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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

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

**PART 3**

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

**CHAPTER 1**

The Regulated Activities Order

**Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001**

4.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(1) is amended as follows.

(2) For the heading to Schedule 2, substitute “Financial Instruments and Investment services and activities”.

(3) In Part 1 of Schedule 2—

(a) omit the heading “Section C of Annex 1 to the Markets in Financial Instruments Directive”;

(b) in paragraph 6(2)—

(i) for “regulated market, an MTF or an OTF” substitute “UK regulated market, a UK MTF or a UK OTF (as defined by Article 2(1)(13A), (14A) and (15A) respectively of the markets in financial instruments regulation)”;

(ii) for “traded on an OTF” substitute “traded on a UK OTF”;

(c) in paragraph 7(3), after “commercial purposes” insert “or wholesale energy products traded on an EU OTF (as defined by Article 2(1)(15B) of the markets in financial instruments regulation)”;

(d) in paragraph 10, for “regulated market, OTF, or an MTF” substitute “a UK regulated market, a UK OTF, or a UK MTF (as defined by Article 2(1)(13A), (15A) and (14A) respectively of the markets in financial instruments regulation)”.

(4) In Part 2 of Schedule 2(4)—

(a) in Article 5—

(i) in the opening words of paragraph 1, for “Section C(6) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 6 of Part 1 of Schedule 2 to this Order”;

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(1) [S.I. 2001/544](#).

(2) Paragraph 6 was substituted (with the rest of Schedule 2) by [S.I. 2006/3384](#), and further amended by [S.I. 2017/488](#).

(3) Paragraph 7 was substituted (with the rest of Schedule 2) by [S.I. 2006/3384](#), and further amended by [S.I. 2017/488](#).

(4) Part 2 of Schedule 2 was substituted by [S.I. 2006/3384](#) and then by [S.I. 2017/488](#).

- (ii) in paragraphs 3, 4, 5, 6 and 7, for “Section C(6) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 6 of Part 1 of Schedule 2 to this Order”;
- (b) in Article 6, in paragraphs, 1, 2 and 3 for “Section C(6) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 6 of Part 1 of Schedule 2 to this Order”;
- (c) in Article 7—
  - (i) in paragraph 1—
    - (aa) in the opening words, for “Section C(7) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 7 of Part 1 of Schedule 2 to this Order”;
    - (bb) for sub-paragraph (a)(i), substitute—
      - “(i) 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);”;
    - (cc) in sub-paragraph (a)(ii), for “a regulated market, an MTF, an OTF”, substitute “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);”;
    - (dd) in sub-paragraph (a)(iii), for “a regulated market, MTF, an OTF”, substitute “a UK regulated market, a UK MTF, a UK OTF”;
  - (ii) in paragraph 3—
    - (aa) in the opening words, for “Section C(10) of Annex 1 to [Directive 2004/39/EC](#)” substitute “paragraph 10 of Part 1 of Schedule 2 to this Order”;
    - (bb) in sub-paragraph (b), omit the words from “, or a third country” to the end of the sub-paragraph;
  - (iii) in paragraph 4, in the opening words—
    - (aa) for “Section C(7) of Annex I to [Directive 2014/65/EU](#)” substitute “paragraph 7 of Part 1 of Schedule 2 to this Order”;
    - (bb) for “Sections C(7) and (10) of that Annex” substitute “paragraphs 7 and 10 of Part 1 of Schedule 2 to this Order”;
  - (iv) in paragraph 4, in point (b), for “Article 2(4) of [Directive 2009/72/EC](#)” substitute “Article 5(8)”;
- (d) in Article 8—
  - (i) in the heading, for “Section C(10) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 10 of Part 1 of Schedule 2”;
  - (ii) in the opening words—
    - (aa) for “Section C(10) of Annex I to [Directive 2014/65/EU](#)” substitute “paragraph 10 of Part 1 of Schedule 2 to this Order”;
    - (bb) for “that Section”, both times it appears, substitute “that Part”;
  - (iii) in point (d), for “Section C(4) of Annex I to [Directive 2014/65/EU](#)” substitute “paragraph 4 of Part 1 of Schedule 2 to this Order”;
  - (iv) in point (e), for “units recognised for compliance with the requirements of [Directive 2003/87/EC](#) of the European Parliament and of the Council” substitute “emission allowances referred to in paragraph 11 of Part 1 of Schedule 2 to this Order”;
- (e) in Article 10, in paragraph 1, for “Section C(4) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 4 of Part 1 of Schedule 2 to this Order”;

