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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

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

PART 4

Amendment of EU Regulations

CHAPTER 2

Commission Delegated Regulation 2017/565

**Commission Regulation 2017/565**

**38.** 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 is amended in accordance with regulations 39 to 56.

**Application, scope and definitions**

**39.**—(1) Before Article 1, insert—

*“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(1);
  - (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.”.

(2) In Article 1—

- (a) in paragraph 1, for the words from “in accordance with” to the end of the paragraph, substitute “in relation to the services described in paragraph 1A.”;
- (b) after paragraph 1, insert—
- “**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<sup>(2)</sup>;
- (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.”;
- (c) in paragraph 2, for the words from “referred to in Article 1(3)” to the end, substitute “(so far as relevant) in Chapters II to IV of this Regulation”;
- (d) after paragraph 2, insert—
- “**3.** 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 this Regulation as it applies in the EEA (“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<sup>(3)</sup>.”.
- (3) In Article 2, after point (6) insert—
- “(7) “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—
- (a) promotes investment or ancillary services to clients or prospective clients;

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(2) S.I. 2001/544. Part 1 of Schedule 2 has been amended by S.I. 2006/3384, 2017/488, and these Regulations.

(3) S.I. 2018/\*\*\*\*.

- (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 exit day;
- (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 exit 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 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 FSMA, and
  - (b) as amended from time to time, in all other cases.
- (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;
  - (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.”
- (4) In Article 3, in paragraph 1, omit “as defined in Article 4(1) point (62) of [Directive 2014/65/EU](#)”.
- (5) In Article 4—
  - (a) omit the sub-heading in brackets;
  - (b) in the opening words, for “the exemption in point (c) of Article 2(1) of [Directive 2014/65/EU](#)” substitute “section 327(4) of FSMA and the exemption in paragraph 1(c) of Schedule 3 to the Regulated Activities Order”.
- (6) In Article 5—
  - (a) omit the sub-heading in brackets;
  - (b) 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 the Regulated Activities Order”;
  - (c) 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 the Regulated Activities Order”.
- (7) In Article 6—

- (a) omit the sub-heading in brackets;
  - (b) 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 the Regulated Activities Order”.
- (8) In Article 7—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) 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 the Regulated Activities Order”;
    - (ii) for point (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);”
    - (iii) in point (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);”
    - (iv) in sub-paragraph (a)(iii), for “a regulated market, MTF, an OTF”, substitute “a UK regulated market, a UK MTF, a UK OTF”;
  - (c) in paragraph 3, for “Section C(10) of Annex 1 to [Directive 2004/39/EC](#) of the European Parliament and of the Council” substitute “paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order”;
  - (d) in paragraph 4—
    - (i) 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 the Regulated Activities Order”;
      - (bb) for “Sections C(7) and (10) of that Annex” substitute “paragraphs 7 and 10 of Part 1 of Schedule 2 to the Regulated Activities Order”.
- (9) In Article 8—
- (a) in the heading, for “Section C(10) of Annex I to [Directive 2014/65/EU](#)” substitute “paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order”;
  - (b) omit the sub-heading in brackets;
  - (c) in the opening words—
    - (i) for “Section C(10) of Annex I to [Directive 2014/65/EU](#)” substitute “paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order”;
    - (ii) for “that Section”, both time it appears, substitute “that Part”;
  - (d) 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 the Regulated Activities Order”;
  - (e) 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 the Regulated Activities Order”.
- (10) In Article 9—
- (a) omit the sub-heading in brackets;
  - (b) 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 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”.

(11) In Article 10, in paragraph 1, for “Section C(4) of Annex I to [Directive 2014/65/EU](#)”, substitute “paragraph 4 of Part 1 of the Schedule 2 to the Regulated Activities Order”.

(12) In Article 11—

- (a) omit the sub-heading in brackets;
- (b) renumber the existing paragraph as paragraph 1;
- (c) in paragraph 1, as renumbered, omit “in accordance with Article 4(1)(17) of [Directive 2014/65/EU](#)”;
- (d) 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, excluding instruments of payment.”

### Systematic internalisers

40.—(1) In Article 12—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing paragraph as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”.
- (f) after paragraph 1, insert—

“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.”

(2) In Article 13—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“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.”.

(3) In Article 14—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“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.”.

