



Financial Services Act 2021

2021 CHAPTER 22

Miscellaneous

40 Over the counter derivatives: clearing and procedures for reporting

- (1) Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (the “European Market Infrastructure Regulation”) is amended as follows.
- (2) In Article 4 (clearing obligation)—
 - (a) after paragraph 3 insert—

“3A Clearing members and clients which provide clearing services, whether directly or indirectly, must—

- (a) provide those services under fair, reasonable, non-discriminatory and transparent commercial terms, and
- (b) take all reasonable measures to identify, prevent, manage and monitor conflicts of interest, in particular between the trading unit and the clearing unit, that may adversely affect the fair, reasonable, non-discriminatory and transparent provision of clearing services.

3B The duty under paragraph 3A(a)—

- (a) does not oblige clearing members or clients to contract, and
- (b) does not prevent clearing members or clients from taking steps to control the risks related to the clearing services offered.

3C The duty to take the measures described in paragraph 3A(b) includes a duty to do so where trading and clearing services are provided by different legal entities belonging to the same group.

Changes to legislation: Financial Services Act 2021, Section 40 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

3D The duties under paragraph 3A (read with paragraphs 3B and 3C) apply in relation to an undertaking with an indirect contractual arrangement with a clearing member of a CCP which enables that undertaking to clear its transactions with a CCP as they apply in relation to a client.”, and

(b) after paragraph 4 insert—

“4A The FCA may make rules specifying the conditions under which the commercial terms referred to in paragraph 3A(a) are to be considered fair, reasonable, non-discriminatory and transparent.”

(3) In Article 78 (general requirements), at the end insert—

“9 A trade repository must establish the following procedures and policies—

- (a) procedures for the effective reconciliation of data between trade repositories;
- (b) procedures to verify the completeness and correctness of the data reported;
- (c) policies for the orderly transfer of data to other trade repositories where requested by the counterparties or CCPs referred to in Article 9 or where otherwise necessary.

10 The FCA may make rules applying to trade repositories relating to—

- (a) procedures described in paragraph 9(a) and (b),
- (b) procedures to be applied to verify compliance by counterparties and CCPs with the reporting obligation under Article 9, and
- (c) policies described in paragraph 9(c).”

(4) After Article 84a insert—

“Article 84b

FCA rules

1 The provisions of Part 9A of FSMA (rules and guidance) listed in paragraph 2 apply in relation to rules made by the FCA under Article 4(4A) or 78(10) as they apply in relation to rules made by the FCA under that Part of that Act, subject to the modification in paragraph 3.

2 The provisions are—

- (a) section 137T (general supplementary powers);
- (b) section 138C (evidential provision);
- (c) section 138E (limits on effect of contravening rules);
- (d) sections 138F, 138G and 138H (notification and verification etc);

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- (e) sections 138I and 138L (consultation);
- (f) section 141A (power to make consequential amendments of references to rules).

3

Section 137T applies as if the reference to authorised persons were—

- (a) for the purposes of rules made under Article 4(4A), a reference to clearing members, clients and undertakings described in Article 4(3D), and
 - (b) for the purposes of rules made under Article 78(10), a reference to trade repositories.”
- (5) The requirements of section 138I of the Financial Services and Markets Act 2000, in so far as they apply in connection with rules made under Article 4(4A) or 78(10) of the European Market Infrastructure Regulation, may be satisfied by things done before the relevant provision of this section comes into force (as well as by things done after that time).

Commencement Information

II S. 40 in force at 1.7.2021 by [S.I. 2021/739](#), [reg. 3\(v\)](#)

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.I. 2021/671, reg. 5 by [S.I. 2021/1163 reg. 2](#)