- (f) in Article 11—
  - (i) renumber the existing paragraph as paragraph 1;
  - (ii) in paragraph 1, as renumbered, omit “in accordance with Article 4(1)(17) of [Directive 2014/65/EU](#),”;
  - (iii) after paragraph 1, insert—
    - “(2) For the purposes of this Article, “money market instruments” means those classes of instruments which are normally dealt with on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.”
- (5) After Part 3 of Schedule 2, insert—

## “PART 3A

### ANCILLARY SERVICES

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash or collateral management and excluding providing and maintaining securities accounts at the top-tier level (“central maintenance service”) referred to in point (2) of Section A of the Annex to the Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories.
  2. Granting credits or loans to an investor to allow the investor to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.
  3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings.
  4. Foreign exchange services where these are connected to the provision of investment services.
  5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments.
  6. Services relating to underwriting.
  7. Investment services and activities included in Part 3 of this Schedule as well as ancillary services of the type included in this Part related to the underlying of the derivatives included in paragraphs 5, 6, 7 or 10 of Part 1 of this Schedule where these are connected to the provision of investment or ancillary services.”
- (6) In Part 4 of Schedule 2, in the opening paragraph, for the words from the beginning to “[Directive 2014/65/EU](#)”, substitute “For the purposes of the list of investment services and activities in Part 3 of this Schedule, “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”.
- (7) After Article 9, insert—

## “PART 5

### Interpretation

Any expression in this Schedule which is used in the markets in financial instruments regulation (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in the Regulation.”.

(8) For Schedule 3, substitute—

## “SCHEDULE 3

Article 3(1)

### Exemptions from the definition of “investment firm”

## PART 1

1. The following persons are excluded from the definition of “investment firm”—
  - (a) the society incorporated by Lloyd’s Act 1871<sup>(5)</sup> 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;
    - (ii) insurance risk transformation under article 13A;
    - (iii) managing the underwriting capacity of a Lloyd’s syndicate under article 57,
 when carrying on those activities (and any other activities permitted by rules made by the FCA or the PRA under the Act);
  - (c) a person (“P”) providing investment services exclusively for P’s parent undertakings, for P’s subsidiaries or for other subsidiaries of P’s parent undertakings;
  - (d) a person providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
  - (e) a person dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons—
    - (i) are market makers;
    - (ii) are members of or participants in a regulated market or an MTF, on the one hand, or have direct electronic access to a trading venue, on the other hand, except for non-financial entities who execute transactions on a trading venue which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of those non-financial entities or their groups;
    - (iii) apply a high-frequency algorithmic trading technique; or
    - (iv) deal on own account when executing client orders;
  - (f) an operator (within the meaning of regulation 3(2) of the Greenhouse Gas Emissions Trading Scheme Regulations 2012<sup>(6)</sup>), subject to compliance obligations under those Regulations who, when dealing in emission allowances, does not execute client orders

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(5) 1871 c.xxi  
 (6) S.I. 2012/3038.

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;

- (g) a person providing investment services consisting exclusively in the administration of employee-participation schemes;
- (h) a person (“P”) providing investment services which only involve both the administration of employee-participation schemes and the provision of investment services exclusively for P’s parent undertakings, for P’s subsidiaries or for other subsidiaries of P’s parent undertakings;
- (i) the Treasury, the Bank of England and other public bodies charged with or intervening in the management of the public debt in the United Kingdom or members of the European System of Central Banks;
- (j) a collective investment undertaking, pension fund or a depositary or manager of such an undertaking or fund;
- (k) a person (“P”)—
  - (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 (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 where paragraph 2 applies;
- (l) a person who provides investment advice in the course of providing another professional activity which is not an investment service or activity provided that the provision of such advice is not specifically remunerated;
- (m) associations set up by Danish and Finnish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;
- (n) agenti di cambio whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998;
- (o) subject to paragraph 3, transmission system operators within the meaning of Article 2(4) of [Directive 2009/72/EC](#) and Article 2(4) of [Directive 2009/73/EC](#) when carrying out their tasks under the law of the United Kingdom or part of the United Kingdom relied on by the United Kingdom immediately before exit day to implement [Directive 2009/72/EC](#) or [2009/73/EC](#), under Regulation (EC) No 714/2009, under Regulation (EC) No 715/2009 or under network codes or guidelines adopted pursuant to those Regulations, any persons acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations, and any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks;
- (p) central securities depositories as defined in point (1) of Article 2(1) of Regulation (EU) 909/2014 on the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories, except as provided for in Article 73 of that Regulation.