(4) In Article 15—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words of paragraph 1 as renumbered, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“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.”.

(5) In Article 16—

- (a) omit the sub-heading in brackets;
- (b) re-number the existing Article as paragraph 1;
- (c) in the opening words, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”;
- (d) in point (a)(i), for “the Union” substitute “the relevant area”;
- (e) in point (c)(ii), for “the Union” substitute “the relevant area”;
- (f) after paragraph 1, insert—

“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.”.

(6) After Article 16, insert—

*“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 exit day by the European 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.”

(7) In Article 16a, for “Article 4(1)(20) of [Directive 2014/65/EU](#)” substitute “Article 2(1)(12) of Regulation (EU) No 600/2014”.

(8) In Article 17, omit the sub-heading in brackets.

### **Algorithmic trading and electronic access**

41.—(1) In Article 18—

- (a) omit the sub-heading in brackets;
- (b) for “Article 4(1)(39) of [Directive 2014/65/EU](#)” substitute “regulation 2(1) of the Markets in Financial Instruments Regulations 2017”.

(2) In Article 19—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, in the opening words, for “in accordance with Article 4(1)(40) of [Directive 2014/65/EU](#)” substitute “for the purposes of the definition of “high-frequency algorithmic trading technique” in regulation 2(1) of the Markets in Financial Instruments Regulations 2017(4) and regulation 3(1) of the Recognition Requirements Regulations”;
- (c) in paragraph 2, for “the criteria in Article 17(4) of [Directive 2014/65/EU](#)” substitute “the criteria described in paragraph 2A.”;
- (d) after paragraph 2, insert—

“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.”;

- (e) in paragraph 4, insert at the end “(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)”.

(3) In Article 20—

- (a) omit the sub-heading in brackets;

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(4) [S.I. 2017/701](#). The definition of “high-frequency algorithmic trading technique” was inserted by these regulations.

- (b) for “Article 4(1)(41) of [Directive 2014/65/EU](#)” substitute “the definition of “direct electronic access in regulation 2(1) of the Markets in Financial Instruments Regulations 2017”.

### Organisation requirements

- 42.**—(1) In Article 21, omit the sub-heading in brackets.
- (2) In Article 22—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) for “[Directive 2014/65/EU](#)” substitute “UK law on markets in financial instruments (“UK obligations)”
;
     - (ii) for “that Directive” substitute “UK law on markets in financial instruments”;
  - (c) in paragraph 2(b), for “obligations under [Directive 2014/65/EU](#)” substitute “UK obligations”;
  - (d) in paragraph 3—
    - (i) in point (b) for “by [Directive 2014/65/EU](#) and” substitute “in relation to its UK obligations and by”;
    - (ii) in point (c) for “obligations under [Directive 2014/65/EU](#)” substitute “UK obligations”.
- (3) In Article 23, omit the sub-heading in brackets.
- (4) In Article 24, omit the sub-heading in brackets.
- (5) In Article 25—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) in the first sentence, for “[Directive 2014/65/EU](#)” substitute “UK law on markets in financial instruments (“UK obligations)”
;
     - (ii) in the second sentence, for “the obligations under [Directive 2014/65/EU](#)” substitute “UK obligations”.
- (6) In Article 26—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 5, for “Article 4(h) of [Directive 2013/11/EU](#) of the European Parliament and of the Council on consumer ADR” substitute “regulation 4 of the Alternative Dispute Resolution Regulations 2015(5)”.
- (7) In Article 27, omit the sub-heading in brackets.
- (8) In Article 28, omit the sub-heading in brackets.
- (9) In Article 29—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 2, in point (c) for “[Directive 2014/65/EU](#)” substitute “UK law on markets in financial instruments”;
  - (c) in paragraph 6(b), for “a Member State” substitute “the United Kingdom”.
- (10) In Article 30—



- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) for “the first sub-paragraph of Article 16(5) of [Directive 2014/65/EU](#)” substitute “rule 8.1.1 of the Senior Management Arrangements, Systems and Controls sourcebook and rule 2.1 of the Outsourcing Part of the PRA rulebook”;
    - (ii) for “[Directive 2014/65/EU](#)” substitute “UK law on markets in financial instruments”.
- (11) In Article 31—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) in the opening words and in point (b), for “[Directive 2014/65/EU](#)” substitute “UK law on markets in financial instruments”;
    - (ii) in point (c), for “to be authorised in accordance with Article 5 of [Directive 2014/65/EU](#)” substitute “to have permission under Part 4A of FSMA to carry on a regulated activity which is any of the investment services and activities (within the meaning of regulation 2(1) of the Markets in Financial Instruments Regulations 2017)”;
  - (c) in paragraph 5, for “[Directive 2014/65/EU](#) and its implementing measures” substitute “UK law on markets in financial instruments”.
- (12) In Article 32—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 2—
    - (i) in point (a) for “[Directive 2014/65/EU](#)” substitute “UK law on markets in financial instruments”;
    - (ii) in point (c), for “[Directive 2014/65/EU](#) and its implementing measures” substitute “UK law on markets in financial instruments”;
    - (iii) in point (d)—
      - (aa) for “in the Union” substitute “in the United Kingdom”;
      - (bb) for “[Directive 2014/65/EU](#) and its implementing measures and relevant national law” substitute “UK law on markets in financial instruments”;
  - (c) in paragraph 3—
    - (i) in the first subparagraph, for “Competent authorities shall publish on their”, substitute “The FCA must publish on its”;
    - (ii) omit the second sub-paragraph.

### **Conflicts of interest**

- 43.—(1) In Article 33, omit the sub-heading in brackets.
- (2) In Article 34—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 4—
    - (i) for “Article 23(2) of [Directive 2014/65/EU](#)” substitute “rule 10.1.8(1) of the Senior Management Arrangements, Systems and Controls sourcebook”;
    - (ii) for “Article 23 of [Directive 2014/65/EU](#)” substitute “rule 10.1.3 of the Senior Management Arrangements, Systems and Control sourcebook”.
- (3) In Article 35, omit the sub-heading in brackets.

### Investment research and marketing

44.—(1) In Article 36—

- (a) omit the sub-heading in brackets;
- (b) in paragraphs 1(b) and 2, for “[Directive 2014/65/EU](#)” substitute “UK law on markets in financial instruments”.

(2) In Article 37, omit the sub-heading in brackets.

### Underwriting and placing

45.—(1) In Article 38—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, in the opening words, for “Section B(3) of Annex 1” substitute “Paragraph 3 of Part 3A of Schedule 2 to the Regulated Activities Order”.

(2) In Article 39, omit the sub-heading in brackets.

(3) In Article 40—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 3, in the first sentence, after “comply with” insert “rules made by the FCA under FSMA which were relied on by the United Kingdom immediately before exit day to implement”;

(4) In Article 41—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, for “Article 24(7), 24(8) and 24(9) of [Directive 2014/65/EU](#)” substitute “rules 2.3A.5 to 2.3A.7, 2.3A.15, 2.3A.16, 2.3A.19 and 6.2B.11 of the Conduct of Business sourcebook”;
- (c) in paragraph 4—
  - (i) after “575/2013 of the European Parliament and of the Council,” insert “the law of the United Kingdom or any part of the United Kingdom (“the UK law”) which was relied on by the United Kingdom immediately before exit day to implement”
  - (ii) after “in accordance with” insert “the UK law which was relied on by the United Kingdom immediately before exit day to implement”.

(5) In Article 42, omit the sub-heading in brackets.

(6) In Article 43, omit the sub-heading in brackets.

### Information to clients

46.—(1) In Article 44—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 4(e), for “that of the Member State in which the retail client or potential retail client is resident” substitute “pounds sterling”.

(2) In Article 45—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, for “[Directive 2014/65/EU](#)” substitute “UK law on markets in financial instruments”;
- (c) in paragraph 3—

