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DRAFT STATUTORY INSTRUMENTS

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**2020 No.**

**The Securities Financing Transactions, Securitisation and  
Miscellaneous Amendments (EU Exit) Regulations 2020**

**PART 2**

**Transitional and saving provisions concerning the SFT Regulation**

**CHAPTER 1**

**Advance applications**

**Advance application for registration as a trade repository**

**2.—(1)** A person may submit an advance application to the FCA for registration as a trade repository.

**(2)** Such an application must—

- (a)** be made in such a manner as the FCA may direct; and
- (b)** contain, or be accompanied by, such information as the FCA may direct.

**Assessment of whether an advance application is complete**

**3.** The FCA must, before the end of period of 20 working days beginning with the day of receipt of an advance application—

- (a)** if it considers that the application complies with any applicable direction under regulation 2(2)(a) or (b), confirm in writing that the application is complete; or
- (b)** if it considers that the application does not comply with one or more of the directions under that regulation—
  - (i)** confirm in writing to the applicant that the application is not complete; and
  - (ii)** where applicable, inform the applicant of the steps which need to be taken, and the time within which they need to be taken, for the application to be considered complete.

**Determination of an advance application**

**4.—(1)** The FCA must, before the end of a period of 40 working days beginning with the day on which the FCA confirms that an application is complete, take the following steps.

**(2)** The first step is that the FCA must consider the application based on compliance with—

- (a)** Article 5(2) of the SFT Regulation; and
- (b)** Article 12 of the SFT Regulation.

**(3)** The second step is that the FCA must decide whether the applicant should be registered as a trade repository or whether the application for registration should be rejected.

(4) The third step is that the FCA must notify the applicant of its decision under paragraph (3), and the reasons for that decision.

### **Effect of determining an advance application**

5. A decision in respect of an advance application under regulation 4(3) has effect from—

- (a) the day of notification, or
- (b) IP completion day,

whichever is later, as if it were a decision to register or refuse registration adopted in accordance with Article 7 of the SFT Regulation.

## **CHAPTER 2**

### **Temporary registration**

#### **Temporary deemed registration under the SFT Regulation**

6.—(1) A person to whom this regulation applies is to be treated as if the person is registered as a trade repository under Chapter III of the SFT Regulation.

(2) Reference in an enactment to a person registered as a trade repository under that Chapter, however expressed, is to be read, unless the contrary intention appears, as including a person treated as being so registered by virtue of this regulation.

#### **Application of regulation 6**

7. Regulation 6 applies to a person—

- (a) who satisfied the conditions in regulation 8;
- (b) for the period specified in regulation 9.

#### **Conditions to be satisfied for regulation 6 to apply**

8. The conditions are—

- (a) the person is a body corporate which, immediately before IP completion day, is—
  - (i) incorporated under the law of any part of the United Kingdom; and
  - (ii) included within a group of undertakings which comprises a trade repository registered under the EU SFT Regulation;
- (b) the person has—
  - (i) submitted an advance application in accordance with regulation 2, whether or not the application complies with any applicable direction under regulation 2(2)(b); and
  - (ii) not been notified by the FCA of its decision in respect of the application in accordance with regulation 4(4).

#### **Period during which regulation 6 is to apply**

9.—(1) For the purposes of regulation 7(b), the period is one that begins with IP completion day and ends with a day determined in accordance with paragraph (2).

(2) The period ends—

- (a) after three years beginning with the day on which IP completion day occurs; or
- (b) if earlier, with the day—

- (i) before the day on which the person's registration as a trade repository has effect;
- (ii) on which the FCA determines, in accordance with regulation 10(1), that regulation 6 should cease to apply to that person; or
- (iii) on which the person ceases to be included within a group of undertakings which comprises a trade repository under the EU SFT Regulation.

#### **Cessation following a determination by the FCA**

- 10.—**(1) The FCA may determine that regulation 6 should cease to apply to a person—
- (a) where, in respect of an advance application—
    - (i) the application does not comply with any applicable direction made by the FCA under regulation 2(2)(a) or (b); and
    - (ii) the steps referred to in regulation 3(b)(ii) have not been taken within the time specified;
  - (b) following a decision refusing registration in accordance with regulation 4(3); or
  - (c) at the request of the person to whom regulation 6 applies.
- (2) The FCA must notify the person in respect of whom the determination is made of the day on which regulation 6 will cease to apply.
- (3) Paragraph (1) is subject to Article 10 (withdrawal of registration) of the SFT Regulation.

