
DRAFT STATUTORY INSTRUMENTS

2018 No.

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

PART 3

Amendment of secondary legislation: European Union (Withdrawal) Act 2018

CHAPTER 2

The Financial Services and Markets Act 2000
(Markets in Financial Instruments) Regulations 2017

**The Financial Services and Markets Act 2000 (Markets in Financial Instruments)
Regulations 2017**

5. The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(1) are amended in accordance with this Chapter.

Introductory provisions

6. In regulation 1—

- (a) in paragraph (2)(a), omit paragraph (v);
- (b) in paragraph (3)(b)(i), at the beginning insert “any United Kingdom legislation which was relied on by the United Kingdom before exit day to implement”.

Interpretation

7.—(1) In regulation 2(1)—

(a) for the definition of “algorithmic trading”, substitute—

““algorithmic trading” means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;”;

(b) for the definition of “ancillary services”, substitute—

““ancillary services” means any of the services and activities listed in Part 3A of Schedule 2 to the Regulated Activities Order;”;

(c) insert after the definition of “ancillary services”—

- ““appropriate regulator” has the meaning given in section 55A of the Act;”
- (d) in the definition of “branch”, for “Article 4.1.30 (definitions) of the markets in financial instruments directive”, substitute “Article 2.1.20 of the markets in financial instruments regulation”;
- (e) in the definition of “client” for “Article 4.1.9 of the markets in financial instruments directive”, substitute “Article 2.1.7 of the markets in financial instruments regulation”;
- (f) in the definition of “commodity derivative” for “Article 4.1.50 of the markets in financial instruments directive”, substitute “Article 2.1.30 of the markets in financial instruments regulation”;
- (g) for the definition of “competent authority”, substitute—
““competent authority” means the authority designated by regulation 3;”;
- (h) in the definition of “credit institution” for “Article 4.1.27 of the markets in financial instruments directive”, substitute “Article 2.1.19 of the markets in financial instruments regulation”;
- (i) for the definition of “derivative”, substitute—
““derivative” means a financial instrument referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order;”;
- (j) for the definition of “direct electronic access” substitute—
““direct electronic access” means an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue and includes arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a person (sponsored access);”
- (k) in the definition of “emission allowance” for “point (11) of Section C of Annex 1 of the markets in financial instruments directive”, substitute “paragraph 11 of Part 1 of Schedule 2 to the Regulated Activities Order”;
- (l) omit the definition of “ESMA”;
- (m) for the definition of “financial instrument”, substitute—
““financial instrument” means those instruments specified in Part 1 of Schedule 2 to the Regulated Activities Order, read with Part 2 of that Schedule;”;
- (n) after the definition of “financial instrument”, insert—
““high-frequency algorithmic trading technique” means an algorithmic trading technique characterised by—
- (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry—
 - (i) co-location;
 - (ii) proximity hosting; or
 - (iii) high-speed direct electronic access;
 - (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and
 - (c) high message intraday rates which constitute orders, quotes or cancellations;”;

- (o) in the definition of “investment activity”, for “Section A of Annex 1 of the markets in financial instruments directive”, substitute “Part 3 of Schedule 2 to the Regulated Activities Order”;
 - (p) in the definition of “investment firm”, for “Article 4.1.1 of the markets in financial instruments directive”, substitute “Article 2.1A of the markets in financial instruments regulation”;
 - (q) in the definition of “investment service”, for “Section A of Annex 1 of the markets in financial instruments directive”, substitute “Part 3 of Schedule 2 to the Regulated Activities Order”;
 - (r) in the definition of “investment services and activities” for “Section A of Annex 1 of the markets in financial instruments directive”, substitute “Part 3 of Schedule 2 to the Regulated Activities Order”;
 - (s) for the definition of “multilateral trading facility”, substitute—
 - ““multilateral trading facility” or “MTF”, “UK multilateral trading facility” and “EU multilateral trading facility” have the meanings given in Article 2.1.14, 2.1.14A and 2.1.14B respectively of the markets in financial instruments regulation;”;
 - (t) after the definition of “regulated activity” insert—
 - ““Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(2);
 - “Regulation (EU) 2017/578” means Commission Delegated Regulation (EU) 2017/578 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes;
 - “Regulation (EU) 2017/589” means Commission Delegated Regulation (EU) 2017/589 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading;
 - “Regulation (EU) 2017/591” means Commission Delegated Regulation (EU) 2017/591 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives;
 - “SME growth market” means a MTF that is registered as an SME growth market in accordance with Part 5.10 of the Market Conduct sourcebook containing rules made by the FCA under the Act;”;
 - (u) for the definition of “regulated market” substitute—
 - ““regulated market”, “UK regulated market” and “EU regulated market” have the meanings given in Article 2.1.13, 2.1.13A and 2.1.13B respectively of the markets in financial instruments regulation;”
 - (v) for the definition of “trading venue”, substitute—
 - ““trading venue”, “UK trading venue” and “EU trading venue” have the meanings given in Article 2.1.16, 2.1.16A and 2.1.16B respectively of the markets in financial instruments regulation;”.
- (2) After paragraph (2) of regulation 2, insert—
- “(3) Unless the context otherwise requires, all references in these Regulations to—
 - (a) a trading venue are to a UK trading venue;