- (i) in point (a), for “Article 30(2) of [Directive 2014/65/EU](#)” substitute “rule 3.6.2 of the Conduct of Business sourcebook”;
  - (ii) in point (b), for “Section I of Annex II to [Directive 2014/65/EU](#)” substitute “Part 2 of Schedule 1 to Regulation (EU) No 600/2014”.
- (3) In Article 46, omit the sub-heading in brackets.
- (4) In Article 47—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) in point (e), omit “specifying the Member State in which that agent is registered”;
    - (ii) in point (f), for “Article 25(6) of [Directive 2014/65/EU](#)” substitute “rules 9A.3.2 and 16A.2.1 of the Conduct of Business sourcebook”;
    - (iii) in point (g), for “a Member State” substitute “the United Kingdom”.
- (5) In Article 48—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraph 3, for “[Directive 2003/71/EC](#)” substitute “the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement [Directive 2003/71/EC](#), as that law is amended from time to time”.
- (6) In Article 49—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraph 5, for “a Member State” substitute “the United Kingdom”.
- (7) In Article 50—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) in the first subparagraph, for “Article 24(4) of [Directive 2014/65/EU](#)” substitute “rule 6.1ZA.11 of the Conduct of Business sourcebook (“the relevant rule”)”;
    - (ii) in the second and third subparagraphs, for “Article 24(4) of [Directive 2014/65/EU](#)” substitute “the relevant rule”;
  - (c) in paragraph 5(b), omit “in accordance with relevant Union legislation”;
  - (d) in paragraph 6, omit “in accordance with relevant Union legislation”.
- (8) In Article 51—
  - (a) in the heading, for “in accordance with [Directive 2009/65/EU](#) and Regulation (EU) No 1286/2014” substitute “in relation to units in collective investment undertakings or PRIIPs”;
  - (b) omit the sub-heading in brackets.

## **Investment Advice**

- 47.**—(1) In Article 52, omit the sub-heading in brackets.
- (2) In Article 53—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, in the opening words, for “Article 24(7)(a) of [Directive 2014/65/EU](#)” substitute “rule 6.2B.11 of the Conduct of Business sourcebook”;

- (c) in paragraph 3(a), for “Article 24(4)(a) of [Directive 2014/65/EU](#)” substitute “rule 6.2B.33 of the Conduct of Business sourcebook”.
- (3) In Article 54—
- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, for “Article 25(2) of [Directive 2014/65/EU](#)” substitute “rule 9A.2.1 of the Conduct of Business sourcebook”;
- (c) in paragraph 3, in the second sub-paragraph, for “Section 1 of Annex II to [Directive 2014/65/EU](#)” substitute “Part 2 of Schedule 1 to Regulation (EU) No 600/2014”;
- (d) in paragraph 6, in the second sub-paragraph, for “Section 2 of Annex II to [Directive 2014/65/EU](#)” substitute “Part 3 of Schedule 1 to Regulation (EU) No 600/2014”;
- (e) in paragraph 8, for “Article 25(2) of [Directive 2014/65/EU](#)” substitute “rule 9A.2.1 of the Conduct of Business sourcebook”.
- (4) In Article 55—
- (a) omit the sub-heading in brackets;
- (b) in paragraph 2, for “Article 25(2) and (3) of [Directive 2014/65/EU](#)” substitute “rules 9A.2.1 and 10A.2.1 of the Conduct of Business sourcebook”.
- (5) In Article 56—
- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, for “Article 25(3) of [Directive 2014/65/EU](#)” substitute “rule 10A.1.1 of the Conduct of Business sourcebook”.
- (6) In Article 57—
- (a) omit the sub-heading in brackets;
- (b) in the opening words—
- (i) for “Article 25(4)(a) of [Directive 2014/65/EU](#)” substitute “rule 10A.4.1(2) of the Conduct of Business sourcebook”;
- (ii) for “Article 25(4)(a)(vi) of [Directive 2014/65/EU](#)” substitute “paragraph (2)(f) of that rule”;
- (iii) for point (a), substitute—
- “(a) it does not fall within Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order;”.
- (7) In Article 58—
- (a) omit the sub-heading in brackets;
- (b) in the first sub-paragraph, for “Section B(1) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order”;
- (c) in the second sub-paragraph, in point (c) for “Section B(1) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order”.
- (8) In Article 59, omit the sub-heading in brackets.
- (9) In Article 60—
- (a) omit the sub-heading in brackets;
- (b) in paragraph 3, in the second sub-paragraph, for the words from “Article 4(1)(44)(c) of” to the end substitute “Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order”.

- (10) In Article 61, omit the sub-heading in brackets.
- (11) In Article 62, omit the sub-heading in brackets.
- (12) In Article 63—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, in the second sub-paragraph—
    - (i) for “authorised under [Directive 2000/12/EC](#) of the European Parliament and of the Council” substitute “that is a CRR firm as defined in Article 4(1)(2A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms”;
    - (ii) for “of that Directive” substitute “of Article 2(1)(23A) of Regulation (EU) No 600/2014”.
  - (c) in paragraph 2(d) for “[Directive 2014/65/EU](#) and its implementing measures” substitute “the UK law on markets in financial instruments”.

