

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 (Text with EEA relevance)

CHAPTER I

SCOPE AND DEFINITIONS

[^{F1}Article A1

Application

- 1 Subject to paragraph 2, this Regulation applies to—
 - a an investment firm which has its head office in the United Kingdom;
 - b a person authorised by the FCA to provide a data reporting service under the Data Reporting Services Regulations 2017;
 - c a market operator which has its registered office (or if it has no registered office, its head office) in the United Kingdom, including any UK regulated markets they operate.
- 2 This Regulation does not apply to—
 - a any person excluded from the definition of “investment firm” in Schedule 3 to the Regulated Activities Order;
 - b any firm which has permission under Part 4A of FSMA to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Markets in Financial Instruments Regulations 2017.]

Textual Amendments

- F1** Art. A1 inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(1)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 1

Subject-matter and scope

1 Chapter II, and Sections 1 to 4, Articles 59(4) and 60 and Sections 6 and 8 of Chapter III and, to the extent they relate to those provisions, Chapter I and Section 9 of Chapter III and Chapter IV of this Regulation shall apply to management companies [^{F2}in relation to the services described in paragraph 1A.]

- [^{F3}1A The services referred to in paragraph 1 are—
- a management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Part 1 of Schedule 2 to the Regulated Activities Order;

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- b investment advice concerning one or more of the instruments referred to in subparagraph (a);
- c safe-keeping and administration in relation to units of collective investments undertakings; and
- d reception and transmission of orders in relation to financial instruments.]

2 References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements [^{F4}(so far as relevant) in Chapters II to IV of this Regulation].

[^{F53} Chapters I, II, III and VI apply to relevant firms.

4 Chapters IV and V apply to a firm which has temporary permission to operate an organised trading facility as a branch in the United Kingdom under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

5 If—

- a a relevant firm complies with a requirement in Chapter II, III or VI of Commission Delegated Regulation (EU) 2017/565 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 as it has effect in EU law (“the EEA requirement”) in relation to the services it provides in the United Kingdom; and
- b the EEA requirement has equivalent effect to a requirement in this Regulation as it applies in the United Kingdom (“the UK requirement”),

the firm is to be treated as complying with the UK requirement.

6 For the purposes of this Article “relevant firm” means an investment firm or credit institution which has temporary permission to carry on a regulated activity which is any of the investment services and activities in the United Kingdom under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.]

Textual Amendments

- F2** Words in Art. 1(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Art. 1(1A) inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(2)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 1(2) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(2)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Art. 1(3)–(6) inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(2)(d)** (as amended by S.I. 2019/710, regs. 1(2), 16(18)(a)) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

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- (1) ‘relevant person’ in relation to an investment firm, means any of the following:
 - (a) a director, partner or equivalent, manager or tied agent of the firm;
 - (b) a director, partner or equivalent, or manager of any tied agent of the firm;
 - (c) an employee of the firm or of a tied agent of the firm, as well as any other natural person whose services are placed at the disposal and under the control of the firm or a tied agent of the firm and who is involved in the provision by the firm of investment services and activities;
 - (d) a natural person who is directly involved in the provision of services to the investment firm or to its tied agent under an outsourcing arrangement for the purpose of the provision by the firm of investment services and activities;
- (2) ‘financial analyst’ means a relevant person who produces the substance of investment research;
- (3) ‘outsourcing’ means an arrangement of any form between an investment firm and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the investment firm itself;
- (3a) ‘person with whom a relevant person has a family relationship’ means any of the following:
 - (a) the spouse of the relevant person or any partner of that person considered by national law as equivalent to a spouse;
 - (b) a dependent child or stepchild of the relevant person;
 - (c) any other relative of the relevant person who has shared the same household as that person for at least one year on the date of the personal transaction concerned;
- (4) ‘securities financing transaction’ means security financing transaction as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council⁽¹⁾.
- (5) ‘remuneration’ means all forms of payments or financial or non-financial benefits provided directly or indirectly by firms to relevant persons in the provision of investment or ancillary services to clients;
- (6) ‘commodity’ means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity.
- (7) [F6“portfolio management” means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;
- (8) “retail client” means a client who is not a professional client;
- (9) “limit order” means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;
- (10) “management company” has the meaning given in section 237(2) of FSMA;
- (11) “tied agent” means a natural or legal person, who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts—