- (b) a regulated market are to a UK regulated market;
- (c) an MTF are to a UK MTF;
- (d) an OTF are to a UK OTF; and
- (e) an EU regulated market, EU MTF or EU OTF include EU regulated markets, MTFs and OTFs in EEA countries.

(4) References in these Regulations to a “third country” (including in expressions including the words “third country”) are, except where the context otherwise requires, to be read as references to a country other than the United Kingdom.

(5) Any reference in these Regulations to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under the Act, as the sourcebook has effect on exit day.”

(3) In regulation 3—

(a) for paragraph (1), substitute—

“(1) The FCA is designated to carry out all the functions of a competent authority provided for in—

- (a) the Act;
- (b) the markets in financial instruments regulation; and
- (c) rules made under section 137A (the FCA general rules) of the Act or any other subordinate legislation conferring functions on the FCA made under the Act.”;

(b) in paragraph (2)(b), omit “and Schedule 3 to the Act”;

(c) in paragraph (4)—

- (i) at the end of sub-paragraph (d), insert “and”;
- (ii) omit sub-paragraph (e).

Exempt and third country investment firms

8.—(1) Omit regulation 5.

(2) In regulation 6—

(a) in paragraph (3)(c)—

(i) for paragraph (i), substitute—

“(i) an investment firm which—

- (aa) has a Part 4A permission to carry on regulated activities relating to investment services and activities; or
- (bb) is authorised in accordance with the markets in financial instruments directive;”;

(ii) for paragraph (ii), substitute—

“(ii) a credit institution which—

- (aa) has a Part 4A permission to carry on the regulated activity of accepting deposits and falls within paragraph (3A); or
- (bb) is authorised in accordance with [Directive 2013/36/EU](#) of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and investment firms;”;

(iii) in paragraph (iv), after “the law of” insert “the United Kingdom or of”;

(iv) in paragraph (v), after “dealt in on” insert “ a UK regulated market or”;

- (b) after paragraph (3), insert—
 - “(3A) A credit institution falls within this paragraph if—
 - (a) it has its head office in the United Kingdom; and
 - (b) it is not a credit union within the meaning of the Credit Unions Act 1979⁽³⁾ or the Credit Unions (Northern Ireland) Order 1985⁽⁴⁾, or a friendly society within the meaning of section 417(1) of the Act.”;
 - (c) for paragraph (4), substitute—
 - “(4) In paragraph (3), “investment company with fixed capital” means a company—
 - (a) the exclusive object of which is to invest its funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving its shareholders the benefit of the results of the management of their assets; and
 - (b) which offers its own shares for subscription by the public.”;
 - (d) omit paragraph (5).
- (3) In regulation 8, for the words after paragraph (b) substitute—
“but to whom the appropriate regulator has granted exemption from authorisation and operating conditions which usually apply to investment firms.”.
- (4) Omit regulations 9 and 10.
 - (5) In regulation 11—
 - (a) in the heading, for “ESMA” substitute “the FCA”;
 - (b) renumber the existing paragraph as paragraph (1);
 - (c) in paragraph (1) as renumbered, for “ESMA” substitute “the FCA”;
 - (d) after paragraph (1) insert—
 - “(2) For the purposes of this regulation, third country firms which are included on the register with ESMA immediately before exit day under Article 46.2 of the markets in financial instruments regulation are to be treated after exit day as being registered with the FCA.”.
 - (6) In regulation 12—
 - (a) in the heading, for “ESMA” substitute “the FCA”;
 - (b) in paragraph (1)—
 - (i) in the opening words, for “with ESMA” substitute “with it”;
 - (ii) for sub-paragraph (b)(ii), substitute—
 - “(ii) on the basis of which—
 - (aa) the Commission has adopted a decision in relation to the country under paragraph 1 of Article 47 of the markets in financial instruments regulation before exit day; or
 - (bb) the Treasury have made regulations in relation to the country under that paragraph after exit day;”
 - (c) in paragraph (2)—
 - (i) for “as it does” substitute “as it applied”;
 - (ii) after the second reference to “FCA” insert “before exit day”;