### **CHAPTER 3**

#### **Temporary registration for run-off period**

#### **Temporary deemed registration under the SFT Regulation for run-off period**

- 11.—**(1) A person to whom this regulation applies is to be treated as if the person is registered as a trade repository under Chapter III of the SFT Regulation.
- (2) Reference in an enactment to a person registered as a trade repository under that Chapter, however expressed, is to be read, unless the contrary intention appears, as including a person treated as being so registered by virtue of this regulation.

#### **Application of regulation 11**

- 12.** Regulation 11 applies to a person—
- (a) who satisfies the condition in regulation 13;
  - (b) for the period determined in accordance with regulation 14.

#### **Condition to be satisfied for regulation 11 to apply**

- 13.** The condition is that the FCA has determined that regulation 6 should cease to apply to a person in accordance with regulation 10, or that the FCA has withdrawn registration of a person to whom regulation 6 applies in accordance with Article 10 of the SFT Regulation.

#### **Period during which regulation 11 is to apply**

- 14.** For the purposes of regulation 12(b), the period is a period of one year beginning with the day on which the condition in regulation 13 is satisfied, or such shorter period as the FCA may determine in a particular case.

**Transitional arrangements during the run-off period**

**15.—**(1) The FCA may make such transitional arrangements imposing requirements in respect of the registration of a person to whom regulation 11 applies as it considers necessary or expedient.

(2) A requirement may, in particular, be imposed—

(a) so as to require the person concerned to take specified action, including to make arrangements for the transfer of data stored by the person to whom regulation 6 or 11 applies or a person which is registered as a trade repository under Chapter III of the EU SFT Regulation; or

(b) so as to require the person concerned to refrain from taking specified action.

(3) A requirement may be imposed by reference to the person's relationship with—

(a) the person's group; or

(b) other members of the person's group.

**Notification of a decision to impose requirements under regulation 15**

**16.—**(1) This regulation applies to an exercise of the FCA's power to impose a requirement in respect of the registration of a person ("P") in accordance with regulation 15.

(2) The imposition of the requirement takes effect—

(a) immediately, if the notice given under paragraph (4) states that that is the case,

(b) on such date as may be specified in the notice, or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer subject to review.

(3) The imposition of a requirement may be expressed to take effect immediately, or on a specified date, only if the FCA, having regard to the ground on which it is exercising its power, reasonably considers that it is necessary for the imposition of the requirement to take effect immediately, or on that date.

(4) If the FCA proposes to impose, or imposes, a requirement it must give P written notice.

(5) The notice must—

(a) give details of the requirement;

(b) state the reasons for the imposition of the requirement;

(c) inform P that P may make representations to the FCA, within a period specified in the notice, whether or not P has referred the matter to the Tribunal;

(d) inform P of when the imposition of the requirement takes effect; and

(e) inform P of their right to refer the matter to the Tribunal.

(6) The FCA may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by P, the FCA decides—

(a) to impose a requirement in the way proposed, or

(b) if the requirement has been imposed, not to rescind the imposition of the requirement,

it must give P written notice.

(8) If, having considered any representations made by P, the FCA decides—

(a) not to impose a requirement in the way proposed,

(b) to impose a different requirement, or

(c) to rescind a requirement which has effect,

it must give P written notice.

(9) A notice under paragraph (7) must inform P of P's right to refer the matter to the Tribunal.

(10) A notice under paragraph (8)(b) must comply with paragraph (5).

(11) If a notice informs P of P's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

### **Right to refer to the Tribunal**

**17.** P may refer to the Tribunal any decision by the FCA to impose a requirement under this Chapter.

### **Application of Part 9 of the Financial Services and Markets Act 2000**

**18.—**(1) Part 9 of the Financial Services and Markets Act 2000(1) ("the Act") (hearings and appeals) applies in respect of a reference to the Tribunal under regulation 17 as it applies in respect of a reference to the Tribunal under the Act but with the following modifications.

(2) In section 133 (proceedings before the Tribunal: general provisions)—

(a) in subsection 1—

(i) omit "(whether made under this or any other Act)";

(ii) in paragraph (a), omit "or the PRA";

(iii) omit paragraphs (b) and (c);

(b) omit subsection (1A);

(c) in subsection (2), omit ", (b) or (c)";

(d) omit subsection (5);

(e) in subsection (6), for "In any other case, the Tribunal" substitute "The Tribunal";

(f) omit subsection (7A).

(3) Omit section 133A (proceedings before the Tribunal: decision and supervisory notices, etc).

(4) In section 133B (offences), in subsection (1)—

(a) in paragraph (a), omit "or the PRA";

(b) omit paragraphs (b) and (c).

