
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

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.”.