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STATUTORY INSTRUMENTS

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**2017 No. 701**

**The Financial Services and Markets Act 2000  
(Markets in Financial Instruments) Regulations 2017**

**PART 1**

Introductory provisions

**Citation and commencement**

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

(2) These Regulations come into force on 29th June 2017 —

(a) to enable the following to be done under the Act, as amended and applied by these Regulations—

- (i) rules to be made under section 137R <sup>M1</sup> (financial promotion rules) of the Act;
- (ii) rules to be made under sections 213 <sup>M2</sup> (the compensation scheme) or 214 <sup>M3</sup> (general) of the Act;
- (iii) rules to be made under paragraph 23 of Schedule 1ZA <sup>M4</sup> (the Financial Conduct Authority) to the Act, including rules that may be made as a result of amendments by these Regulations to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 <sup>M5</sup>;
- (iv) fees to be charged under any rules that are made by virtue of paragraph (iii); and
- (v) rules to be made under paragraph 19(10) or 20(4C) <sup>M6</sup> of Schedule 3 (EEA Passport Rights) to the Act; and

(b) to enable rules to be made under regulation 11 (FCA rules) of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 <sup>M7</sup>.

(3) These Regulations come into force on 3rd July 2017—

(a) to enable—

- (i) applications to be made under regulation 4;
- (ii) directions to be given under regulation 16(1) to establish position limits applying on or after 3rd January 2018;
- (iii) applications to be made, directions to be given, and requirements to be imposed, under regulation 17;
- (iv) requirements to be imposed and directions to be given under regulation 27;
- (v) requirements to be imposed under regulations 31 and 33; and
- (vi) the FCA and the PRA to prepare and issue a statement of policy under paragraph 14 of Schedule 1; and

**Status:** Point in time view as at 02/01/2018.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 is up to date with all changes known to be in force on or before 20 June 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)

- (b) to enable notifications to be given, reports or applications to be made, directions to be given, and requirements to be imposed under regulation 47 for the purposes of—
- (i) the markets in financial instruments directive, including any directly applicable EU regulation made under the directive, as it has effect on or after 3rd January 2018; and
  - (ii) the markets in financial instruments regulation, including any directly applicable EU regulation made under that regulation, as it applies under Article 55<sup>M8</sup> of that regulation; and
- (c) for the purposes of—
- (i) paragraphs 6, 7, 16, 19, 20, 22, 23 and 28 of Schedule 1; and
  - (ii) paragraphs 25 and 26 of that Schedule in so far as they relate to a matter referred to in sub-paragraph (a) or (b) or in paragraph (i) of this sub-paragraph.
- (4) These Regulations come into force on 31st July 2017 —
- (a) to enable the following to be done under the Act, as amended and applied by these Regulations—
- (i) notices to be given or sent under section 312A(1)(b)<sup>M9</sup> (exercise of passport rights by EEA market operator) or 312C<sup>M10</sup> (exercise of passport rights by recognised investment exchange) of the Act;
  - (ii) entries to be added, removed, or altered in the record the FCA maintains under section 347(1)<sup>M11</sup> of the Act;
  - (iii) notices relating to any relevant regulated activity to be given or received under paragraph 13(1)<sup>M12</sup>, (1B)<sup>M13</sup>, or (1C)<sup>M14</sup> of Schedule 3 to the Act ;
  - (iv) the PRA to give consent under paragraph 13(1D)<sup>M15</sup> of that Schedule;
  - (v) preparations to be made under paragraph 13(1E)<sup>M16</sup> or (1F)<sup>M17</sup> of that Schedule;
  - (vi) notices relating to any relevant regulated activity to be given or received under paragraph 14(1)(ba)<sup>M18</sup>, (1B)<sup>M19</sup>, or (1C)<sup>M20</sup> of that Schedule ;
  - (vii) preparations to be made under paragraph 14(1D)<sup>M21</sup> or 14(1E)<sup>M22</sup> of that Schedule; and
  - (viii) notices relating to any relevant regulated activity to be given or received under paragraph 19(2)<sup>M23</sup>, (4)<sup>M24</sup>, (7B)<sup>M25</sup>, (8)<sup>M26</sup>, (11)<sup>M27</sup>, or (12)<sup>M28</sup>, or paragraph 20(1)<sup>M29</sup>, (3)<sup>M30</sup>, or (4)<sup>M31</sup> of that Schedule; and
- (b) to enable notices to be given under the following provisions of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001<sup>M32</sup> for the purposes of Schedule 3 to the Act, as amended and applied by these Regulations—
- (i) regulation 4<sup>M33</sup> (management companies, credit institutions and financial institutions: changes);
  - (ii) regulation 4A<sup>M34</sup> (investment firms: changes to branch details);
  - (iii) regulation 5A<sup>M35</sup> (investment firms: changes to services);
  - (iv) regulation 11<sup>M36</sup> (UK management companies, credit institutions and financial institutions);
  - (v) regulation 11A<sup>M37</sup> (UK investment firms: changes to branch details); and
  - (vi) regulation 12A<sup>M38</sup> (UK investment firms: changes to services).
- (5) In paragraph (4) “relevant regulated activity” means a regulated activity which relates to any specified activity or specified investment in Part 2 or 3 of the Financial Services and Markets Act

2000 (Regulated Activities) Order 2001<sup>M39</sup> that was amended or inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017<sup>M40</sup>.

