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## STATUTORY INSTRUMENTS

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# 2020 No. 1385

## The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020

### PART 5

#### Amendment of secondary legislation

#### **The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019**

**52.**—(1) The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019<sup>(1)</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation), in the definition of “the EMIR regulation”, for “last amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019” substitute “it forms part of retained EU law”.

(3) In regulation 14(4) (clearing obligation), in the words to be substituted for paragraph 4 of Article 4 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, for the second subparagraph, substitute—

“The Bank of England may make technical standards in relation to CCPs specifying the types of indirect contractual arrangements that meet the conditions referred to in the second sub-paragraph of paragraph 3.

The FCA may make technical standards for cases other than CCPs specifying the types of indirect contractual arrangements that meet—

- (a) the conditions referred to in the second sub-paragraph of paragraph 3; and
  - (b) conditions for reasonable and transparent commercial terms.”.
- (4) For regulation 42 (segregation and portability), including the heading, substitute—

#### **“Segregation and portability**

**42.** In Article 39—

- (a) in paragraph 8, for the words from “Article 2(1)(c)” to “collateral arrangements” substitute “regulation 3(1) of the Financial Collateral Arrangements (No.2) Regulations 2003<sup>(2)</sup>”;
- (b) omit paragraph 11.”.

(5) In regulation 59(4)(b) (transitional and final provisions), in new paragraph 5A, for “2020” substitute “2021”.

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(1) [S.I. 2019/335](#), as amended by [S.I. 2019/1416](#) and [2020/646](#).

(2) [S.I. 2003/3226](#). Relevant amending instrument is [S.I. 2010/2993](#).

(6) After regulation 64 (interpretation of Part 4) insert—

“CHAPTER 1A

SUPERVISION OF TRADE REPOSITORIES

**Supervision of trade repositories**

**64A.**—(1) If the FCA considers that—

- (a) a trade repository has contravened, or is likely to contravene, a requirement imposed by or under this Part, the EMIR Regulation or the TRATP Regulations, or
- (b) it is desirable to exercise the power in order to advance one or more of its operational objectives set out in section 1B(3) of FSMA,

it may impose, for such period as it considers appropriate, such requirements in relation to the carrying on of trade repository activities as it considers necessary or expedient.

(2) A requirement may, in particular, be imposed so as to require a trade repository to take, or refrain from taking, specified action.

(3) The FCA may—

- (a) withdraw a requirement; or
- (b) vary a requirement so as to reduce the period for which it has effect or otherwise to limit its effect.

(4) The imposition of the requirement takes effect—

- (a) immediately, if the notice given under paragraph (6) states that that is the case; or
- (b) on such date as may be specified in the notice.

(5) The imposition of a requirement may be expressed to take effect immediately, or on a specified date, only if the FCA, having regard to the ground on which it is exercising its power, reasonably considers that it is necessary for the imposition of the requirement to take effect immediately, or on that date.

(6) If the FCA proposes to impose, or imposes a requirement, it must give the trade repository written notice.

(7) The notice must—

- (a) give details of the requirement;
- (b) state the FCA’s reasons for imposition of the requirement;
- (c) inform the trade repository that it may make representations to the FCA within such period as may be specified in the notice, whether or not the trade repository has referred the matter to the Tribunal;
- (d) inform the trade repository of when the imposition of the requirement takes effect; and
- (e) inform the trade repository of its right to refer the matter to the Tribunal.

(8) The FCA may extend the period allowed under the notice for making representations.

(9) If, having considered any representations made by the trade repository, the FCA decides—

- (a) to impose the requirement in the way proposed, or
- (b) if the requirement has been imposed, not to rescind the imposition of the requirement,

it must give the trade repository written notice.

(10) If, having considered any representations made by the trade repository, the FCA decides—

- (a) not to impose the requirement in the way proposed,
- (b) to impose a different requirement, or
- (c) to rescind a requirement which has effect,

it must give the trade repository written notice.

(11) A notice under paragraph (9) must inform the trade repository of its right to refer the matter to the Tribunal.

(12) A notice under paragraph (10)(b) must comply with paragraph (7).

(13) If a notice informs the trade repository of its right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(14) A trade repository may refer to the Tribunal the FCA’s decision to impose a requirement under this regulation.”.

(7) In regulation 74 (application of Part 9A FSMA), after paragraph (7) insert—

“(7A) In section 138H (verification of rules)—

- (a) each reference to a regulator is a reference to the FCA;
- (b) each reference to either regulator is a reference to the FCA only.”.

(8) In regulation 79(3) (interpretation), for “exit day” substitute “IP completion day”.

(9) In regulation 80 (continuation of exemptions from certain clearing obligations and risk-management obligations)—

(a) in paragraph (1)(c)—

(i) in paragraph (i)—

- (aa) for “exit day”, in each place it occurs, substitute “21 December 2020”;
- (bb) in sub-paragraph (cc), omit “or”;

(ii) omit paragraph (ii);

(b) in paragraph (2)(c)—

- (i) for “exit day”, in each place it occurs, substitute “IP completion day”;
- (ii) in paragraph (ii), for “the 2016 Regulation” substitute “Regulation 2016/2251”.

(10) In regulation 81(1) and (2) (relevant day for the purposes of regulation 80), for “exit day”, in each place it occurs, substitute “IP completion day”.

(11) In regulation 82 (new exemptions from certain clearing obligations and risk-management obligations)—

(a) in paragraph (2), for “exit day” substitute “IP completion day”;

(b) for paragraph (5) substitute—

“(5) Paragraph (8) applies where one or both of the counterparties—

(a) in relation to an exemption from an obligation as specified in paragraph (6)—

- (i) has applied before 21 December 2020 to a competent authority for an exemption; or
- (ii) has before 21 December 2020 notified a competent authority of its intention to apply an exemption; or

(b) in relation to an exemption from an obligation as specified in paragraph (7)—

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**Changes to legislation:** The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020, Section 52 is up to date with all changes known to be in force on or before 29 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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- (i) has applied before IP completion day to a competent authority for an exemption; or
  - (ii) has before IP completion day notified a competent authority of its intention to apply an exemption.”;
- (c) in paragraph (6)—
- (i) in sub-paragraph (a)—
    - (aa) in each place it occurs, for “exit day” substitute “21 December 2020”;
    - (bb) in sub-paragraph (iii), omit “or”;
  - (ii) omit sub-paragraph (b);
- (d) in paragraphs (7) and (8), for “exit day”, in each place it occurs, substitute “IP completion day”.
- (12) In regulation 83(1) and (2) (relevant day for the purposes of regulation 82), for “exit day”, in each place it occurs, substitute “IP completion day”.

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**Commencement Information**

**II** Reg. 52 in force at 31.12.2020 immediately before IP completion day, see **reg. 1(4)**

**Changes to legislation:**

The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020, Section 52 is up to date with all changes known to be in force on or before 29 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)