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- (a) promotes investment or ancillary services to clients or prospective clients;
 - (b) receives and transmits instructions or orders from the client in respect of investment services or financial instruments; or
 - (c) places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;
- (12) “Group” has the meaning given in section 421 of FSMA;
- (13) “durable medium” means any instrument which—
 - (a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
 - (b) allows the unchanged reproduction of the information stored;
- (14) references in this Regulation to a sourcebook are to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by that Authority under FSMA as the sourcebook has effect on [F7 1st December 2021];
- (15) references in this Regulation to the PRA rulebook are to the rulebook published by the PRA containing rules made by that Authority under FSMA as the rulebook has effect on IP completion day;
- (16) References to “UK law on markets in financial instruments” are to the law of the United Kingdom which was relied on by the United Kingdom immediately before IP completion day to implement Directive 2014/65/EU and its implementing measures—
 - (a) as they have effect on IP completion day, in the case of rules made by F8... the PRA under FSMA, F9...
 - (aa) [F10 as they have effect on 1 December 2021, in the case of rules made by the FCA under FSMA, and]
 - (b) as amended from time to time, in all other cases.
- 16A [F11 “Directive 2013/36/EU UK law” means the law of the United Kingdom or any part of it, which was relied on by the United Kingdom immediately before IP completion day to implement Directive 2013/36/EU and its implementing measures:
 - a as it has effect on 1 January 2022, in the case of rules made by the PRA under FSMA; and
 - b as amended from time to time, in all other cases.]
- 16B [F11 “Part 9C rules” has the meaning given in section 143F(1) of FSMA.]
- 16C [F11 “CRR rules” has the meaning given in section 144A of FSMA.]
- (17) In this Regulation—
 - (a) any expression which is used in Regulation (EU) No 600/2014 (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in that Regulation;

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- (b) subject to point (a), any expression which is used in the Markets in Financial Instruments Regulations 2017 (as so amended) has the same meaning as in those Regulations;
- (c) subject to point (a), any expression which is used in the Data Reporting Services Regulations 2017 (as so amended) has the same meaning as in those Regulations.]

Textual Amendments

- F6** Art. 2(7)-(17) inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **39(3)** (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 12(n)) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 2(14) substituted (1.12.2021) by The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (S.I. 2021/774), regs. 1(3), **3(2)(a)**
- F8** Words in Art. 2(16)(a) omitted (1.12.2021) by virtue of The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (S.I. 2021/774), regs. 1(3), **3(2)(b)(i)(aa)**
- F9** Word in Art. 2(16)(a) omitted (1.12.2021) by virtue of The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (S.I. 2021/774), regs. 1(3), **3(2)(b)(i)(bb)**
- F10** Art. 2(16)(aa) inserted (1.12.2021) by The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (S.I. 2021/774), regs. 1(3), **3(2)(b)(ii)**
- F11** Art. 2(16A)-(16C) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **27(2)**

Article 3

Conditions applying to the provision of information

1 Where, for the purposes of this Regulation, information is required to be provided in a durable medium [^{F12}to retail clients, or potential retail clients,]^{F13}... investment firms shall have the right to provide that information in a durable medium other than on paper only if:

- a the provision of that information in that medium is appropriate to the context in which the business between the [^{F14}firm and the retail client, or potential retail client,] is, or is to be, carried on; and
- b [^{F15}the retail client, or potential retail client,] to whom the information is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.

[^{F16}1A Where the client or potential client is a retail client, or potential retail client, who has requested to receive the information on paper, that information must be provided on paper and free of charge.

1B Investment firms must provide all information required to be provided in a durable medium by this Regulation to clients or potential clients in electronic format, except where the client or potential client is a retail client, or potential retail client, when the provisions of paragraph 1 above apply.]

2 Where, pursuant to Article 46, 47, 48, 49, 50 or 66(3) of this Regulation, an investment firm provides information to a client by means of a website and that information is not addressed personally to the client, investment firms shall ensure that the following conditions are satisfied:

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- a the provision of that information in that medium is appropriate to the context in which the business between the firm and the client is, or is to be, carried on;
- b [^{F17}in the case of a retail client,] the client must specifically consent to the provision of that information in that form;
- c the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
- d the information must be up to date;
- e the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3 For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on where there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

Textual Amendments

- F12** Words in Art. 3(1) inserted (26.7.2021) by The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (S.I. 2021/774), regs. 1(2), **3(3)(a)**
- F13** Words in Art. 3(1) omitted (31.12.2020) by virtue of The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **39(4)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in Art. 3(1)(a) substituted (26.7.2021) by The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (S.I. 2021/774), regs. 1(2), **3(3)(b)**
- F15** Words in Art. 3(1)(b) substituted (26.7.2021) by The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (S.I. 2021/774), regs. 1(2), **3(3)(c)**
- F16** Art. 3(1A)(1B) inserted (26.7.2021) by The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (S.I. 2021/774), regs. 1(2), **3(3)(d)**
- F17** Words in Art. 3(2)(b) inserted (26.7.2021) by The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (S.I. 2021/774), regs. 1(2), **3(3)(e)**

Article 4

Provision of investment service in an incidental manner ^{F18}...