(6) These Regulations come into force for all other purposes on 3rd January 2018.

### Marginal Citations

- M1** Section 137R was inserted by section 24(1) of the Financial Services Act 2012.
- M2** Section 213 was amended by S.I. 2011/1613 and paragraph 1 and 3 of Schedule 10 to the Financial Services Act 2012.
- M3** Section 214 was amended by section 174(1) of the Banking Act 2009 (c.1) and paragraph 1 and 4 of Schedule 10 to the Financial Services Act 2012
- M4** Schedule IZA was inserted by paragraph 1 of Schedule 3 to the Financial Services Act 2012.
- M5** S.I. 2013/419.
- M6** Paragraph 4C was inserted by S.I. 2001/1376.
- M7** S.I. 2001/995, to which there are amendments not relevant to these Regulations.
- M8** Article 55 was amended by Article 1.14 of Regulation (EU) No 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) no 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories (OJ L 175, 30.6.2016, p. 1).
- M9** Section 312A(1)(b) was inserted by S.I. 2007/126 and amended by paragraph 33 of Schedule 8 to the Financial Services Act 2012.
- M10** Section 312C was inserted by S.I. 2007/126 and amended by paragraph 35 of Schedule 8 to the Financial Services Act 2012.
- M11** Section 347(1) was amended by S.I. 2007/126, 2013/1388, and 2015/910.
- M12** Paragraph 13(1) was amended by S.I. 2003/1473 and 2015/910.
- M13** Paragraph 13 (1B) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
- M14** Paragraph 13(1C) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
- M15** Paragraph 13(1D) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
- M16** Paragraph 13(1E) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
- M17** Paragraph 13(1F) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
- M18** Paragraph 14(1)(ba) was inserted by S.I. 2007/126 and amended by paragraph 3(2) of Schedule 4 to the Financial Services Act 2012.
- M19** Paragraph 14(1B) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
- M20** Paragraph 14(1C) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
- M21** Paragraph 14(1D) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
- M22** Paragraph 14(1E) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
- M23** Paragraph 19(2) was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
- M24** Paragraph 19(4) was amended by was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
- M25** Paragraph 19(7B) was inserted by S.I. 2007/126 and amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
- M26** Paragraph 19(8) was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
- M27** Paragraph 19(11) was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
- M28** Paragraph 19(12) was amended by S.I. 2003/2066, paragraph 10(2) of Schedule 4 to the Financial Services Act 2012, and S.I. 2013/3115.
- M29** Paragraph 20(1) was amended by S.I. 2007/3253, paragraph 11(2) of Schedule 4 to the Financial Services Act 2012, S.I. 2013/1773, and S.I. 2015/575.
- M30** Paragraph 20(3) was amended by S.I. 2003/2066, S.I. 2007/126, paragraph 11(2) of Schedule 4 to the Financial Services Act 2012, S.I. 2013/3115, and S.I. 2015/910.
- M31** Paragraph 20(4) was amended by S.I. 2001/1376 and paragraph 11(2) of Schedule 4 to the Financial Services Act 2012

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**Changes to legislation:** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 is up to date with all changes known to be in force on or before 20 June 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)

- M32** S.I. 2001/2511.
- M33** Regulation 4 was amended by S.I. 2003/2066, 2006/3385, and 2013/642.
- M34** Regulation 4A was inserted by S.I. 2006/3385.
- M35** Regulation 5A was inserted by S.I. 2006/3385.
- M36** Regulation 11 was amended by S.I. 2006/3385, 2003/2066, 2013/642, and 2013/3115.
- M37** Regulation 11A was inserted by S.I. 2006/3385 and amended by S.I. 2013/642.
- M38** Regulation 12A was inserted by S.I. 2006/3385 and amended by S.I. 2013/642.
- M39** S.I. 2001/544.
- M40** S.I. 2017/488.

## Interpretation

### 2.—(1) In these Regulations—

- “the Act” means the Financial Services and Markets Act 2000<sup>M41</sup>;
- “algorithmic trading” has the meaning given by Article 4.1.39 (definitions) of the markets in financial instruments directive;
- “ancillary services” has the meaning given by Article 4.1.3 (definitions) of the markets in financial instruments directive;
- “authorised person” has the same meaning as in section 31(2) (authorised persons) of the Act;
- “branch” has the meaning given by Article 4.1.30 (definitions) of the markets in financial instruments directive;
- “client” has the meaning given by Article 4.1.9 of the markets in financial instruments directive;
- “the Commission” means the Commission of the European Union;
- “commodity derivative” has the meaning given by Article 4.1.50 of the markets in financial instruments directive;
- “competent authority” has the meaning given by Article 4.1.26 of the markets in financial instruments directive;
- “credit institution” has the meaning given by Article 4.1.27 of the markets in financial instruments directive;
- “derivative” means a financial instrument listed in points (4) to (10) of Section C of Annex 1 of the markets in financial instruments directive;
- “direct electronic access” has the meaning given by Article 4.1.41 of the markets in financial instruments directive;
- “EEA” means the European Economic Area created by the EEA agreement;
- “emission allowance” means an emission allowance as described in point (11) of Section C of Annex 1 of the markets in financial instruments directive;
- “ESMA” means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)<sup>M42</sup>;
- “the FCA” means the Financial Conduct Authority;
- “financial instrument” has the meaning given by Article 4.1.15 of the markets in financial instruments directive, read with Articles 5 to 8 of Commission Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the

Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive<sup>M43</sup>;

“investment activity” means an activity listed in Section A of Annex I of the markets in financial instruments directive relating to a financial instrument;

“investment firm” has the meaning given by Article 4.1.1 of the markets in financial instruments directive;

“investment service” means any service listed in Section A of Annex 1 of the markets in financial instruments directive relating to a financial instrument;

“investment services and activities” means any of the services and activities listed in Section A of Annex 1 of the markets in financial instruments directive relating to a financial instrument;

“market abuse” means a contravention of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or 15 (prohibition of market manipulation) of the market abuse regulation;

“market abuse regulation” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation)<sup>M44</sup>;

“markets in financial instruments directive” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast)<sup>M45</sup>;

“markets in financial instruments regulation” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments<sup>M46</sup>;

“multilateral trading facility” has the meaning given by Article 4.1.22 (definitions) of the markets in financial instruments directive;

“the PRA” means the Prudential Regulation Authority;

“Part 4A permission” has the meaning given by section 55A(5)<sup>M47</sup> (application for permission) of the Act;

“recognised investment exchange” has the meaning given by section 285(1)(a)<sup>M48</sup> (exemption for recognised investment exchanges and clearing houses) of the Act;

“regulated activity” has the meaning given by section 22<sup>M49</sup> (regulated activities) of the Act;

[<sup>F1</sup>“regulated market” has the meaning given by article 4.1.21 of the markets in financial instruments directive;]

“trading venue” has the meaning given by Article 4.1.24 of the markets in financial instruments directive; and

“the Tribunal” means the Upper Tribunal.

(2) In these Regulations any reference to the markets in financial instruments directive or the markets in financial instruments regulation includes any EU legislation made under the directive or the regulation.

#### Textual Amendments

**F1** Words in [reg. 2\(1\)](#) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), [regs. 2\(a\)](#), [12](#)

#### Marginal Citations

**M41** 2000 c.8.

**M42** OJ No L 331, 15.12.2010, p.84.

**M43** OJ L 87, 31.3.2017, p. 1.

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- M44** OJ No L 173, 12.06.2014, p.1.  
**M45** OJ No L 173, 12.06.2014, p.349; the Directive was amended by Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 (OJ No L 257, 28.8.2014 p.1) and Directive (EU) 2016 of the European Parliament and of the Council of 23 June 2016 (OJ No L 175 30.6.2016 p.8).  
**M46** OJ No L 173, 12.06.2014, p.84.  
**M47** Section 55A(5) was inserted by section 11(2) of the Financial Services Act 2012.  
**M48** Section 285(1)(a) was amended by [S.I. 2013/504](#).  
**M49** Section 22 was amended by section 7(1)(a) to (d) of the Financial Services Act 2012.

### Designation of competent authorities

3.—(1) The FCA is designated to carry out all the duties of a competent authority provided for in Titles 1 to 4, 6 and 7 of the markets in financial instruments directive and in the markets in financial instruments regulation (“duties of a competent authority”) unless paragraph (2), (3) or (4) applies.

(2) The PRA is designated to carry out any duty of a competent authority that relates to a PRA authorised person where the PRA has the function of carrying out that duty under—

- (a) these Regulations;
- (b) Parts 4A <sup>M50</sup>, 12 to 15, 22, and 25 of the Act and Schedule 3 to the Act; or
- (c) rules made under section 137G <sup>M51</sup> (the PRA's general rules) of the Act or any other subordinate legislation conferring functions on the PRA made under the Act.

(3) Where a PRA authorised person is obliged to keep records at the disposal of the competent authority under Article 25 (obligation to maintain records) of the markets in financial instruments regulation both the FCA and PRA are designated as the competent authority.

(4) The Bank of England is designated to carry out any duty of a competent authority that relates to a central counterparty (as defined by section 313(1) <sup>M52</sup> (interpretation of Part 18) of the Act) and is provided for in the following provisions of the markets in financial instruments regulation—

- (a) Article 29 (clearing obligation for derivatives traded on regulated markets and timing of acceptance for clearing);
- (b) Article 30 (indirect clearing arrangements);
- (c) Article 35 (non-discriminatory access to a CCP);
- (d) Article 36 (non-discriminatory access to a trading venue);
- (e) Article 37 (non-discriminatory access to and obligation to licence benchmarks); and
- (f) Article 54.2 (transitional provisions).

(5) In this regulation “PRA authorised person” has the meaning given by section 2B(5) <sup>M53</sup> (the PRA's general objective) of the Act.

#### Marginal Citations

- M50** [Part 4A](#) was inserted by section 11(2) of the Financial Services Act 2012.  
**M51** [Section 137G](#) was inserted by section 24(1) of the Financial Services Act 2012.  
**M52** [Section 313\(1\)](#) was amended by [S.I. 2013/504](#); there are other amendments but none is relevant.  
**M53** [Section 2B\(5\)](#) was inserted by section 6(1) of the Financial Services Act 2012.