(3) 1979 c.34.

(4) 1985 No.1205 (N.I. 12)

- (d) in paragraph (3)—
 - (i) in the opening words, for “with ESMA” substitute “with it”;
 - (ii) omit sub-paragraph (a);
- (e) in paragraph (4)—
 - (i) in sub-paragraph (a)—
 - (aa) for “notices” substitute “notice”;
 - (bb) at the end, insert “and”;
 - (ii) omit sub-paragraph (c) and (d);
- (f) omit paragraphs (5) and (6).
- (7) In regulation 14—
 - (a) in paragraph (2)—
 - (i) in sub-paragraph (a)—
 - (aa) for “ESMA” substitute “the FCA”;
 - (bb) at the end, insert “or”;
 - (ii) in sub-paragraph (b), at the end, omit “or”;
 - (iii) omit sub-paragraph (c);
 - (b) in paragraph (3)(b)(i), for “decision” substitute “determination”;
 - (c) in paragraph (4)—
 - (i) for sub-paragraph (a), substitute—
 - “(a) “equivalence determination” means—
 - (i) a decision adopted by the Commission in relation to a country under paragraph 1 of Article 47 of the markets in financial instruments regulation before exit day which has not been withdrawn by a subsequent decision adopted by the Commission under that Article before exit day; or
 - (ii) regulations made by the Treasury in relation to a country under that paragraph after exit day which have not subsequently been revoked;”;
 - (ii) for sub-paragraph (b), substitute—
 - “(b) a country is subject to an equivalence determination if a period of more than three years has elapsed since—
 - (i) the adoption of the decision by the Commission, beginning on the day after the date of the adoption of the decision; or
 - (ii) the making of the regulations by the Treasury, beginning on the day after the day on which the regulations were made;”.
- (8) In regulation 15—
 - (a) in the definition of “clients considered to be professionals”—
 - (i) for “Article 4.1.10 of the markets in financial instruments directive” substitute “Article 2(1)(8) of the markets in financial instruments regulation”;
 - (ii) for “Section I of Annex II to the directive” substitute “Part 2 of Schedule 1 to that regulation”;
 - (b) for the definition of “power of intervention”, substitute—

- “power of intervention” means the power of the regulator to impose any requirement in relation to the firm in respect of which the power is exercisable which the regulator could impose if—
- (a) the firm’s permission was a Part 4A permission, within the meaning of the Act; and
 - (b) the regulator was entitled to exercise its power under section 55L(3) or 55M(3) of the Act;”;
- (c) in the definition of “third country firm”, for “Article 4.1.57 of the markets in financial instruments directive” substitute “Article 2.1.42 of the markets in financial instruments regulation”;
 - (d) in the definition of “third country firm registered with ESMA”, for “ESMA” both times it appears, substitute “the FCA”;
 - (e) omit the definition of “third country firm with an EEA branch”.
- (9) In regulation 16(5)—
- (a) for the definition of “group”, substitute—