For the purpose of [^{F19}section 327(4) of FSMA and the exemption in paragraph 1(d) of Schedule 3 to the Regulated Activities Order], an investment service shall be deemed to be provided in an incidental manner in the course of a professional activity where the following conditions are satisfied:

- (a) a close and factual connection exists between the professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to the main professional activity;
- (b) the provision of investment services to the clients of the main professional activity does not aim to provide a systematic source of income to the person providing the professional activity; and
- (c) the person providing the professional activity does not market or otherwise promote his ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.

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Textual Amendments

- F18** Words in [Art. 4](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(5)(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))
- F19** Words in [Art. 4](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(5)(b)** (as amended by [S.I. 2019/710](#), regs. 1(2), **16(18)(b)**) (with savings in [S.I. 2019/680](#), [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))

Article 5

Wholesale energy products that must be physically settled ^{F20}...

1 For the purposes of [^{F21}paragraphs 6 and 7 of Part 1 of Schedule 2 to the Regulated Activities Order], a wholesale energy product must be physically settled where all the following conditions are satisfied:

- a it contains provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity; a balancing agreement with the Transmission System Operator in the area of electricity and gas shall be considered a proportionate arrangement where the parties to the agreement have to ensure physical delivery of electricity or gas.
- b it establishes unconditional, unrestricted and enforceable obligations of the parties to the contract to deliver and take delivery of the underlying commodity;
- c it does not allow either party to replace physical delivery with cash settlement;
- d the obligations under the contract cannot be offset against obligations from other contracts between the parties concerned, without prejudice to the rights of the parties to the contract, to net their cash payment obligations.

For the purposes of point (d), operational netting in power and gas markets shall not be considered as offsetting of obligations under a contract against obligations from other contracts.

2 Operational netting shall be understood as any nomination of quantities of power and gas to be fed into a gridwork upon being so required by the rules or requests of a Transmission System Operator as defined in Article 2(4) of Directive 2009/72/EC of the European Parliament and of the Council⁽²⁾ for an entity performing an equivalent function to a Transmission System Operator at the national level. Any nomination of quantities based on operational netting shall not be at the discretion of the parties to the contract.

3 For the purposes of [^{F22}paragraphs 6 and 7 of Part 1 of Schedule 2 to the Regulated Activities Order], force majeure shall include any exceptional event or a set of circumstances which are outside the control of the parties to the contract, which the parties to the contract could not have reasonably foreseen or avoided by the exercise of appropriate and reasonable due diligence and which prevent one or both parties to the contract from fulfilling their contractual obligations.

4 For the purposes of [^{F22}paragraphs 6 and 7 of Part 1 of Schedule 2 to the Regulated Activities Order] bona fide inability to settle shall include any event or set of circumstances, not qualifying as force majeure as referred to in paragraph 3, which are objectively and expressly defined in the contract terms, for one or both parties to the contract, acting in good faith, not to fulfil their contractual obligations.

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5 The existence of force majeure or bona fide inability to settle provisions shall not prevent a contract from being considered as ‘physically settled’ for the purposes of [F²² paragraphs 6 and 7 of Part 1 of Schedule 2 to the Regulated Activities Order].

6 The existence of default clauses providing that a party is entitled to financial compensation in the case of non- or defective performance of the contract shall not prevent the contract from being considered as ‘physically settled’ within the meaning of [F²² paragraphs 6 and 7 of Part 1 of Schedule 2 to the Regulated Activities Order].

7 The delivery methods for the contracts being considered as ‘physically settled’ within the meaning of [F²² paragraphs 6 and 7 of Part 1 of Schedule 2 to the Regulated Activities Order] shall include at least:

- a physical delivery of the relevant commodities themselves;
- b delivery of a document giving rights of an ownership nature to the relevant commodities or the relevant quantity of the commodities concerned;
- c other methods of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them, including notification, scheduling or nomination to the operator of an energy supply network, that entitles the recipient to the relevant quantity of the goods.

Textual Amendments

- F20** Words in [Art. 5](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(6)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F21** Words in [Art. 5\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(6)(b)** (as amended by S.I. 2019/710, regs. 1(2), **16(18)(c)**) (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F22** Words in [Art. 5\(3\)-\(7\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(6)(c)** (as amended by S.I. 2019/710, regs. 1(2), **16(18)(c)**) (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Article 6

Energy derivative contracts relating to oil and coal and wholesale energy products ^{F23}...

1 For the purposes of [F²⁴ paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order], energy derivative contracts relating to oil shall be contracts with mineral oil, of any description and petroleum gases, whether in liquid or vapour form, including products, components and derivatives of oil and oil transport fuels, including those with biofuel additives, as an underlying.

2 For the purposes of [F²⁵ paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order], energy derivative contracts relating to coal shall be contracts with coal, defined as a black or dark-brown combustible mineral substance consisting of carbonised vegetable matter, used as a fuel, as an underlying.