## PART 2

### Exempt and third-country investment firms

#### CHAPTER 1

##### Exempt investment firms

#### Applications to be an exempt investment firm

4.—(1) A person may apply in accordance with section 55A<sup>M54</sup> (application for permission) of the Act for a Part 4A permission to carry on regulated activities as an exempt investment firm.

(2) An authorised person may become entitled to carry on regulated activities as an exempt investment firm only by applying for a variation of its Part 4A permission in accordance with section 55H<sup>M55</sup> (variation by FCA) or 55I<sup>M56</sup> (variation by PRA) of the Act.

(3) A person may only apply for a Part 4A permission as mentioned in paragraph (1), and an authorised person may only apply for a variation of their Part 4A permission as mentioned in paragraph (2), if the person or authorised person has its relevant office in the United Kingdom.

(4) In this regulation “relevant office” means—

- (a) in relation to a body corporate, its registered office or, if it has no registered office, its head office; and
- (b) in relation to a person, or authorised person other than a body corporate, the person's head office.

#### Marginal Citations

**M54** Section 55A was inserted by section 11(2) of the Financial Services Act 2012.

**M55** Section 55H was inserted by section 11(2) of the Financial Services Act 2012 and amended by S.I. 2013/1773.

**M56** Section 55I was inserted by section 11(2) of the Financial Services Act 2012.

#### Limitation on exempt investment firms

5. An exempt investment firm has no entitlement —

- (a) to establish a branch by making use of the procedures in paragraph 19 (establishment) of Schedule 3 (EEA passport rights) to the Act; or
- (b) to provide any services by making use of the procedures in paragraph 20 (services) of Schedule 3 to the Act,

in a case where the entitlement of the firm to do so would, but for this [<sup>F2</sup>regulation], derive from the markets in financial instruments directive.

#### Textual Amendments

**F2** Word in reg. 5 substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), 13

#### Requirements applying to exempt investment firms

6.—(1) If the appropriate regulator—

*Status: Point in time view as at 02/01/2018.*

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- (a) gives to a person who has applied under regulation 4(1) a Part 4A permission to carry on regulated activities as an exempt investment firm; or
- (b) varies the Part 4A permission of an authorised person who has applied as mentioned in regulation 4(2) for a variation to permit them to carry on regulated activities as an exempt investment firm,

the requirements specified in paragraph (3) (“the specified requirements”) shall be treated as being imposed under section 55L<sup>M57</sup> (imposition of requirements by FCA) (where the FCA is the appropriate regulator) or 55M<sup>M58</sup> (imposition of requirements by PRA) (where the PRA is the appropriate regulator) of the Act.

(2) Notwithstanding paragraph (1)—

- (a) the treatment of the specified requirement as a requirement imposed under section 55L or 55M of the Act does not—
  - (i) amount for the purpose of section 55X(1)<sup>M59</sup> (determination of applications: warning notices and decision notices) of the Act to a proposal to exercise the power of the appropriate regulator under section 55L(1) or 55M(1) of the Act;
  - (ii) amount for the purpose of section 55X(4)<sup>M60</sup> of the Act to a decision to exercise the power of the appropriate regulator under section 55L(1) or 55M(1) of the Act; or
  - (iii) entitle the person to refer a matter under section 55Z3(1)<sup>M61</sup> (right to refer matters to the Tribunal) of the Act;
- (b) the specified requirements shall not expire until the person ceases to be an exempt investment firm; and
- (c) no application under section 55L(5) or 55M(5) of the Act to vary or cancel any of the specified requirements may be made by the person unless they inform the appropriate regulator when making the application that they wish to cease to be an exempt investment firm.

(3) The requirements are that the person—

- (a) does not hold clients' funds or securities and does not, for that reason, at any time, place themselves in debit with their clients;
- (b) does not provide any investment service other than the—
  - (i) reception and transmission of orders in transferable securities and units in collective investment undertakings; and
  - (ii) provision of investment advice in relation to the financial instruments mentioned in paragraph (i); and
- (c) in the course of providing the investment services mentioned in sub-paragraph (b), transmits orders only to—
  - (i) an investment firm authorised in accordance with the markets in financial instruments directive;
  - (ii) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms<sup>M62</sup>;
  - [<sup>F3</sup>(iii) a branch of an investment firm or of a credit institution authorised in a third country and which is subject to, and complies with, prudential rules considered by the appropriate regulator to be at least as stringent as those laid down in the markets in financial instruments directive, the capital requirements regulation, and the solvency 2 directive;]



- (iv) a collective investment undertaking authorised under the law of an EEA State to market units to the public and to a manager of such an undertaking; or
- (v) an investment company with fixed capital, the securities of which are listed or dealt in on a regulated market in an EEA State.

(4) In paragraph (3) “investment company with fixed capital” has the meaning given by Article 17.7 of Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent <sup>M63</sup>.

(5) Terms and expressions used in paragraph (3)(c)(i) to (v) which are not otherwise defined in these Regulations and are used in Article 3.1(c)(i) to (v) (optional exemptions) of the markets in financial instruments directive have the same meaning as in those provisions of the directive.

[<sup>F4</sup>(6) In this regulation—

“appropriate regulator” means the appropriate regulator for the purposes of section 55A in relation to an application under regulation 4(1);

“the capital requirements regulation” means Regulation (EU) No EU 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and

“the solvency 2 directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).]

