
DRAFT STATUTORY INSTRUMENTS

2018 No.

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

PART 4

Amendment of EU Regulations

CHAPTER 1

Amendment of Markets in Financial Instruments Regulation

Derivatives

30.—(1) In Article 28—

(a) in paragraph 1, for point (d), substitute—

“(d) third-country trading venues, provided that—

(i) either—

(aa) a decision has been adopted before exit day by the European Commission in accordance with paragraph 4 of this Article as it had effect in the European Union before exit day; or

(bb) the Treasury has made regulations in accordance with paragraph 4 of this Article as it applies in the United Kingdom on and after exit day; and

(ii) the third country provides for an effective equivalent system for recognition of UK trading venues to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.”;

(b) in paragraph 2—

(i) in the first subparagraph, for “Union” each time it appears, substitute “United Kingdom”;

(ii) in the second subparagraph, for “ESMA shall” substitute “The competent authority must”;

(c) in paragraph 4—

(i) in the first subparagraph—

(aa) for “The Commission may, in accordance with the examination procedure referred to in Article 51(2) adopt decisions determining” substitute “The Treasury may by regulations specify”;

(bb) after “this Regulation,” insert “United Kingdom legislation which implemented or replaced”;

(ii) in the fourth subparagraph—

- (aa) for “A decision of the Commission” substitute “Regulations made by the Treasury”;
- (bb) for “the Commission’s decision” substitute “regulations made by the Treasury”;
- (d) in paragraph 5—
 - (i) in the first subparagraph—
 - (aa) for “ESMA shall develop draft regulatory” substitute “the FCA may make”;
 - (bb) for “the Union” substitute “the United Kingdom”;
 - (ii) omit the second and third subparagraphs;
 - (iii) in the fourth sub-paragraph omit “regulatory”.
- (2) In Article 29, in paragraph 3—
 - (a) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The appropriate regulator may make”;
 - (b) in the second subparagraph—
 - (i) for “ESMA” substitute “The appropriate regulator,”;
 - (ii) omit “regulatory”;
 - (c) omit the third and fourth subparagraphs;
 - (d) at the end insert—

“For the purposes of this paragraph, “appropriate regulator” means—

 - (a) the Bank of England, in relation to CCPs;
 - (b) the FCA in all other cases.

The FCA and the Bank of England must co-ordinate the exercise of their functions when making technical standards under this Article to ensure that the technical standards made under it are mutually compatible.”
- (3) In Article 30, in paragraph 2—
 - (a) in the first subparagraph, for “ESMA shall develop draft regulatory” substitute “The appropriate regulator may make”;
 - (b) omit the second and third subparagraphs;
 - (c) at the end insert—

“For the purposes of this paragraph, “appropriate regulator” means—

 - (a) the Bank of England, in relation to CCPs;
 - (b) the FCA in all other cases.

The FCA and the Bank of England must co-ordinate the exercise of their functions when making technical standards under this Article to ensure that the technical standards made under it are mutually compatible.”
- (4) In Article 31—
 - (a) in paragraph 1—
 - (i) for “Article 27 of [Directive 2014/65/EU](#)” substitute “section 11.2A of the Conduct of Business sourcebook”
 - (ii) for “Article 1(6) of [Directive 2014/65/EU](#)” substitute “rule 5AA.1.1 in the Market Conduct sourcebook”;
 - (b) in paragraph 3, in the second sentence, omit “or ESMA”;

- (c) in paragraph 4, for “The Commission may adopt by means of delegated acts in accordance with Article 50, measures specifying” substitute “The Treasury may by regulations specify”.
- (5) In Article 32—
 - (a) in paragraph 1—
 - (i) in the opening words, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
 - (ii) in point (b), omit “regulatory”;
 - (iii) omit the second, third, and fourth subparagraphs;
 - (b) in paragraph 3—
 - (i) omit “draft regulatory” both times it appears;
 - (ii) for “ESMA” each time it appears, substitute “the FCA”;
 - (c) in paragraph 4—
 - (i) for “ESMA”, both times it appears, substitute “the FCA”;
 - (ii) for “Commission”, both times it appears, substitute “Treasury”;
 - (d) in paragraph 5—
 - (i) for “ESMA” substitute “The FCA”;
 - (ii) for “submit to the Commission draft regulatory” substitute “make”;
 - (iii) omit “regulatory” the second time it appears;
 - (iv) omit the second sentence of the first subparagraph and the second subparagraph;
 - (e) in paragraph 6—
 - (i) in the first sub-paragraph, for “ESMA shall develop draft regulatory” substitute “The FCA may make”;
 - (ii) omit the second and third sub-paragraphs.
- (6) In Article 33—
 - (a) omit paragraph 1;
 - (b) in paragraph 2—
 - (i) in the opening words of the first subparagraph, for “The Commission may adopt implementing acts declaring” substitute “The Treasury may by regulations specify”;
 - (ii) omit the second subparagraph;
 - (c) in paragraph 3, for “An implementing act” substitute “Regulations”;
 - (d) for paragraph 4, substitute—

“4. Where regulations made under paragraph 2 are revoked, transactions by counterparties shall automatically be subject again to all requirements contained in Articles 28 and 29 of this Regulation.”.
- (7) For Article 34, substitute—

“Article 34

Register of derivatives subject to the trading obligation

1. The FCA must publish and maintain on its website a register specifying—

- (a) every derivative that appears to the FCA to be subject to the obligation to trade on the venues referred to in Article 28(1);
- (b) the venues where the derivative is admitted to trading or traded;
- (c) the dates from which the obligation takes effect.

2. The FCA may draw on such information as it considers appropriate to maintain the register, including information published in the register maintained by ESMA under this Article as it applies in the European Union.”.