3 For the purposes of [F²⁶ paragraphs 6 and 7 of Part 1 of Schedule 2 to the Regulated Activities Order] derivative contracts that have the characteristics of wholesale energy products as defined in Article 2(4) of Regulation (EU) No 1227/2011 shall be derivatives with electricity or natural gas as an underlying, in accordance with points (b) and (d) of Article 2(4) of that Regulation.

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Textual Amendments

- F23** Words in Art. 6 heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(7)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F24** Words in Art. 6(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(7)(b)** (as amended by S.I. 2019/710, regs. 1(2), **16(18)(d)(i)**) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F25** Words in Art. 6(2) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(7)(b)** (as amended by S.I. 2019/710, regs. 1(2), **16(18)(d)(i)**) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F26** Words in Art. 6(3) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(7)(c)** (as inserted by S.I. 2019/710, regs. 1(2), **16(18)(d)(ii)**) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 7

Other derivative financial instruments ^{F27} ...

1 For the purposes of [^{F28}paragraph 7 of Part 1 of Schedule 2 to the Regulated Activities Order], a contract which is not a spot contract in accordance with paragraph 2 and which is not for commercial purposes as laid down in paragraph 4 shall be considered as having the characteristics of other derivative financial instruments where it satisfies the following conditions:

- a it meets one of the following criteria:
 - (i) [^{F29}it is traded on a third country trading venue which is a regulated market, an MTF or an OTF (as defined by Article 2(1)(13), (14) and (15) respectively of the markets in financial instruments regulation);]
 - (ii) it is expressly stated to be traded on, or is subject to the rules of, [^{F30}a UK regulated market, a UK MTF, a UK OTF (as defined by Article 2(1)(13A), (14A) and (15A) respectively of the markets in financial instruments regulation)] or such a third country trading venue;
 - (iii) it is equivalent to a contract traded on [^{F31}a UK regulated market, a UK MTF, a UK OTF] or such a third country trading venue, with regards to the price, the lot, the delivery date and other contractual terms;
- b it is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

2 A spot contract for the purposes of paragraph 1 shall be a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods:

- a 2 trading days;
- b the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the

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underlying is to be postponed and not to be performed within the period referred to in paragraph 2.

3 For the purposes of [^{F32}paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order], a derivative contract relating to an underlying referred to in that Section or in Article 8 of this Regulation shall be considered to have the characteristics of other derivative financial instruments where one of the following conditions is satisfied:

- a it is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;
- b it is traded on a regulated market, an MTF, an OTF, or a third country trading venue that performs a similar function to a regulated market, MTF or an OTF;
- c the conditions laid down in paragraph 1 are satisfied in relation to that contract.

4 A contract shall be considered to be for commercial purposes for the purposes of [^{F33}paragraph 7 of Part 1 of Schedule 2 to the Regulated Activities Order], and as not having the characteristics of other derivative financial instruments for the purposes of [^{F34}paragraphs 7 and 10 of Part 1 of Schedule 2 to the Regulated Activities Order], where the following conditions are both met:

- a it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network,
- b it is necessary to keep in balance the supplies and uses of energy at a given time, including the case when the reserve capacity contracted by an electricity transmission system operator as defined in Article 2(4) of Directive 2009/72/EC is being transferred from one prequalified balancing service provider to another prequalified balancing service provider with the consent of the relevant transmission system operator.

Textual Amendments

- F27** Words in Art. 7 heading omitted (31.12.2020) by virtue of The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **39(8)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F28** Words in Art. 7(1) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **39(8)(b)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F29** Art. 7(1)(a)(i) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **39(8)(b)(ii)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F30** Words in Art. 7(1)(a)(ii) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **39(8)(b)(iii)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F31** Words in Art. 7(1)(a)(iii) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **39(8)(b)(iv)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F32** Words in Art. 7(3) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **39(8)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F33** Words in Art. 7(4) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **39(8)(d)(i)(aa)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F34** Words in Art. 7(4) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **39(8)(d)(i)(bb)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 8

Derivatives under [F35 paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order]F36...

In addition to derivative contracts expressly referred to in [F37 paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order], a derivative contract shall be subject to the provisions in [F38 that Part] where it meets the criteria set out in [F38 that Part] and in Article 7(3) of this Regulation and it relates to any of the following:

- (a) telecommunications bandwidth;
- (b) commodity storage capacity;
- (c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;
- (d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except where the contract is already within the scope of [F39 paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order];
- (e) a geological, environmental or other physical variable, except if the contract is relating to any [F40 emission allowances referred to in paragraph 11 of Part 1 of Schedule 2 to the Regulated Activities Order];
- (f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;
- (g) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;
- (h) an index or measure based on actuarial statistics.