## **CHAPTER 4**

### **Registration conversion**

#### **Registration under the SFT Regulation**

**19.—**(1) Notwithstanding Articles 5 to 10 of the SFT Regulation, a person to whom this regulation applies is, on and after IP completion day, registered as a trade repository under Chapter III of that Regulation.

(2) Reference in an enactment to a person registered under that Chapter, however expressed, includes a person registered by virtue of this regulation.

#### **Application to regulation 19**

**20.** Regulation 19 applies to a person who—

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(1) 2000 c.8.

- (a) satisfies the conditions in regulation 21; and
- (b) notifies the FCA in accordance with regulation 22.

**Conditions to be satisfied for regulation 19 to apply**

**21.** The conditions are that the person is a body corporate which, immediately before IP completion day, is—

- (a) incorporated under the law of any part of the United Kingdom; and
- (b) registered as a trade repository under the EU SFT Regulation.

**Notification for registration**

**22.—**(1) The person must, no later than the final day, notify the FCA that the person wishes to be registered in accordance with regulation 19.

- (2) For the purposes of paragraph (1), the notification must—
  - (a) be made in such a manner as the FCA may direct; and
  - (b) contain, or be accompanied by, such information as the FCA may direct.
- (3) For the purposes of paragraph (1), the final day is—
  - (a) the day before IP completion day; or
  - (b) such earlier day as the FCA may direct.

**Acknowledgement of receipt**

**23.** The FCA must, within a period of 10 working days beginning with the day on which it receives a notification under regulation 22, confirm in writing to the person making the notification that the notification has been received.

**FCA response**

**24.** The FCA must, within a period of 20 working days beginning with the day on which it receives a notification under regulation 22—

- (a) if it considers that the notification complies with the requirements of, or made under, that regulation, confirm in writing to the person making the notification that the notification is valid; or
- (b) if it considers that the notification does not comply with those requirements—
  - (i) confirm in writing to the person making the notification that the notification is not valid; and
  - (ii) where applicable, inform the person of the steps which need to be taken, and the time within which they need to be taken, for the notification to be considered valid.

## CHAPTER 5

### General provisions

#### Misleading the FCA: criminal offence

**25.** Section 398 of the Financial Services and Markets Act 2000 (misleading the FCA or PRA: residual cases)<sup>(2)</sup> applies to a requirement to provide information in accordance with a direction under regulation 2(2)(b) or 22(2)(b) as it applies to a requirement falling within subsection (1A) of that section.

#### Further information to be supplied by a person to whom regulation 9 or 13 applies

**26.**—(1) A person to whom regulation 6 applies must notify the FCA if any information contained in or accompanying an advance application submitted in accordance with regulation 1 changes.

(2) A person to whom regulation 11 applies must notify the FCA if any information contained in or accompanying a notification made in accordance with regulation 25 changes.

#### Directions

**27.**—(1) The power to make a direction under this Part includes the power—

- (a) to make different directions in relation to different applications or categories of application;
- (b) to vary or revoke a previous direction.

(2) A direction under this Part must be—

- (a) in writing; and
- (b) published by the FCA in a manner suitable to bring it to the attention of persons likely to be affected.

#### Enforcement

**28.** The following provisions of the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019<sup>(3)</sup> apply to this Part, as though contraventions of the requirements of this Part were a contravention of a requirement of those Regulations—

- (a) Chapter 2 in Part 4;
- (b) regulation 36;
- (c) regulation 38; and
- (d) regulation 39.

#### Interpretation

**29.** In this Part—

“advance application” means an application made under regulation 2(1) submitted during the period that begins with the day on which this Part comes into force and ends immediately before IP completion day;

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(2) [2000 c. 8](#). Section 398 is amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 ([c. 21](#)), [S.I. 2013/1773](#), [S.I. 2015/1882](#), [S.I. 2016/680](#), [S.I. 2017/701](#), [S.I. 2018/135](#), [S.I. 2018/698](#), [S.I. 2019/362](#), and [S.I. 2019/1043](#).

(3) [S.I. 2019/542](#).

“EU SFT Regulation” means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012<sup>(4)</sup>;

“the FCA” means the Financial Conduct Authority;

“SFT Regulation” means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 as it forms part of retained EU law;

“trade repository” has the same meaning as in Article 3(1) of the SFT Regulation;

“the Tribunal” means the Upper Tribunal;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a bank holiday within the meaning of the Banking and Financial Dealings Act 1971<sup>(5)</sup>.

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(4) OJ L 337, 23.12.2015, p. 1–34.

(5) [1971 c. 80](#). Amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 ([asp 2](#)).