#### Textual Amendments

- F3** [Reg. 6\(3\)\(c\)\(iii\)](#) substituted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **14(a)**
- F4** [Reg. 6\(6\)](#) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **14(b)**

#### Marginal Citations

- M57** Section 55L was inserted by section 11(2) of the Financial Services Act 2012.
- M58** Section 55M was inserted by section 11(2) of the Financial Services Act 2012.
- M59** Section 55X(1) was inserted by section 11(2) of the Financial Services Act 2012.
- M60** Section 55X(4) was inserted by section 11(2) of the Financial Services Act 2012.
- M61** Section 55Z3 was inserted by section 11(2) of the Financial Services Act 2012.
- M62** OJ No L 176, 27.6.2013, p. 338.
- M63** OJ L315, 14/11/2012, p.74.

#### Transitional provision: exempt investment firms

- 7.—(1) An authorised person who immediately before 3rd January 2018 was—
- (a) an exempt investment firm by virtue of regulation 9A <sup>M64</sup>(transitional provision: exempt investment firms) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007; or

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- (b) permitted to carry on regulated activities as an exempt investment firm in accordance with permission granted in accordance with regulation 4C<sup>M65</sup> (requirements to be applied to exempt investment firms) of those Regulations,

becomes an exempt investment firm with effect from that day as if they had applied as mentioned in regulation 4(1) or (2)<sup>M66</sup> and had been granted the permission or variation on that day.

#### Marginal Citations

**M64** S.I. 2007/126; regulation 9A was inserted by S.I. 2007/763.

**M65** Regulation 4C was inserted by S.I. 2007/263 and was amended by S.I. 2013/472 and 2013/3115.

**M66** Regulation 4(1) and (2) were amended by S.I. 2013/472.

### Meaning of “exempt investment firm” in Chapter 1

8. In this Chapter “exempt investment firm” means an authorised person who—
- (a) is an investment firm; and
  - (b) has a Part 4A permission;

but to whom Title II of the markets in financial instruments directive does not apply by virtue of Article 3 of the markets in financial instruments directive.

## CHAPTER 2

### Third country investment firms

#### Third country firms with an EEA branch: provision of services

9.—(1) A third country firm with an EEA branch is not to be regarded as carrying on a regulated activity if it carries on the activity in the course of exercising rights under Article 47.3 (equivalence decision) of the markets in financial instruments regulation.

(2) But paragraph (1) only applies once the third country firm with an EEA branch satisfies the service conditions for incoming EEA investment firms.

(3) The service conditions for incoming EEA investment firms apply to a third country firm for the purposes of paragraph (1) with the modifications set out in paragraphs [F5(4) and (5)].

(4) A reference to the home state regulator has effect as if in each place it were a reference to the competent authority of the EEA State in which [F6 the relevant branch of] the third country firm with an EEA branch is established (“supervising EEA competent authority”).

(5) In paragraph 14(1)(b)<sup>M67</sup>(services) of Schedule 3 (EEA passport rights) [F7 to the Act] the requirement for a regulator's notice to contain such information as may be prescribed has effect as if it were a requirement for the notice to contain—

- (a) a statement by that competent authority that the [F8 relevant] branch—
  - (i) is authorised in accordance with Article 39 (establishment of a branch) of the markets in financial instruments directive;
  - (ii) is entitled to exercise rights under Article 47.3 of the markets in financial services regulation; and
  - (iii) intends to exercise those rights in the United Kingdom; and
- (b) the [F9 relevant] branch's programme of operations provided to the supervising EEA competent authority in accordance with Article 40(b) (obligation to provide information) of the markets in financial instruments directive.

(6) In this regulation “service conditions for incoming EEA investment firms” means the service conditions set out in paragraph 14(1)<sup>M68</sup> of Schedule 3 to the Act which apply to an EEA firm as defined by paragraph 5(a)<sup>M69</sup> (EEA firm) of that Schedule.

[<sup>F10</sup>(7) For the purposes of this regulation the relevant branch of a third country firm with an EEA branch is the branch mentioned in paragraph (b) of the definition of “third country firm with an EEA branch” in regulation 15 (interpretation).]

#### Textual Amendments

- F5** Words in reg. 9(3) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **15(a)**
- F6** Words in reg. 9(4) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **15(b)**
- F7** Words in reg. 9(5) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **15(c)(i)**
- F8** Word in reg. 9(5)(a) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **15(c)(ii)**
- F9** Word in reg. 9(5)(b) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **15(c)(iii)**
- F10** Reg. 9(7) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **15(d)**

#### Marginal Citations

- M67** Paragraph 14(1)(b) was amended by S.I. 2003/1473, **paragraph 3(2)** of Schedule 4 to the Financial Services Act 2012, and S.I. 2015/910.
- M68** Sub-paragraphs (1)(b) and (ba) of paragraph 14 were amended as mentioned previously. The remaining provisions of paragraph 14 were amended by S.I. 2003/1473, paragraphs (2), (3), (4), (5), (6)(a) and (b), and (7) of Schedule 4 to the Financial Services Act 2012, S.I. 2012/1906, S.I. 2013/1773, and S.I. 2015/910,
- M69** Paragraph 5(a) was amended by S.I. 2007/126.