Textual Amendments

- F35** Words in Art. 8 heading substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F36** Words in Art. 8 heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F37** Words in Art. 8 substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(c)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F38** Words in Art. 8 substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(c)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F39** Words in Art. 8(d) substituted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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F40 Words in Art. 8(e) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(9)(e)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 9

Investment advice ^{F41}...

[^{F42}For the purposes of the list of investment services and activities in Part 3 of Schedule 2 to the Regulated Activities Order, “investment advice” means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments. For these purposes], a personal recommendation shall be considered a recommendation that is made to a person in his capacity as an investor or potential investor, or in his capacity as an agent for an investor or potential investor.

That recommendation shall be presented as suitable for that person, or shall be based on a consideration of the circumstances of that person, and shall constitute a recommendation to take one of the following sets of steps:

- (a) to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument;
- (b) to exercise or not to exercise any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

A recommendation shall not be considered a personal recommendation if it is issued exclusively to the public.

Textual Amendments

F41 Words in Art. 9 heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(10)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F42 Words in Art. 9 substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(10)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 10

Characteristics of other derivative contracts relating to currencies

1 For the purposes of [^{F43}paragraph 4 of Part 1 of the Schedule 2 to the Regulated Activities Order], other derivative contracts relating to a currency shall not be a financial instrument where the contract is one of the following:

- a a spot contract within the meaning of paragraph 2 of this Article,
- b a means of payment that:
 - (i) must be settled physically otherwise than by reason of a default or other termination event;

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- (ii) is entered into by at least a person which is not a financial counterparty within the meaning of Article 2(8) of Regulation (EU) No 648/2012 of the European Parliament and of the Council⁽³⁾;
- (iii) is entered into in order to facilitate payment for identifiable goods, services or direct investment; and
- (iv) is not traded on a trading venue.

2 A spot contract for the purposes of paragraph 1 shall be a contract for the exchange of one currency against another currency, under the terms of which delivery is scheduled to be made within the longer of the following periods:

- a 2 trading days in respect of any pair of the major currencies set out in paragraph 3;
- b for any pair of currencies where at least one currency is not a major currency, the longer of 2 trading days or the period generally accepted in the market for that currency pair as the standard delivery period;
- c where the contract for the exchange of those currencies is used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, the period generally accepted in the market for the settlement of that transferable security or a unit in a collective investment undertaking as the standard delivery period or 5 trading days, whichever is shorter.

A contract shall not be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the currency is to be postponed and not to be performed within the period set out in the first subparagraph.

3 The major currencies for the purposes of paragraph 2 shall only include the US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish złoty and Romanian leu.

4 For the purposes of paragraph 2, a trading day shall mean any day of normal trading in the jurisdiction of both the currencies that are exchanged pursuant to the contract for the exchange of those currencies and in the jurisdiction of a third currency where any of the following conditions are met:

- a the exchange of those currencies involves converting them through that third currency for the purposes of liquidity;
- b the standard delivery period for the exchange of those currencies references the jurisdiction of that third currency.

Textual Amendments

F43 Words in Art. 10(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(11)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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Article 11

Money-market instruments ^{F44}...

[^{F45}1]. Money-market instruments ^{F46}... shall include treasury bills, certificates of deposits, commercial papers and other instruments with substantively equivalent features where they have the following characteristics:

- (a) they have a value that can be determined at any time;
- (b) they are not derivatives;
- (c) they have a maturity at issuance of 397 days or less.

[^{F47}2 For the purposes of this Article, “money market instruments” means those classes of instruments which are normally dealt with on the money market, excluding instruments of payment.]

Textual Amendments

- F44** Words in [Art. 11](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(12)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F45** [Art. 11](#) renumbered as [Art. 11\(1\)](#) (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(12)(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F46** Words in [Art. 11\(1\)](#) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(12)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F47** [Art. 11\(2\)](#) inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **39(12)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 12

Systematic internalisers for shares, depositary receipts, ETFs, certificates and other similar financial instruments ^{F48}...

[^{F49}1.] An investment firm shall be considered to be a systematic internaliser in accordance with [^{F50}Article 2(1)(12) of Regulation (EU) No 600/2014] in respect of each share, depositary receipt, exchange traded fund (ETF), certificate and other similar financial instrument where it internalises according to the following criteria:

- (a) on a frequent and systematic basis in the financial instrument for which there is a liquid market as defined in Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months:
 - (i) the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 0,4 % of the total number of transactions in the relevant financial instrument executed in [^{F51}the relevant area] on any trading venue or OTC during the same period;

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- (ii) the OTC transactions carried out by it on own account when executing client orders in the relevant financial instrument take place on average on a daily basis;
- (b) on a frequent and systematic basis in the financial instrument for which there is not a liquid market as defined in Article 2(1)(17)(b) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders takes place on average on a daily basis;
- (c) on a substantial basis in the financial instrument where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than either:
 - (i) 15 % of the total turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
 - (ii) 0,4 % of the total turnover in that financial instrument executed in ^[F52]the relevant area] on a trading venue or OTC.