“group” means a parent undertaking and all its subsidiary undertakings, and for these purposes, “parent undertaking” and “subsidiary undertaking” have the same meanings as in section 420 of the Act;”
 - (b) in the definition of “the relevant methods”, for the words from “regulatory technical standards” to the end, substitute “Article 4 of Regulation (EU) 2017/591.”.
- (10) In regulation 17(5)—
- (a) in the definition of “the relevant criteria and methods” for the words from “regulatory technical standards” to the end, substitute “Article 7 of Regulation (EU) 2017/591; and”;
 - (b) in the definition of “the relevant procedure” for the words from “regulatory technical standards” to the end, substitute “Article 8 of Regulation (EU) 2017/591.”.
- (11) In regulation 19—
- (a) in the heading, for “ESMA methodology” substitute “Regulation (EU) 2017/591”
 - (b) in paragraph (1), for “the ESMA methodology” substitute “Regulation (EU) 2017/591”.
- (12) Omit regulations 20 to 22 and 24.
- (13) In regulation 25—
- (a) in paragraph (1), for “the ESMA methodology mentioned in regulation 19(1) (“a more restrictive position limit”)” substitute “Regulation (EU) 2017/591”;
 - (b) omit paragraphs (5) to (7).
- (14) In regulation 26—
- (a) in the heading, omit “or other competent authorities in the EEA”;
 - (b) omit paragraph (2).
- (15) In regulation 28—
- (a) in paragraph (1), for “the markets in financial instruments directive” substitute “these Regulations”;
 - (b) in paragraph (2), omit “or an EEA position limit relating to the commodity derivative”.
- (16) Omit regulation 28A.
- (17) In regulation 29—

- (a) in paragraph (1), for the words from “regulatory technical standards” to the end of the paragraph, substitute “Article 6 of Regulation (EU) 2017/591.”;
- (b) in paragraph (2)—
 - (i) omit the definition of “EEA position limit”;
 - (ii) omit the definition of “the ESMA methodology”;
 - (iii) in the definition of “position” for the words from “regulatory technical standards” to the end of the definition, substitute “Articles 3 and 4 of Regulation (EU) 2017/591.”;
 - (iv) in the definition of “significant volumes”⁽⁵⁾ for the words from “regulatory technical standards” to the end of the definition, substitute “Article 5 of Regulation (EU) 2017/591”.

Algorithmic trading

- 9.—(1) Regulation 30 is amended as follows.
- (2) In paragraph (1)—
 - (a) in paragraph (a), for “M’s home Member State is” substitute “M is established in”;
 - (b) for sub-paragraph (b), substitute—
 - “(b) M falls within paragraph (1A); and”;
 - (c) in sub-paragraph (c), for “for the purposes of the directive” substitute “to carry on a regulated activity which is any of the investment services and activities”.
 - (3) After paragraph (1), insert—
 - “(1A) M falls within this paragraph if M is—
 - (a) the society incorporated by Lloyd’s Act 1871⁽⁶⁾ known by the name of Lloyd’s;
 - (b) an authorised person with a Part 4A permission to carry on the regulated activity of—
 - (i) effecting or carrying out contracts of insurance under article 10 of the Regulated Activities Order;
 - (ii) insurance risk transformation under article 13A of the Regulated Activities Order;
 - (iii) managing the underwriting capacity of a Lloyd’s syndicate under article 57 of the Regulated Activities Order,
 when carrying on those activities (and any other activities permitted by rules made by the FCA or the PRA under the Act);
 - (c) an operator (within the meaning of regulation 3(2) of the Greenhouse Gas Emissions Trading Scheme Regulations 2012⁽⁷⁾), subject to compliance obligations under those Regulations who when dealing in emission allowances does not execute client orders and does not provide any investment services or perform any investment activities other than dealing on own account, provided that the operator does not apply a high-frequency algorithmic trading technique;
 - (d) a collective investment undertaking, pension fund or a depositary or manager of such an undertaking;
 - (e) a person (“P”)—

⁽⁵⁾ The definition of “significant volumes” was inserted by [S.I. 2017/1255](#).

⁽⁶⁾ 1871 c.xxii.

⁽⁷⁾ [S.I. 2012/3038](#).

- (i) dealing on own account, including a market maker, in commodity derivatives or emission allowances or derivatives thereof, excluding a person who deals on own account when executing client orders; or
- (ii) providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of P's main business,

provided that in each case the activity in paragraph (i) or (ii), considered both individually and on an aggregate basis, is an ancillary activity to P's main business, when considered on a group basis, and paragraph (1B) applies.

(1B) This paragraph applies if—

(a) P's main business is not—

- (i) the provision of investment services;
- (ii) banking activities requiring permission under Part 4A of the Act (or banking activities which would require such permission if they were carried on in the United Kingdom); or
- (iii) acting as a market-maker in relation to commodity derivatives;

(b) P does not apply a high-frequency algorithmic trading technique; and

(c) P notifies the FCA under regulation 47 that P is carrying out the activity described in paragraph (1A)(e)(i) and (ii) as an ancillary activity to P's main business and reports to the FCA upon request the basis on which P considers that this activity is ancillary to P's main business.”.