### **Best execution**

- 48.**—(1) In Article 64—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, for “Article 27(1) of the [Directive 2014/65/EU](#)” substitute “rule 11.2A.2 of the Conduct of Business sourcebook”;
  - (c) in paragraph 2, for “Article 27(1) of [Directive 2014/65/EU](#)” substitute “rules 11.2A.2, 11.2A.3, 11.2A.9, 11.2A.12 and 11.2A.15 of the Conduct of Business sourcebook”.
- (2) In Article 65—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraphs 1 and 2, for “Article 24(1) of [Directive 2014/65/EU](#)” substitute “rule 2.1.1. of the Conduct of Business sourcebook”;
  - (c) in paragraph 4—
    - (i) for “Article 27(1) of [Directive 2014/65/EU](#)”, the first time it occurs, substitute “rule 11.2A.2 of the Conduct of Business sourcebook”;
    - (ii) for “Article 27(1) of [Directive 2014/65/EU](#)” the second time it occurs, substitute “rule 11.2A.9 of the Conduct of Business sourcebook”;
  - (d) in paragraph 6, for “the technical standards developed under Article 27(10)(b) of Article 2014/65/EU” substitute “Commission Delegated Regulation (EU) 2017/576 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 20(b) of Schedule 3 to Regulation (EU) No 600/2014”;
  - (e) in paragraph 8, for the last sentence, substitute “In those cases, Articles 64 and 66 of this Regulation, technical standards made under Article 27(10) of [Directive 2014/65/EC](#) and rules in the Conduct of Business sourcebook which were relied on by the United Kingdom immediately before exit day to implement Article 27 of [Directive 2014/65/EU](#) shall apply.”.
- (3) In Article 66—
  - (a) omit the sub-heading in brackets;

- (b) in paragraph 1, for “Article 27(4) of [Directive 2014/65/EU](#)” substitute “rule 11.2A.20 of the Conduct of Business sourcebook”;
  - (c) in paragraph 3, in point (a), for “Article 27(1) of [Directive 2014/65/EU](#)” substitute “rule 11.2A.2 of the Conduct of Business sourcebook”;
  - (d) in paragraph 6, for “Article 24(9) of [Directive 2014/65/EU](#)” substitute “rules 2.3A.5, 2.3A.6 and 2.3A.7E of the Conduct of Business sourcebook”;
  - (e) in paragraph 7, for “Article 24(9) of [Directive 2014/65/EU](#) and its implementing measures” substitute “rules 2.3A.5, 2.3A.6 and 2.3A.7E of the Conduct of Business sourcebook”;
  - (f) in paragraph 9, for “Article 27(3) of [Directive 2014/65/EU](#)” substitute “rule 11.2C.1 of the Conduct of Business sourcebook, rules 5.3.1A(5), 5A.4.2(3) and 6.3A.1 of the Market Conduct sourcebook and paragraph 4C of the Schedule to the Recognition Requirements Regulations<sup>(6)</sup>”.
- (4) In Article 67, omit the sub-heading in brackets.
  - (5) In Article 68, omit the sub-heading in brackets.
  - (6) In Article 69, omit the sub-heading in brackets.
  - (7) In Article 70—
    - (a) omit the sub-heading in brackets;
    - (b) in paragraph 1—
      - (i) for “Article 28(2) of [Directive 2014/65/EU](#)” substitute “rule 11.4.1 of the Conduct of Business sourcebook”;
      - (ii) for “a data reporting services provider located in one Member State” substitute “a person authorised to provide data reporting services under the Data Reporting Services Regulations 2017<sup>(7)</sup>”.

### Eligible counterparties

- 49. In Article 71—
  - (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) for “Article 30(2) of [Directive 2014/65/EU](#)” substitute “rule 3.6.2 of the Conduct of Business sourcebook”;
    - (ii) for “Member States” substitute “the FCA”;
    - (iii) omit “, in accordance with Article 30(3) of that Directive,”;
    - (iv) for “paragraphs 1, 2 and 3 of Section 1 of Annex II to that Directive” substitute “paragraph 3(a), (b) and (c) of Schedule 1 to Regulation (EU) No 600/2014”;
  - (c) in paragraph 2—
    - (i) for “the second subparagraph of Article 30(2) of [Directive 2014/65/EU](#)” substitute “rule 3.7.1 of the Conduct of Business sourcebook”;
    - (ii) for “Articles 24, 25, 27 and 28 of that Directive” substitute “rules in the Conduct of Business; Market Conduct; Senior Management Arrangements, Systems and Controls and the Product Intervention and Product Governance sourcebooks which

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(6) [S.I. 2001/995](#). Paragraph 4C was inserted by [S.I. 2017/701](#).