^[F53]2 For the purposes of this Article, and Articles 13 to 16, “relevant area” in relation to a financial instrument, means the United Kingdom and such other countries or regions as have been specified by the FCA by direction for the purposes of Article 5, 9 or 14 of Regulation (EU) No 600/2014.

3 During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.]

Textual Amendments

- F48** Words in [Art. 12](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **40(1)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F49** [Art. 12](#) renumbered as [Art. 12\(1\)](#) (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **40(1)(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F50** Words in [Art. 12\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **40(1)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F51** Words in [Art. 12\(1\)\(a\)\(i\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **40(1)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F52** Words in [Art. 12\(1\)\(c\)\(ii\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **40(1)(e)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F53** [Art. 12\(2\)\(3\)](#) inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **40(1)(f)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 13

Systematic internalisers for bonds ^{F54}...

[^{F55}1]. An investment firm shall be considered to be a systematic internaliser in accordance with [^{F56}Article 2(1)(12) of Regulation (EU) No 600/2014] in respect of all bonds belonging to a class of bonds issued by the same entity or by any entity within the same group where, in relation to any such bond, it internalises according to the following criteria:

- (a) on a frequent and systematic basis in a bond for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:
 - (i) the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 2,5 % of the total number of transactions in the relevant bond executed in [^{F57}the relevant area] on any trading venue or OTC during the same period;
 - (ii) the OTC transactions carried out by it on own account when executing client orders in the relevant financial instrument take place on average once a week;
- (b) on a frequent and systematic basis in a bond for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders take place on average once a week;
- (c) on a substantial basis in a bond where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:
 - (i) 25 % of the total turnover in that bond executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
 - (ii) 1 % of the total turnover in that bond executed in [^{F58}the relevant area] on a trading venue or OTC.

[^{F59}2 During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.]

Textual Amendments

- F54** Words in Art. 13 heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **40(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F55** Art. 13 renumbered as Art. 13(1) (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **40(2)(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F56** Words in Art. 13(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **40(2)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F57** Words in Art. 13(1)(a)(i) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **40(2)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F58** Words in Art. 13(1)(c)(ii) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(2)(e)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F59** Art. 13(2) inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(2)(f)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 14

Systematic internalisers for structured finance products ^{F60}...

[^{F61}1]. An investment firm shall be considered to be a systematic internaliser in accordance with [^{F62}Article 2(1)(12) of Regulation (EU) No 600/2014] in respect of all structured finance products belonging to a class of structured finance products issued by the same entity or by any entity within the same group where, in relation to any such structured finance product, it internalises according to the following criteria:

- (a) on a frequent and systematic basis in a structured finance product for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:
 - (i) the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 4 % of the total number of transactions in the relevant structured finance product executed in [^{F63}the relevant area] on any trading venue or OTC during the same period;
 - (ii) the OTC transactions carried out by it on own account when executing client orders in the relevant financial instrument take place on average once a week;
- (b) on a frequent and systematic basis in a structured finance product for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account when executing client orders take place on average once a week;
- (c) on a substantial basis in a structured finance product where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:
 - (i) 30 % of the total turnover in that structured finance product executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
 - (ii) 2,25 % of the total turnover in that structured finance product executed in [^{F64}the relevant area] on a trading venue or OTC.

[^{F65}2 During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.]

Textual Amendments

- F60** Words in Art. 14 heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(3)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F61** Art. 14 renumbered as Art. 14(1) (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(3)(b)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F62** Words in Art. 14(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(3)(c)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F63** Words in Art. 14(1)(a)(i) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(3)(d)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F64** Words in Art. 14(1)(c)(ii) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(3)(e)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F65** Art. 14(2) inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(3)(f)** (with savings in S.I. 2019/680, [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Article 15

Systematic internalisers for derivatives ^{F66}...

[^{F67}1]. An investment firm shall be considered to be a systematic internaliser in accordance with [^{F68}Article 2(1)(12) of Regulation (EU) No 600/2014] in respect of all derivatives belonging to a class of derivatives where, in relation to any such derivative, it internalises according to the following criteria:

- (a) on a frequent and systematic basis in a derivative for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:
 - (i) the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 2,5 % of the total number of transactions in the relevant class of derivatives executed in [^{F69}the relevant area] on any trading venue or OTC during the same period;
 - (ii) the OTC transactions carried out by it on own account when executing client orders in this class of derivatives take place on average once a week;
- (b) on a frequent and systematic basis in a derivative for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account in the relevant class of derivative when executing client orders takes place on average once a week;
- (c) on a substantial basis in a derivative where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:
 - (i) 25 % of the total turnover in that class of derivatives executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC; or
 - (ii) 1 % of the total turnover in that class of derivatives executed in [^{F70}the relevant area] on a trading venue or OTC.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

[^{F71}2] During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.]