(4) In paragraph (6), after “United Kingdom” insert “or in an EEA state”.

(5) Omit paragraph (7).

(6) In paragraph (9), omit “(as defined by Article 4.1.40 (definitions) of the markets in financial instruments directive)”.

(7) In paragraph (12)—

- (a) in the definition of “approved form”, for the words “regulatory technical standards” to the end of the definition, substitute “Article 28 of Regulation (EU) 2017/589;”;
- (b) in the definition of “exceptional circumstances”, for the words “regulatory technical standards” to the end of the definition, substitute “Article 3 of Regulation (EU) 2017/578;”;
- (c) in the definition of “the specified circumstances”, for the words “regulatory technical standards” to the end of the definition, substitute “Article 1 of Regulation (EU) 2017/578; and”;
- (d) in the definition of “the specified content”, for the words “regulatory technical standards” to the end of the definition, substitute “Article 2 of Regulation (EU) 2017/578.”.

(8) In regulation 31, omit paragraph (3).

Direct electronic access

10.—(1) In regulation 32—

(a) in paragraph (2)—

(i) in sub-paragraph (a), for “M's home Member State is” substitute “M is established in”;

(ii) for sub-paragraph (b), substitute—

“(b) M falls within paragraph (1A) of regulation 30; and”;

- (iii) in sub-paragraph (c), for “for the purposes of the directive” substitute “to carry on a regulated activity which is any of the investment services and activities”;
 - (b) in paragraph (3), for “relevant United Kingdom national regime” substitute “law of the United Kingdom”;
 - (c) in paragraph (7), for “markets in financial instruments directive” substitute “UK law on markets in financial instruments”;
 - (d) in paragraph (8)—
 - (i) at the end of sub-paragraph (a), omit “and”;
 - (ii) omit sub-paragraph (b);
 - (e) in paragraph (10), for “relevant United Kingdom national regime” substitute “law of the United Kingdom”;
 - (f) after paragraph (10) insert—
 - “(11) 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 exit day to implement [Directive 2014/65/EU](#) and its implementing measures—
 - (a) as they have effect on exit day, in the case of rules made by the FCA or by the PRA under the Act;
 - (b) as amended from time to time, in all other cases.”.
- (2) In regulation 33, omit paragraph (2).

Acting as a general clearing member

11. In regulation 34, in paragraph (1)—
- (a) in sub-paragraph (a), for “M’s home Member State is” substitute “M is established in”;
 - (b) for sub-paragraph (b), substitute—
 - “(b) M falls within paragraph (1A) of regulation 30; and”;
 - (c) in sub-paragraph (c), for “for the purposes of the directive” substitute “to carry on a regulated activity which is any of the investment services and activities”.

Synchronisation of business clocks

12. In regulation 35—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), for “M’s home Member State is” substitute “M is established in”;
 - (ii) for sub-paragraph (b), substitute—
 - “(b) M falls within paragraph (1A) of regulation 30; and”;
 - (iii) in sub-paragraph (c), for “for the purposes of the directive” substitute “to carry on a regulated activity which is any of the investment services and activities”;
 - (b) in paragraph (2), for the words from “regulatory technical standards” to the end of the paragraph, substitute “Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks.”.

Interpretation of Part 4

13. For regulation 37, substitute—

“37. For the purposes of this Part, a person is established in the United Kingdom if the person has its registered office, or (if it has no registered office), its head office, in the United Kingdom.”.

Removal of persons from the management board

14. In regulation 38, in paragraph (1), for the words from “functions under” to the end of the paragraph, substitute—

“functions under—

- (a) these Regulations;
- (b) the markets in financial instruments regulation;
- (c) EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) made under the markets in financial instruments directive which forms part of retained EU law ; or
- (d) the Act, which correspond to functions under the markets in financial instruments directive.”.

Miscellaneous FCA functions

15.—(1) Omit regulations 41, 42 and 43.

(2) In regulation 44, omit paragraph (3).

(3) Omit regulations 45, 46.