(7) [S.I. 2017/699](#).

- were relied on by the United Kingdom immediately before exit day to implement Articles 24, 25, 27 and 28 of [Directive 2014/65/EU](#) (“the relevant rules”);
- (d) in paragraph 3, in the first sub-paragraph, for “Articles 24, 25, 27 and 28 of [Directive 2014/65/EU](#)” substitute “the relevant rules”;
  - (e) in paragraph 4, for “the second, third and fourth sub-paragraphs of Section 1 of Annex II to [Directive 2014/65/EU](#)” substitute “paragraph 3(b), (c), (d) and 4 of Schedule 1 to Regulation (EU) No 600/2014”;
  - (f) in paragraph 5, for “Article 30(3) of [Directive 2014/65/EU](#)” substitute “rule 3.6.4A of the Conduct of Business sourcebook”.

### Record-keeping

**50.**—(1) In Article 72—

- (a) omit the sub-heading in brackets;
  - (b) in paragraph 3, for “[Directive 2014/65/EU](#), Regulation (EU) No 600/2014, [Directive 2014/57/EU](#) and Regulation (EU) No 596/2014 and their respective implementing measures” substitute “Regulation (EU) No 600/2014, Regulation (EU) No 596/2014 and their implementing measures (as amended under the European Union (Withdrawal) Act 2018) and the law of the United Kingdom or any part of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement [Directive 2014/65/EU](#), [Directive 2014/57/EU](#) and their implementing measures”;
- (2) In Article 73, omit the sub-heading in brackets.
- (3) In Article 74, omit the sub-heading in brackets.
- (4) In Article 75, omit the sub-heading in brackets.
- (5) In Article 76—
- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1—
    - (i) in point (a), for “Article 16(7) of [Directive 2014/65/EU](#)”, substitute “rules 10A.1.6 to 10A.1.8 and 10A.1.11 to 10.1.14 of the Senior Management Arrangements, Systems and Control sourcebook (“the relevant rules”);
    - (ii) in point (b)—
      - (aa) for “the third and eighth subparagraphs of Article 16(7) of [Directive 2014/65/EU](#)”, substitute “rule 10A.1.6 and 10A.1.7 of the Senior Management Arrangements, Systems and Controls sourcebook”;
      - (bb) for “competent authorities” substitute “the FCA”;
- (c) in paragraphs 5 and 6, for “Article 16(7) of [Directive 2014/65/EU](#)” substitute “the relevant rules”;
- (d) in paragraph 7, for “relevant competent authorities” substitute “FCA”.

### SME growth market

**51.**—(1) In Article 77—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, in the opening words, for “point (a) of Article 33(3) of [Directive 2014/65/EU](#)” substitute “rule 5.10.2(1) of the Market Conduct sourcebook”;

- (c) in paragraph 2, for “Article 4(1)(13) of [Directive 2014/65/EU](#)” substitute “regulation 2(1) of the Markets in Financial Instruments Regulations 2017”<sup>(8)</sup>;
- (2) In Article 78—
- (a) omit the sub-heading in brackets;
- (b) in paragraph 1—
- (i) in the first sub-paragraph, for “point (a) of Article 33(3) of [Directive 2014/65/EU](#), the competent authority of the home Member State of the operator of an MTF” substitute “rule 5.10.2(1) of the Market Conduct sourcebook, the FCA”;
- (ii) in the second sub-paragraph, for “points (b) to (g) of Article 33(3) of [Directive 2014/65/EU](#), the competent authority” substitute “paragraphs (2) to (7) of rule 5.10.2 of the Market Conduct sourcebook, the FCA”;
- (c) in paragraph 2—
- (i) in the opening words, for “points (b), (c), (d) and (f) of Article 33(3) of [Directive 2014/65/EU](#), the competent authority of the home Member State of the operator of an MTF” substitute “paragraphs (2), (3), (4) and (6) of rule 5.10.2 of the Market Conduct sourcebook, the FCA”;
- (ii) in point (c), after “in cases where” insert “the UK law implementing”;
- (iii) in point (h), after “in accordance with” insert “the UK law implementing”;
- (d) after paragraph 2, insert—
- “3. For the purposes of paragraph 2, “UK law implementing [Directive 2003/71/EC](#)” means the law of the United Kingdom or of any part of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement [Directive 2003/71/EC](#), as that law has been amended under the European Union (Withdrawal) Act 2018.”
- (3) In Article 79—
- (a) omit the sub-heading in brackets;
- (b) in paragraphs 1 and 2—
- (i) for “points (b) to (g) of Article 33(3) of [Directive 2014/65/EU](#)” substitute “paragraphs (2) to (7) of rule 5.10.2 of the Market Conduct sourcebook”;
- (ii) for “competent authority of its home Member State” substitute “FCA”.