2. 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 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 that P makes use of this exemption and reports to the FCA, upon request, the basis on which P considers that P's activity under points (i) and (ii) is ancillary to P's main business.
3. The exemption in paragraph 1(p)—
- (a) only applies to the persons engaged in the activities set out in that sub-paragraph where they perform investment activities or provide investment services relating to commodity derivatives in order to carry out those activities;
  - (b) does not apply with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights.
4. References in this Schedule to “regulated markets”, “MTFs” and “trading venues” are to “UK regulated markets”, “UK MTFs” and “UK trading venues” within the meaning of Article 2(1)(13A), (14A) and (16A) respectively of the markets in financial instruments regulation.
5. Any expression used in this Part of this Schedule which is used in the markets in financial instruments regulation (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in the regulation.

## PART 2

### Provision of investment service in an incidental manner

6. For the purpose of the exemption in paragraph 1(e), 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 persons providing the professional activity do not market or otherwise promote their ability to provide investment services, except where these are disclosed to clients as being accessory to the main professional activity.”.

## 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(7) 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(8);
- “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—
        - (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<sup>(9)</sup> or the Credit Unions (Northern Ireland) Order 1985<sup>(10)</sup>, 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—

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<sup>(9)</sup> 1979 c.34.

<sup>(10)</sup> 1985 No.1205 (N.I. 12)

- (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”;
  - (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”**(11)** for the words from “regulatory technical standards” to the end of the definition, substitute “Article 5 of Regulation (EU) 2017/591”.

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

## 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<sup>(12)</sup> 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<sup>(13)</sup>), 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”)—
      - (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;

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<sup>(12)</sup> 1871 c.xxi.

<sup>(13)</sup> S.I.2012/3038.

- (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”)(**14**); 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.

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(14) S.I. 2001/995. Paragraphs 7BA and 7BB were inserted by S.I. 2017/701.

(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).

## CHAPTER 3

### The Data Reporting Services Regulations 2017

#### **The Data Reporting Services Regulations 2017**

17. The Data Reporting Services Regulations 2017(15) are amended in accordance with this Chapter.

#### **Introductory provisions**

- 18.—(1) In regulation 2(1)—
- (a) in the definition of “APA” after “regulation 10” insert “or 12A”;
  - (b) in the definition of “ARM”—
    - (i) after “regulation 10” insert “or 12A”;
    - (ii) for “competent authorities or to ESMA” substitute “the competent authority”;
  - (c) after the definition of “authorised person” insert—

““Commission Delegated Regulation (EU) 2017/565” means 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;

“Commission Delegated Regulation (EU) 2017/571” means Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers;”;
  - (d) for the definition of “credit institution”, substitute—