(4) In regulation 47, in paragraph (1)—

(a) in sub-paragraph (a)—

(i) for “Article 2.1(j) (exemptions) of the markets in financial instruments directive” substitute “regulation 30(1A)(e)”;

(ii) for “Article 2.1(j) of that directive” substitute “that regulation”;

(b) in sub-paragraph (b)—

(i) for “the final point of Article 2.1(j) (exemptions) of the markets in financial instruments directive” substitute “the words after paragraph (ii) of sub-paragraph (e) of regulation 30(1A)”;

(ii) for “under that Article” substitute “described in paragraphs (i) and (ii) of that sub-paragraph”.

(5) After regulation 47, insert—

“Position management and publication of position reports

47A.—(1) The FCA must maintain a database containing—

(a) the position limits established by the FCA under regulation 16; and

(b) the information the FCA receives from—

- (i) market operators operating trading venues summarising the position management controls in effect in relation to trading venues under paragraph 7BA(3) of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses

and Central Securities Depositories) Regulations 2001 (“the Recognition Requirements Regulations”)(8); and

(ii) firms operating MTF or OTF in the United Kingdom summarising the position management controls in effect in relation to trading venues under rule 10.3.3R of the Market Conduct sourcebook.

(2) The FCA must ensure that the database referred to in paragraph (1) is published on its website.

(3) The FCA must publish all weekly reports it receives from market operators and firms operating trading venues in the United Kingdom under—

- (a) paragraph 7BB(5) of the Schedule to the Recognition Requirements Regulations;
- (b) rule 10.4.3 of the Market Conduct sourcebook.

(4) For the purpose of this regulation, “market operator” has the meaning given in Article 2(1)(10) of the markets in financial instruments regulation.

Statements of Policy

47B.—(1) The FCA must prepare and issue a statement of its policy in relation to the exercise of—

- (a) the following functions in the markets in financial instruments regulation—
 - (i) suspending the use of waivers under Article 5(3B);
 - (ii) withdrawing a waiver under Article 9(3);
 - (iii) suspending the obligations referred to in Article 8 under Article 9(4A);
 - (iv) suspending the obligations referred to in Article 10 under Article 11(2A);
 - (v) determining the class to which financial instruments belong under Article 14.6A;
 - (vi) suspending the obligations referred to in Article 21(1) under Article 21(4A);
 and
- (b) its functions under Article 5(1A) of Commission Delegated Regulation 2017/567/ EU supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions.

(2) No statement may be issued under paragraph (1) or amended without the approval of the Treasury.

(3) The Treasury may refuse to approve a statement of policy or amended statement of policy if it appears to the Treasury that—

- (a) the issue of that statement would prejudice any current or proposed negotiations for an international agreement between the United Kingdom and one or more other countries, international organisations or institutions; or
- (b) they may direct the FCA not to issue the statement of policy under section 410 (international standards) of the Financial Services and Markets Act 2000.

(4) For the purposes of paragraph (3), “international organisations” includes the European Union.

(5) The Treasury must notify the FCA in writing whether or not they approve a statement of policy within four weeks from the day on which that statement is submitted to the Treasury for approval (“the relevant period”).

(6) Provision of a draft statement of policy to the Treasury for consultation does not amount to submission of the statement for approval.

(7) If the Treasury do not give notice under paragraph (5) before the end of the relevant period, the Treasury is deemed to have approved the statement of policy.

(8) The FCA must publish any statement of policy issued under this Article in the way appearing to the FCA to be best calculated to bring it to the attention of the public.”.

Administration and Enforcement of Parts 3, 4 and 5

- 16.**—(1) In paragraph 1 of Schedule 1, for the definition of “senior management” substitute—
- ““senior management” means natural persons who exercise executive functions within an investment firm, a market operator or a data reporting services provider and who are responsible, and accountable to the management body, for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel.”.
- (2) In paragraph 2—
- (a) for the heading, substitute “retained EU law”;
 - (b) in sub-paragraph (1)(a), for “directly applicable EU regulation” substitute “retained EU law”;
 - (c) in sub-paragraph (2), for “directly applicable EU regulation” substitute “retained EU law”.
- (3) In paragraph 6—
- (a) in sub-paragraph (1)—
 - (i) at the end of paragraph (a), insert “and”;
 - (ii) at the end of paragraph (b), omit “and”;
 - (iii) omit paragraph (c);
 - (b) in sub-paragraph (2)—
 - (i) at the end of paragraph (a), omit “and”;
 - (ii) omit paragraph (b).