### FCA power to intervene in relation to third country firms with an EEA branch

**10.**—(1) The FCA may exercise its power of intervention in relation to a third country firm with an EEA branch where the FCA has clear and demonstrable grounds for believing that the firm has contravened, or is contravening, a requirement imposed on the firm—

- (a) by or under any provision adopted for the purpose of implementing the markets in financial instruments directive by an EEA State where a branch of the firm is located and authorised in accordance with Article 39 (establishment of a branch) of the markets in financial instruments directive;
- (b) by or under the markets in financial instruments regulation; or
- (c) by any directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation.

(2) Section 197<sup>M70</sup> (procedure on exercise of power of intervention) [<sup>F11</sup>of the Act] applies to the exercise by the FCA of its power of intervention under paragraph (1) as it does to the exercise by the FCA of its power of intervention under Part 13 of the Act generally.

(3) Section 199<sup>M71</sup> (additional procedure for EEA firms in certain cases) [<sup>F12</sup>of the Act] applies when the FCA's power of intervention is exercisable under paragraph (1) as it does if it appears to the

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FCA that its power of intervention is exercisable in relation to an EEA firm exercising EEA rights in the United Kingdom in respect of the contravention of a relevant requirement.

- (4) Section 199 [<sup>F13</sup>of the Act] has effect for the purposes of paragraph (3) as if—
- (a) a reference to the regulator were in each place a reference to the FCA;
  - (b) a reference to an EEA firm were in each place a reference to a third country firm with an EEA branch;
  - (c) a reference to EEA rights were in each place a reference to rights under Article 47.3 (equivalence decision) of the markets in financial instruments regulation;
  - (d) a reference to the home state regulator were in each place a reference to the competent authority responsible for the supervision of the firm with an EEA branch under Article 41.2 (granting of the authorisation) of the markets in financial instruments directive and Article 47.3 of the markets in financial instruments regulation;
  - (e) subsection (1) and (2) were omitted;
  - (f) subsection (3A) were omitted; and
  - (g) subsections (8) to (12) were omitted.

#### Textual Amendments

- F11** Words in [reg. 10\(2\)](#) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), [regs. 2\(a\)](#), **16(a)**
- F12** Words in [reg. 10\(3\)](#) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), [regs. 2\(a\)](#), **16(b)**
- F13** Words in [reg. 10\(4\)](#) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), [regs. 2\(a\)](#), **16(c)**

#### Marginal Citations

- M70** Section 197 was amended by paragraph 37(2), (3), (4)(a) and (b), and (5) of Schedule 4 to the Financial Services Act 2012.
- M71** Section 199 was amended by [S.I. 2007/126](#), [S.I. 2007/3253](#), [S.I. 2011/1613](#), [paragraph 39\(2\) to \(5\)](#) of Schedule 4 to the Financial Services Act 2012, and [S.I. 2012/916](#), [S.I. 2012/2015](#) and [S.I. 2013/1773](#).

### Third country firms registered with ESMA: provision of services

**11.** A third country firm registered with ESMA is not to be regarded as carrying on a regulated activity if it carries on the activity in the course of exercising rights under Article 46.1 (general provisions) of the markets in financial instruments regulation.

### FCA power to intervene in relation to third country firms registered with ESMA

**12.—(1)** The FCA may exercise its power of intervention in relation to a third country firm registered with ESMA where it considers that —

- (a) the firm has acted, or is acting, in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of the markets; or
- (b) the firm has seriously infringed provisions—
  - (i) applicable to the firm in the country in which it is established; and
  - (ii) on the basis of which the Commission has adopted a decision under Article 47.1 [<sup>F14</sup>of the markets in financial instruments regulation] in relation to the country.

(2) Section 197 (procedure on exercise of power of intervention) applies to the exercise by the FCA of its power of intervention under paragraph (1) as it does to the exercise by the FCA of its power of intervention under Part 13 of the Act generally.

(3) Where it appears to the FCA that the power of intervention is exercisable under paragraph (1) in relation to a third country firm registered with ESMA the FCA must give—

- (a) ESMA written notice of its concerns; and
- (b) the firm written notice of its concerns which—
  - (i) requires the firm to put an end to the conduct which gives rise to the concern;
  - (ii) states that the FCA's power of intervention will become exercisable in accordance with this regulation; and
  - (iii) indicates any requirements that the FCA proposes to impose on the firm in exercise of its power of intervention in the event the power becomes exercisable.

(4) The FCA may then only exercise its power of intervention under paragraph (1) if—

- (a) the FCA considers a reasonable time has elapsed since it gave the written notices under paragraph (3);
- (b) the firm has not put an end to the concerning conduct;
- (c) ESMA has not withdrawn the registration of the firm under Article 49 (withdrawal of registration) of the markets in financial instruments regulation; and
- (d) the FCA considers the exercise of its power of intervention is not inconsistent with any course of action ESMA has given the FCA written notice it has taken, is taking, or will take under the markets in financial instruments regulation in relation to the notice of the FCA's concerns given to ESMA by the FCA under paragraph (3)(a).

(5) If the FCA exercises its power of intervention under paragraph (1) in relation to a third country firm registered with ESMA it must at the earliest opportunity inform ESMA of—

- (a) the fact that it has exercised that power in relation to the firm; and
- (b) any requirements it has imposed on the firm in the exercise of the power.