- “credit institution” has the meaning given in Article 2.1.19 of the markets in financial instruments regulation;”;
- (e) in the definition of “CTP” after “regulation 10” insert “or 12A”;
  - (f) in the definition of “data reporting service”, in sub-paragraph (b), for “competent authorities or to ESMA” substitute “the competent authority”;
  - (g) omit the definition of “ESMA”;
  - (h) in the definition of “financial instrument”, for “Article 4.1.15 of the markets in financial instruments directive”, substitute “Article 2.1.9 of the markets in financial instruments regulation”;
  - (i) omit the definition of “home Member State”;
  - (j) for the definition of “investment firm”, substitute—
    - “investment firm” has the meaning given in Article 2.1A of the markets in financial instruments regulation;”;
  - (k) for the definition of “multilateral trading facility”, substitute—
    - “multilateral trading facility” means a “UK multilateral trading facility” within the meaning given in Article 2.1.14A of the markets in financial instruments regulation;”;
  - (l) for the definition of “organised trading facility”, substitute—
    - “organised trading facility” means a “UK organised trading facility” within the meaning given in Article 2.1.15A of the markets in financial instruments regulation;”;
  - (m) for the definition of “regulated market”, substitute—
    - “regulated market” means a “UK regulated market” within the meaning of Article 2.1.13A of the markets in financial instruments regulation;”;
  - (n) for 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;”;
  - (o) in the definition of “systematic internaliser”, for “Article 4.1.20 in the markets in financial instruments directive” substitute “Article 2.1.12 of the markets in financial instruments regulation”;
  - (p) in the definition of “trading venue”, for “Article 4.1.24 of the markets in financial instruments directive” substitute “Article 2.1.16 of the markets in financial instruments regulation”.
- (2) In regulation 2(2), for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

### **Authorisation of data reporting services**

#### **19.—(1) In regulation 5—**

- (a) in paragraph (1)(b), (c) and (d), for “Article 59.2 of the markets in financial instruments directive that the firm complies with Title V of that directive”, substitute “regulation 8 that the firm complies with these Regulations”;

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

“(e) a person who is authorised in Gibraltar in accordance with the law of Gibraltar relied on by Gibraltar before exit day to implement Title V of the markets in financial instruments directive, as that law is amended from time to time.”

(2) In regulation 6, in paragraph (1)(b) for “Title V of the markets in financial instruments directive it has verified in accordance with Article 59.2 of that directive” substitute “these Regulations it has verified in accordance with regulation 8”.

(3) In regulation 7, in paragraph (5), at the end insert “which form part of retained EU law, or any technical standards made by the FCA under paragraph 34 of Schedule 3 to the markets in financial instruments regulation”.

(4) In the heading to regulation 8, for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

(5) In regulation 8—

(a) in paragraph (1)—

(i) omit “in accordance with Article 59.2 of the markets in financial instruments directive”;

(ii) for “Title V of that directive as it applies” substitute “these Regulations, as they apply”;

(b) in paragraph (2), in the opening words, for “Title V of the markets in financial instruments directive” substitute “these Regulations”;

(c) in paragraph (3), for “Title V of the markets in financial instruments directive” substitute “these Regulations”;

(d) omit paragraph (8);

(e) in paragraph (9), in sub-paragraph (a) of the modified version of regulation 11(1), for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

(6) In regulation 9, in paragraph (1)(b), for “European Union” substitute “United Kingdom”.

(7) In regulation 10, omit paragraph (11).

(8) In regulation 11, in paragraph (1)(h)—

(a) in the opening words, for “the provisions of”, substitute “requirements imposed by or under”;

(b) omit paragraph (ii).

### **Temporary authorisation**

**20.** After regulation 12, insert—

#### **“Deemed authorisation to provide a data reporting service**

**12A.—**(1) A person to whom this regulation applies is to be treated, for the period determined in accordance with regulation 12C, as if that person is authorised to provide a data reporting service under these Regulations.

(2) This regulation applies to a person—

(a) who immediately before exit day—

(i) is established in an EEA state other than the United Kingdom;

- (ii) is authorised in that EEA state in accordance with Title V of the markets in financial instruments directive or is permitted to provide a data reporting service in accordance with Article 59.2 of that directive; and
  - (b) who has taken the steps set out in paragraph (3).
- (3) The steps referred to in this paragraph are that the person has, on or after the day on which this regulation comes into force and no later than 30 working days before the day on which exit day occurs, notified the FCA that the person wishes to be treated in accordance with paragraph (1) by—
- (a) making an application for authorisation to provide a data reporting service under these Regulations; or
  - (b) making a statement to that effect and tendering the fee (if any) prescribed under paragraph 23 of Schedule 1ZA to the Act.
- (4) For the purposes of paragraph (3)(b), the statement must—
- (a) be made in such manner, and during such period, as the FCA may direct; and
  - (b) contain, or be accompanied by, such other information as the FCA may direct.
- (5) The FCA's powers under these Regulations are exercisable in respect of a person to whom this regulation applies as they are in respect of a person who is authorised to provide a data reporting service under these Regulations, in particular in relation to the variation or cancellation of an authorisation to provide such a service.
- (6) The power to give directions under this regulation includes the power—
- (a) to give different directions in relation to different statements or categories of statements;
  - (b) to vary or revoke previous directions.