Textual Amendments

- F66** Words in Art. 15 heading omitted (31.12.2020) by virtue of The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **40(4)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F67** Art. 15 renumbered as Art. 15(1) (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **40(4)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F68** Words in Art. 15(1) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **40(4)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F69** Words in Art. 15(1)(a)(i) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **40(4)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F70** Words in Art. 15(1)(c)(ii) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **40(4)(e)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F71** Art. 15(2) inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **40(4)(f)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 16

Systematic internalisers for emission allowances^{F72}...

[^{F73}1]. An investment firm shall be considered to be a systematic internaliser in accordance with [^{F74}Article 2(1)(12) of Regulation (EU) No 600/2014] in respect of emission allowances where, in relation to any such instrument, it internalises according to the following criteria:

- (a) on a frequent and systematic basis in an emission allowance for which there is a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months:
 - (i) the number of OTC transactions carried out by it on own account when executing client orders is equal to or larger than 4 % of the total number of transactions in the relevant type of emission allowances executed in [^{F75}the relevant area] on any trading venue or OTC during the same period;
 - (ii) the OTC transactions carried out by it on own account when executing client orders in this type of emission allowances take place on average once a week;
- (b) on a frequent and systematic basis in an emission allowance for which there is not a liquid market as defined in Article 2(1)(17)(a) of Regulation (EU) No 600/2014 where during the past 6 months the OTC transactions carried out by it on own account in the relevant type of emission allowances when executing client orders takes place on average once a week;

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- (c) on a substantial basis in an emission allowance where the size of OTC trading carried out by it on own account when executing client orders is, during the past 6 months, equal to or larger than any of the following:
- (i) 30 % of the total turnover in that type of emission allowances executed by the investment firm on own account or on behalf of clients and executed on a trading venue or OTC;
 - (ii) 2,25 % of the total turnover in that type of emission allowance executed in [^{F76}the relevant area] on a trading venue or OTC.

[^{F77}2 During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, whether the criteria set out in paragraph 1 are satisfied is to be calculated in accordance with Article 16ZA.]

Textual Amendments

- F72** Words in [Art. 16](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(5)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F73** [Art. 16](#) renumbered as [Art. 16\(1\)](#) (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(5)(b)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F74** Words in [Art. 16\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(5)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F75** Words in [Art. 16\(1\)\(a\)\(i\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(5)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F76** Words in [Art. 16\(1\)\(c\)\(ii\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(5)(e)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F77** [Art. 16\(2\)](#) inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(5)(f)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

[^{F78}Article 16ZA

Transitional period: data for calculations

1 During the transitional period, within the meaning of Article 5(3A) of Regulation (EU) No 600/2014, for the purposes of determining whether the criteria set out in Articles 12 to 16 are satisfied, firms must use data published by the FCA for the financial instrument in question to calculate—

- a whether there is a liquid market for that financial instrument;
- b the total number of transactions in that financial instrument executed in the relevant area on any trading venue or OTC;
- c the total turnover for that financial instrument executed in the relevant area on a trading venue or OTC.

2 Where the FCA has not published relevant data for the financial instrument in question, firms must use the most recent data published before IP completion day by the European

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Securities and Markets Authority in relation to that financial instrument to calculate the questions set out in paragraph 1.

3 If neither the data described in paragraph 1 nor the data described in paragraph 2 are available in relation to the financial instrument in question, an investment firm is not a systematic internaliser within the definition given in Article 2(1)(12) of Regulation (EU) No 600/2014 unless it has chosen to opt in to the systematic internaliser regime.]

Textual Amendments

F78 Art. 16ZA inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **40(6)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 12(o)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

[^{F79} Article 16a

Participation in matching arrangements

An investment firm shall not be considered to be dealing on own account for the purposes of [^{F80}Article 2(1)(12) of Regulation (EU) No 600/2014] where that investment firm participates in matching arrangements entered into with entities outside its own group with the objective or consequence of carrying out *de facto* riskless back-to-back transactions in a financial instrument outside a trading venue.]

Textual Amendments

- F79** Inserted by Commission Delegated Regulation (EU) 2017/2294 of 28 August 2017 amending Delegated Regulation (EU) 2017/565 as regards the specification of the definition of systematic internalisers for the purposes of Directive 2014/65/EU (Text with EEA relevance).
- F80** Words in Art. 16a substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **40(7)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

Article 17

Relevant assessment periods ^{F81}...

The conditions set out in Articles 12 to 16 shall be assessed on a quarterly basis on the basis of data from the past 6 months. The assessment period shall start on the first working day of the months of January, April, July and October.

