
DRAFT STATUTORY INSTRUMENTS

2018 No.

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

PART 4

Amendment of EU Regulations

CHAPTER 3

Commission Delegated Regulation 2017/567

Commission Delegated Regulation 2017/567

57. Commission Delegated Regulation (EU) 2017/567 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 is amended in accordance with regulations 58 to 61.

Interpretation

58. Before Chapter I, insert—

“Article A1

Interpretation

For the purposes of this Regulation—

- (a) any reference to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the Financial Conduct Authority containing rules made by that Authority under FSMA as the sourcebook has effect on exit day;
- (b) any reference to the PRA rulebook is to the rulebook published by the Prudential Regulation Authority containing rules made by that Authority under FSMA as the rulebook has effect on exit day.
- (c) 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;
- (d) any expression which is used in the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 has the same meaning as in those Regulations.”

Determining liquid markets for equity instruments

59.—(1) In Articles 1(6), 2(5), 3(5) and 4(5)—

- (a) for “the trading venues of a Member State” substitute “UK trading venues”;

- (b) for “that Member State”, the first and third time it occurs, substitute “the United Kingdom”;
 - (c) for “the competent authority of that Member State”, substitute “the FCA”.
- (2) In Article 5—
- (a) in paragraph 1—
 - (i) at the beginning, insert “Subject to paragraph 1A.”;
 - (ii) for the words from the beginning to “2017/590” substitute “the FCA”;
 - (iii) in points (b) and (c), for “executed in the Union” substitute “executed in the relevant area”;
 - (iv) in the words after point (d), for “Competent authorities” substitute “The FCA”;
 - (b) after paragraph 1, insert—

“1A. Subject to paragraph 1B, during the transitional period (within the meaning of Article 5(3A) of Regulation 600/2014/EU), paragraph 1 does not apply except as follows—

 - (a) the FCA must make and publish the assessment required by—
 - (i) point (a) of paragraph 1, where a share, depository certificate, exchange traded fund or a certificate (“a relevant instrument”) is traded on a UK trading venue for the first time after exit day;
 - (ii) point (d) of paragraph 1;
 - (b) the FCA may make (and if it does so must publish) the assessments required by point (b) or (c) of paragraph 1 if it has the data it needs to do so;
 - (c) subject to point (f), if no assessment has been carried out by the FCA under this paragraph, where any obligation in retained EU law relating to markets in financial instruments requires the determination of whether a particular relevant instrument has a liquid market, the most recent assessment made before exit day by a competent authority under this Article (as it was in force in the European Union before exit day) is to apply;
 - (d) if no assessment had been made by the FCA under this paragraph or by any competent authority before exit day in relation to a relevant instrument, that instrument is to be deemed not to have a liquid market for the purposes of article 2(1)(17)(b) of Regulation 600/2014/EU, unless an assessment has been made by the FCA under paragraph 1;
 - (e) the FCA may disregard the most recent assessment made in relation to a relevant instrument before exit day and direct that the instrument concerned is to be treated as not having a liquid market if—
 - (i) an assessment would be required under point (b) or point (c) of paragraph 1 but the FCA does not have the data to carry out such an assessment; and
 - (ii) it appears to the FCA that—
 - (aa) the liquidity of the financial instrument in UK trading venues has reduced since the relevant instrument was last assessed, and
 - (bb) the extent of the reduction in liquidity is so material that continuing to treat the relevant instrument as having a liquid market would have an adverse effect on price formation in that instrument;
 - (f) a direction given by the FCA under point (e) must be published as soon as possible.

1B. The FCA must make at least one assessment required by paragraph 1 no later than the date six weeks before the end of the transitional period in relation to every relevant instrument which is traded on a UK trading venue.

1C. If any assessment has been made and published by the FCA in accordance with paragraph 1A (including an assessment given by direction under point (e)) during the transitional period that assessment is to be used by the FCA, market operators and investment firms (including investment firms operating a trading venue)—

- (a) from the date on which the assessment is published, in the case of an assessment in accordance with point (a)(ii) of paragraph 1A;
- (b) from the date six weeks after the date on which that assessment was published in all other cases.”;
- (c) in paragraph 2, for “competent authorities” both times it occurs, substitute “the FCA”;
- (d) in paragraph 3—
 - (i) in the opening words, for “competent authorities” substitute “the FCA”;
 - (ii) in point (b)(iii) for “competent authority” substitute “FCA”;
- (e) after paragraph 3, insert—

4. For the purposes of this Article, the “relevant area” consists of the United Kingdom and those countries or regions specified by the FCA by direction.

5. The FCA may only give a direction under paragraph 4 specifying that a country or region is within the relevant area in relation to one or more financial instruments for the purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess the volume of trading in the financial instruments concerned in that country or region.

6. Article 50B of Regulation 600/2014/EU (“the Regulation”) applies to a direction given by the FCA for the purposes of this Article as it applies to a direction given by the FCA for the purposes of Article 5, 9 or 14 of the Regulation.”.

Data publication obligations for systematic internalisers

60. In Article 14(1)—

- (a) in point (a), for “Article 48(5) of [Directive 2014/65/EU](#)” substitute “paragraph 3B of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001⁽¹⁾ or rules 5.3A.5 to 5.3A.8 or 5A.5.5 to 5A.5.8 of the Market Conduct sourcebook”;
- (b) in point (d), for “a competent authority” substitute “the FCA”.

Supervisory measures on product intervention and position management

61.—(1) Omit Articles 19 and 20.

(2) In Article 21—

- (a) in the heading, for “competent authorities” substitute “the FCA”;
- (b) in paragraph 1—
 - (i) for “competent authorities”, both times it occurs, substitute “the FCA”;

(1) [S.I. 2001/995](#). Paragraph 3B was inserted by [S.I. 2017/701](#).

- (ii) for “at least one Member State”, both times it occurs, substitute “the United Kingdom”;
- (c) in paragraph 2—
 - (i) in the opening words—
 - (aa) for “competent authorities” substitute “the FCA”;
 - (bb) for “at least one Member State”, substitute “the United Kingdom”;
 - (ii) in point (b), for “[Directive 2014/49/EU](#)” substitute “Chapter 4 of the Depositor Protection Part of the PRA Rulebook.”;
 - (iii) In point (s), for “the Member State of the relevant competent authority” substitute “the United Kingdom”.
- (3) Omit Article 22.
- (4) After Article 24, omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States”.