(6) For the purposes of paragraph (4)(a) a reasonable time includes a reasonable time for ESMA to take the steps referred to in Article 49.1(c) and (d) (withdrawal of registration) of the markets in financial instruments regulation.

#### Textual Amendments

**F14** Words in [reg. 12\(1\)\(b\)\(ii\)](#) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), [regs. 2\(a\)](#), [17](#)

### **Third country firms: provision of services to eligible counterparties or clients considered to be professionals**

**13.** A third country firm is not to be regarded as carrying on a regulated activity if it carries on the activity in the course of exercising rights under the third paragraph of Article 46.5 (general provisions) of the markets in financial instruments regulation.

### **Third country firms: financial promotions**

**14.—(1)** The communication, in the course of business, of an invitation or inducement to engage in investment activity is not to be regarded as a communication for the purposes of section 21(1)

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(restrictions on financial promotion) of the Act if it is made in the course of exercising rights under Title 8 of the markets in financial instruments regulation.

(2) For the purposes of paragraph (1) a communication is made in the course of exercising rights under Title 8 of the markets in financial instruments regulation if it is made—

- (a) by a third country firm registered with ESMA to eligible counterparties or to clients considered to be professionals in the course of exercising rights under Article 46.1 (general provisions) [<sup>F15</sup>of the Regulation];
- (b) by a third country firm to eligible counterparties or to clients considered to be professionals in the course of exercising rights under Article 46.5 of the Regulation provided that—
  - (i) the counterparty or client has initiated at his or her own exclusive initiative the provision by the firm of an investment service or activity under that Article to the counterparty or client; and
  - (ii) the communication is in respect of the investment service or activity; or
- (c) by a third country firm with an EEA branch to eligible counterparties or to clients considered to be professionals in the course of exercising rights under Article 47.3 (equivalence decision) of the [<sup>F16</sup>Regulation].

(3) An order made by the Treasury under section 21(5) of the Act does not apply to a person who, in the course of business, communicates an invitation or inducement to engage in investment activity if—

- (a) the communication is made in the course of providing investment services or performing investment activities with or without ancillary services to eligible counterparties or clients considered to be professionals; and
- (b) the person is—
  - (i) established in a country which is subject to an equivalence decision; or
  - (ii) permitted to provide those services under Article 46.5 of the markets in financial instruments regulation.

(4) For the purposes of paragraph (3)—

- (a) “equivalence decision” means a decision adopted by the Commission in relation to a country under Article 47.1 of the markets in financial instruments regulation which has not been withdrawn by a subsequent decision adopted by the Commission under that Article; and
- (b) a country is subject to an equivalence decision if a period of more than three years has elapsed since the adoption of the decision by the Commission, beginning on the day after the date of the adoption of the decision.

#### Textual Amendments

**F15** Words in reg. 14(2)(a) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **18(a)**

**F16** Word in reg. 14(2)(c) substituted (2.1.2018) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **18(b)**

## Interpretation of Chapter 2

15. In this Chapter—

“clients considered to be professionals” means professional clients (as defined by Article 4.1.10 of the markets in financial instruments directive) who fall within Section I of Annex II to the directive;

“power of intervention” means the power conferred on the FCA by section 196 (the power of intervention) of the Act;

“third country firm” has the same meaning as in Article 4.1.57 of the markets in financial instruments directive;

“third country firm registered with ESMA” means a third country firm which—

- (a) is registered in the register of third-country firms kept by ESMA in accordance with [F17 Article 48 (register) of the markets in financial instruments regulation]; and
- (b) has the right under Article 46.1 (general provisions) [F18 of the markets in financial instruments regulation] to provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to clients considered to be professionals;

“third country firm with an EEA branch” means a third country firm which—

- (a) is established in a country whose legal and supervisory framework has been recognised to be effectively equivalent in accordance with Article 47.1 (equivalence decision) of the markets in financial instruments regulation;
- (b) has a branch located in an EEA state other than the United Kingdom which is authorised in that state in accordance with Article 39 (establishment of a branch) of the markets in financial instruments directive; and
- (c) has the right under Article 47.3 of the markets in financial instruments regulation to provide the services and activities covered under the authorisation to eligible counterparties and clients considered to be professionals in other EEA States without the establishment of a branch in those states.

#### Textual Amendments

**F17** Words in reg. 15 substituted (2.1.2018) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **19(a)**

**F18** Words in reg. 15 inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **19(b)**

## PART 3

### Position limits and position management controls in commodity derivatives

#### FCA duty to establish position limits

**16.**—(1) The FCA must, by giving directions, establish position limits in respect of commodity derivatives traded on trading venues in the United Kingdom and economically equivalent over the counter contracts.

(2) The FCA must establish position limits under paragraph (1) on the basis of all positions held by a person in the contract to which the limit relates and those held on the person's behalf at an aggregate group level in order to—

- (a) prevent market abuse; and
- (b) support orderly pricing and settlement conditions, which includes, but is not restricted to—

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- (i) preventing market distorting positions; and
  - (ii) ensuring convergence between prices of commodity derivatives in the delivery month and spot prices for the underlying commodity without prejudice to price discovery on the market for the underlying commodity.
- (3) The FCA must determine if a position is held at an aggregate group level for the purpose of paragraph (2) in accordance with the relevant methods.
- (4) Position limits established by the FCA under this regulation must be published in a manner the FCA considers appropriate.
- (5) In this regulation—
- “group” has the meaning given by Article 4.1.34 (definitions) of the markets in financial instruments directive; and
  - “the relevant methods” means the methods determined by regulatory technical standards referred to in sub-paragraph (b) of Article 57.12 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article.