Newly issued instruments shall only be considered in the assessment when historical data covers a period of at least three months in the case of shares, depositary receipts, ETFs, certificates and other similar financial instruments, and six weeks in the case of bonds, structured finance products and derivatives.

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Textual Amendments

- F81** Words in [Art. 17](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **40(8)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 18

Algorithmic trading ^{F82}...

For the purposes of further specifying the definition of algorithmic trading in accordance with [^{F83}regulation 2(1) of the Markets in Financial Instruments Regulations 2017], a system shall be considered as having no or limited human intervention where, for any order or quote generation process or any process to optimise order-execution, an automated system makes decisions at any of the stages of initiating, generating, routing or executing orders or quotes according to pre-determined parameters.

Textual Amendments

- F82** Words in [Art. 18](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **41(1)(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F83** Words in [Art. 18](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **41(1)(b)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 19

High frequency algorithmic trading technique ^{F84}...

1 A high message intraday rate [^{F85}for the purposes of the definition of “high-frequency algorithmic trading technique” in regulation 2(1) of the Markets in Financial Instruments Regulations 2017 and regulation 3(1) of the Recognition Requirements Regulations] shall consist of the submission on average of any of the following:

- a at least 2 messages per second with respect to any single financial instrument traded on a trading venue;
- b at least 4 messages per second with respect to all financial instruments traded on a trading venue.

2 For the purposes of paragraph 1, messages concerning financial instruments for which there is a liquid market in accordance with Article 2(1)(17) of Regulation (EU) No 600/2014 shall be included in the calculation. Messages introduced for the purpose of trading that fulfil [^{F86}the criteria described in paragraph 2A] shall be included in the calculation.

[^{F87}2A A market making strategy satisfies the criteria in this paragraph where the strategy (pursued by the investment firm as a member or participant in one or more trading venues), when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.]

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3 For the purposes of paragraph 1, messages introduced for the purpose of dealing on own account shall be included in the calculation. Messages introduced through other trading techniques than those relying on dealing on own account shall be included in the calculation where the firm's execution technique is structured in such a way as to avoid that the execution takes place on own account.

4 For the purposes of paragraph 1, for the calculation of high message intraday rate in relation to DEA providers, messages submitted by their DEA clients shall be excluded from the calculations [^{F88}(and for the purposes of this paragraph, “DEA” means “direct electronic access” as defined in regulation 2(1) of the Markets in Financial Instruments Regulations 2017)].

5 For the purposes of paragraph 1, trading venues shall make available to the firms concerned, on request, estimates of the average number of messages per second on a monthly basis two weeks after the end of each calendar month, thereby taking into account all messages submitted during the preceding 12 months.

Textual Amendments

- F84** Words in [Art. 19](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), [41\(2\)\(a\)](#) (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))
- F85** Words in [Art. 19\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), [41\(2\)\(b\)](#) (with savings in [S.I. 2019/680](#), [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))
- F86** Words in [Art. 19\(2\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), [41\(2\)\(c\)](#) (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))
- F87** [Art. 19\(2A\)](#) inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), [41\(2\)\(d\)](#) (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))
- F88** Words in [Art. 19\(4\)](#) inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), [41\(2\)\(e\)](#) (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))

Article 20

Direct electronic access ^{F89}...

1 A person shall be considered not capable of electronically transmitting orders relating to a financial instrument directly to a trading venue in accordance with [^{F90}the definition of ‘direct electronic access’ in regulation 2(1) of the Markets in Financial Instruments Regulations 2017] where that person cannot exercise discretion regarding the exact fraction of a second of order entry and the lifetime of the order within that timeframe.

2 A person shall be considered not capable of such direct electronic order transmission where it takes place through arrangements for optimisation of order execution processes that determine the parameters of the order other than the venue or venues where the order should be submitted, unless these arrangements are embedded into the clients' systems and not into those of the member or participant of a regulated market or of an MTF or a client of an OTF.

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

Textual Amendments

- F89** Words in [Art. 20](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **41(3)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F90** Words in [Art. 20\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **41(3)(b)** (as amended by S.I. 2019/710, regs. 1(2), 16(19)) (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (1) Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 ([OJ L 337](#), 23.12.2015, p. 1).
- (2) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ([OJ L 211](#), 14.8.2009, p. 55).
- (3) 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 ([OJ L 201](#), 27.7.2012, p. 1).

Changes to legislation:

There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- Regulation power to amend or revoke conferred by [2023 c. 29 s. 1517](#)
- Regulation power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 3](#)
- Regulation power to modify conferred by [2023 c. 29 s. 1317](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 3](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Art. 3(1B) omitted by [S.I. 2022/1297 reg. 2\(3\)](#)
- Art. 3(1ZA) inserted by [S.I. 2022/1297 reg. 2\(2\)\(b\)](#)