### **Regulator response**

- 12B.**—(1) Within 28 days beginning with the date of receipt of a notification made in accordance with regulation 12A(3)(a), the FCA must—
- (a) if it considers that the requirements of regulation 7 have been satisfied, confirm in writing to the person making the application that it constitutes a valid notification;
  - (b) if it considers that those requirements are not satisfied, confirm in writing to the person making the application—
    - (i) that it does not constitute a valid application, and
    - (ii) the details of any requirements that have not been satisfied.
- (2) Within 28 days beginning with the date of receipt of a notification made in accordance with regulation 12A(3)(b), the FCA must—
- (a) if it considers that the steps in regulation 12A(3) have been taken (in accordance with any direction), confirm in writing to the person making the statement that it constitutes a valid notification;
  - (b) subject to paragraph (3), if it considers that the steps in regulation 12A(3) have not been taken (in accordance with any direction), confirm in writing to the person making the statement that—
    - (i) the notification was not valid; and
    - (ii) as applicable, the steps that have not been taken, or the directions that have not been complied with.

(3) Within 28 days beginning with the day of receipt of a notification made in accordance with regulation 12A(3)(b), the FCA may, if—

- (a) it considers that a direction given in accordance with regulation 12A(4) has not been complied with; and
- (b) it would not be possible or practicable for the applicant to comply with the direction in time,

waive the requirement to comply with the direction and confirm in writing to the person submitting the statement that it nevertheless constitutes a valid notification.

### **Period during which regulation 12A is to apply**

**12C.**—(1) For the purpose of regulation 12A(1), the period is one that begins with exit day and ends—

- (a) after one year beginning with the day on which exit day occurs, or
- (b) if earlier, with a day determined as follows.

(2) Paragraph (3) applies to a person who has applied for authorisation to provide a data reporting service under these Regulations on or after the date on which this regulation comes into force, and not withdrawn that application.

(3) Where this paragraph applies—

- (a) if the application is granted, the period ends with the day before the date stated in the written notice (issued in accordance with regulation 10(6));
- (b) if the application is refused, the period ends with the day before the day stated in the decision notice (issued in accordance with regulation 10(9)(c)).

(4) Paragraph (5) applies to a person who has not applied for authorisation to provide a data reporting service under these Regulations on or after the date on which this regulation comes into force (or has made such an application but withdrawn it without submitting another).

(5) Where this paragraph applies, the period ends with the day before the day on which the decision notice (issued in accordance with regulation 11) takes effect.”.

### **Operating requirements**

**21.**—(1) In regulation 14, in paragraph (7)—

(a) for sub-paragraph (a) substitute—

“(a) Commission Delegated Regulation (EU) 2017/571(16); and”;

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

“(b) Commission Delegated Regulation (EU) 2017/565(17).”.

(2) In regulation 15—

(a) in paragraph (9), at the end insert “which form part of retained EU law, or which are set out in technical standards made by the FCA under paragraph 38 of Schedule 3 to the markets in financial instruments regulation”;

(b) in paragraph (12), for paragraphs (a) and (b), substitute—

“(a) Chapters II and III of Commission Delegated Regulation (EU) 2017/571; and

(b) Chapter VI of Commission Delegated Regulation (EU) 2017/565.”.

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(16) OJ L 87. 31.3.2017, p.126.

(17) OJ L 87, 31.3.2017, p.1.

(3) In regulation 16, in paragraph (5), for “regulatory technical standards adopted by the European Commission under Article 66.5 of the markets in financial instruments directive” substitute “Chapter II of Commission Delegated Regulation (EU) 2017/571”.

#### **Administration and enforcement**

**22.** In regulation 17, in paragraph (1), for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

#### **Miscellaneous**

**23.**—(1) Omit regulation 46.

(2) In regulation 48, omit paragraph (2).