA may also take into account any relevant information available in relation to the value of the orders executed in relation to the financial instrument in question in the United Kingdom or in any other country.

**6C.** If the FCA does not determine the class of a financial instrument during the transitional period in accordance with paragraphs 6A and 6B, the class determined for that financial instrument (if any) before exit day must continue to apply.”;

- (e) in paragraph 7—
  - (i) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “the FCA may make”;
  - (ii) omit the second and third subparagraphs.
- (2) In Article 15—
  - (a) in paragraph 1, for the second subparagraph, substitute—
 

“Firms that meet the definition of systematic internaliser must notify the FCA in accordance with the rules of that authority.

The FCA must publish a list of the systematic internalisers in the United Kingdom for which it has received notifications.”;
  - (b) in paragraph 2, for “Article 27 of [Directive 2014/65/EU](#)” substitute “the rules in section 11.2A of the Conduct of Business sourcebook, Articles 64 to 66 of Regulation (EU) 2017/565, Regulation (EU) 2017/575 and Regulation (EU) 2017/576”;
  - (c) in paragraph 4, for “Article 28 of [Directive 2014/65/EU](#)” substitute “rules 11.3.1, 11.4.1, 11.4.4A and 11.4.5 of the Conduct of Business sourcebook, and Articles 67 to 70 of Regulation (EU) 2017/565”;
  - (d) in paragraph 5, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 50, clarifying”, substitute “The Treasury may by regulations clarify”.
- (3) In Article 16, for “competent authorities” substitute “competent authority”.
- (4) In Article 17—
  - (a) in paragraph 2, for “Article 28 of [Directive 2014/65/EU](#)” substitute “rules 11.3.1, 11.4.1, 11.4.4A and 11.4.5 of the Conduct of Business sourcebook, and Articles 67 to 70 of Regulation (EU) 2017/565”;
  - (b) in paragraph 3, in the opening words, for “the Commission shall adopt delegated acts in accordance with Article 50 specifying”, substitute “the Treasury may by regulations specify”.
- (5) In Article 18—
  - (a) for paragraph 4, substitute—
 

“4. Firms which meet the definition of systematic internaliser must notify the FCA in accordance with the rules of that authority.

The FCA must publish a list of the systematic internalisers in the United Kingdom for which it has received notifications.”;

- (b) in paragraph 9, for “Article 27 of [Directive 2014/65/EU](#)” substitute “section 11.2A of the Conduct of Business sourcebook, Articles 64 to 66 of Regulation (EU) 2017/565, Regulation (EU) 2017/575 and Regulation (EU) 2017/576”.
- (6) In Article 19—
  - (a) in the heading, for “ESMA” substitute “the competent authority”;
  - (b) in paragraph 1—
    - (i) in the first sentence, for “Competent authorities and ESMA” substitute “The competent authority”;
    - (ii) omit the second and third sentences;
  - (c) in paragraph 2, for “The Commission shall adopt delegated acts in accordance with Article 50 specifying” substitute “The Treasury may by regulations specify”;
  - (d) in paragraph 3, for “The Commission shall adopt delegated acts in accordance with Article 50, clarifying” substitute “The Treasury may by regulations specify”.
- (7) In Article 20, in paragraph 3—
  - (a) in the opening words, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
  - (b) omit the second and third subparagraphs.
- (8) In Article 21—
  - (a) in paragraph 4, for “Competent authorities” substitute “The competent authority”;
  - (b) after paragraph 4, insert—
 

“**4A.** During the transitional period referred to in Article 5(3A), the FCA may suspend the obligations referred to in Article 21(1) in relation to a specified class of financial instruments as described in paragraph 4 for a specified period otherwise than on the conditions laid down in Article 11 if the FCA considers that it is necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.

**4B.** In deciding whether to suspend those obligations—

    - (a) the FCA must also take into account—
      - (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and
      - (ii) the most recent specified threshold published before exit day on the basis of calculations under Article 16 of Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives<sup>(1)</sup>;
    - (b) the FCA may also take into account any other relevant information available in relation to liquidity in the relevant class of financial instrument concerned, whether in the United Kingdom or in any other country.”;
  - (c) in paragraph 5—
    - (i) in the opening words—
      - (aa) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;

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(1) OJ L87, 31.3.2017.

- (bb) for “Article 64 of [Directive 2014/65/EU](#)” substitute “regulation 14 of the Data Reporting Services Regulations 2017”;
  - (ii) omit the second and third subparagraphs.
- (9) In Article 22—
- (a) in paragraph 1, for “competent authorities” substitute “the competent authority”;
  - (b) omit paragraph 3;
  - (c) in paragraph 4—
    - (i) in the first subparagraph, for “ESMA shall develop draft regulatory”, substitute “The FCA may make”;
    - (ii) omit the second and third subparagraphs.
- (10) In Article 23—
- (a) in paragraph 1, for “in accordance with Article 25(4)(a) of [Directive 2014/65/EU](#)” substitute “by the Commission in accordance with Article 25(4)(a) of [Directive 2014/65/EU](#) before exit day, or specified as equivalent in regulations made by the Treasury under paragraph 8 of Schedule 3(2) on or after exit day”;
  - (b) in paragraph 2—
    - (i) for “authorised as an MTF under [Directive 2014/65/EU](#)” substitute “has permission to operate a multilateral trading facility under Part 4A of FSMA”;
    - (ii) for “such authorisations” substitute “such permissions”;
  - (c) in paragraph 3—
    - (i) for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
    - (ii) omit the second and third subparagraphs;
  - (d) insert after paragraph 3—
 

“4. The Treasury may only specify a third country trading venue as equivalent for the purposes of paragraph 1 if it is satisfied that the legal and supervisory framework of the third country in question ensures that a trading venue authorised in that country—

    - (a) complies with legally binding requirements equivalent to the requirements resulting from Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse, Title II of this Regulation, provisions of the law of the United Kingdom relied on by the United Kingdom before exit day to implement Title III of [Directive 2014/65/EU](#) 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(3), as those provisions are amended from time to time; and
    - (b) is subject to effective supervision and enforcement in that third country.

5. For the purpose of paragraph 4, a third-country legal and supervisory framework may be considered equivalent where that framework fulfils at least the following conditions—

    - (a) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(2) Schedule 3 is inserted to the Regulation by regulation 37 of these Regulations.

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

- (b) the markets have clear and transparent rules regarding the 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.”.