### **Operating obligations for trading venues**

- 52.**—(1) In Article 80—
- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, for “Articles 32(1), 32(2), 52(1) and 52(2) of [Directive 2014/65](#)” substitute “sections 313CA and 313CC of FSMA<sup>(9)</sup>, paragraph 7E of the Schedule to the Recognition Requirements Regulations<sup>(10)</sup> and rules 5.6.1 and 5A.9.1 of the Market Conduct sourcebook”.
- (2) In Article 81, omit the sub-heading in brackets.
- (3) In Article 82—
- (i) omit the sub-heading in brackets;

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<sup>(8)</sup> [S.I. 2017/701](#). The definition of “SME growth market” is inserted by regulation 5(1)(t) of these Regulations.

<sup>(9)</sup> [2000 c.8](#). Sections 313CA to 313CC were inserted by [S.I. 2017/701](#).

<sup>(10)</sup> [S.I.2001/995](#). Paragraph 7E was inserted by [S.I. 2006/3386](#).



(ii) in paragraph 1, for “their competent authorities” substitute “the FCA”.

### **Position reporting in commodity derivatives**

**53.** In Article 83—

- (a) omit the sub-heading in brackets;
- (b) in paragraph 1, for “Article 58(1)(a) of [Directive 2014/65/EU](#)” substitute “paragraph 7BB of the Schedule to the Recognition Requirement Regulations(11) and rule 10.4.3 of the Market Conduct sourcebook”.

### **Data provision obligations for data reporting service providers**

**54.**—(1) In Article 84—

- (a) omit the sub-heading in brackets;
  - (b) in paragraph 1, for “Articles 64(1) and 65(1) of [Directive 2014/65/EU](#)” substitute “regulations 14(1) and 15(1) of the Data Reporting Services Regulations 2017(12)”.
- (2) In Article 85, omit the sub-heading in brackets.
  - (3) In Article 86, omit the sub-heading in brackets.
  - (4) In Article 87, omit the sub-heading in brackets.
  - (5) In Article 88, omit the sub-heading in brackets.
  - (6) In Article 89, omit the sub-heading in brackets.

### **Final provisions**

**55.**—(1) Omit Article 90.

(2) After Article 91, omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.”

### **Annexes**

**56.**—(1) In Annex I, in the text before the table, after “nature of their activities” insert “. References to provisions in [Directive 2014/65/EU](#) are to be read as references to the provisions in the UK law on markets in financial instruments which implemented those provisions.”

(2) In Annex III, in Section A—

- (a) in paragraph 6, for “Article 48 of [Directive 2014/65/EU](#) and its implementing measures” substitute “paragraphs 3 to 3F of the Schedule to the Recognition Requirements Regulations, and Parts 5.3A and 5.5A of the Market Conduct sourcebook”;
- (b) in paragraph 9, for “[Directive 2014/65/EU](#)” substitute “the UK law on markets in financial instruments”.

(3) In Annex IV, in Section 1, in paragraph 16, and in Section 2, in paragraphs 32 and 34, for “under the standards on clock synchronisation under Article 50(2) of [Directive 2014/65/EU](#)” each time it occurs, substitute “in 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 or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3”.

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(11) Paragraph 7BB was inserted by [S.I. 2017/701](#).

(12) [S.I. 2017/699](#).

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**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 No. 1403*

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