#### **Exemption for non-financial entities**

- 17.—**(1) The calculation of the size of a position a person holds for the purposes of regulation 16(2) must not include a position which is—
- (a) held by or on behalf of a non-financial entity;
  - (b) objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity; and
  - (c) approved by the FCA in accordance with—
    - (i) the relevant criteria and methods; and
    - (ii) the relevant procedure.
- (2) An application to the FCA for approval under paragraph (1)(c) must—
- (a) be made in such manner as the FCA may direct; and
  - (b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the FCA may require the applicant to provide the FCA with such further information as the FCA reasonably considers necessary to enable the FCA to determine the application.
- (4) The FCA may give different directions, and may impose different requirements, in relation to different applications.
- (5) In this regulation—
- “the relevant criteria and methods” means the criteria and methods determined by regulatory technical standards referred to in sub-paragraph (a) of Article 57.12 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article; and
  - “the relevant procedure” means the procedure determined by regulatory technical standards referred to in sub-paragraph (f) of Article 57.12 of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article.



## Content of position limits

18. A position limit established by the FCA under regulation 16 must specify clear quantitative thresholds for the maximum size of a position in a commodity derivative that a person can hold.

## FCA duty to use ESMA methodology to establish position limits and to review if market changes

19.—(1) The FCA must, unless regulation 25 applies, establish position limits under regulation 16 in accordance with the ESMA methodology.

(2) The FCA must review a position limit it has established under regulation 16 where there is—

- (a) a significant change in deliverable supply or open interest; or
- (b) any other significant change on the market, based on the FCA's determination of deliverable supply or open interest.

(3) Where following a review the FCA believes that the position limit should be reset it must establish a new position limit under regulation 16.

## ESMA opinions on position limits

20.—(1) The FCA must notify ESMA of any position limit it intends to establish under regulation 16.

(2) If the establishment of the position limit would be, or is, incompatible with an opinion issued by ESMA in respect of the position limit the FCA must—

- (a) modify the position limit in accordance with ESMA's opinion; or
- (b) notify ESMA of the reasons why it considers that [<sup>F19</sup>modifying] the established limit is unnecessary in light of the opinion.

(3) The FCA must publish a notice on the FCA's official website explaining the reasons for its decision where it does not modify a position limit following an ESMA opinion recommending that it should.

(4) In this regulation an “opinion issued by ESMA” means an opinion issued by ESMA for the purposes of Article 57.5 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive.

### Textual Amendments

**F19** Word in reg. 20(2)(b) substituted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **20**

## Position limits affecting multiple EEA jurisdictions

21.—(1) Where the same commodity derivative is traded in significant volumes on trading venues in more than one jurisdiction in the EEA the FCA must only establish a position limit under regulation 16 in respect of that commodity derivative or any economically equivalent over the counter contract if the FCA is the competent authority of the trading venue where the largest volume of trading takes place.

(2) The volume of trading in a commodity derivative on a trading venue is to be determined for the purposes of paragraph (1) using the relevant method for calculation.

(3) The FCA must consult the competent authority of a trading venue in another EEA State on—

- (a) a position limit to be established under regulation 16; or

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(b) any revision to such a position limit,

if the position limit would be, or is, in respect of a commodity derivative traded in significant volumes on that trading venue or any economically equivalent over the counter contract.

(4) If the FCA and the competent authority of an EEA State other than the United Kingdom (“EEA competent authority”) disagree on a decision by—

(a) the competent authority concerning the establishment or revision of an EEA position limit in respect of a commodity derivative traded in significant volumes on a trading venue for which the FCA is the competent authority; or

(b) the FCA concerning the establishment or revision of a position limit under regulation 16 in respect of a commodity derivative traded in significant volumes on a trading venue for which the competent authority of the other EEA State is responsible,

the FCA must state in writing to the competent authority of the other EEA State the full and detailed reasons why the FCA considers that the requirements laid down in Article 57.1 of the markets in financial instruments directive are, or are not, met in respect of that position limit.

(5) The FCA may bring any disagreement mentioned in paragraph (4) to ESMA's attention for consideration in accordance with Article 19 (settlement of disagreements between competent authorities in cross-border situations) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) <sup>M72</sup>.

(6) In this regulation—

“the relevant method for calculation” means the method determined by regulatory technical standards referred to in sub-paragraph (g) of Article 57.12 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article; <sup>F20</sup>and

“the same commodity derivative” has the meaning given by regulatory technical standards referred to in sub-paragraph (d) of Article 57.12 of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article. <sup>F21</sup>...

<sup>F22</sup>  
...

#### Textual Amendments

**F20** Word in reg. 21(6) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **21(a)**

**F21** Word in reg. 21(6) omitted (2.1.2018) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **21(b)**

**F22** Words in reg. 21(6) omitted (2.1.2018) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **21(c)**

#### Marginal Citations

**M72** OJ L331, 15/12/2010, p.84.

### Cooperation with other competent authorities regarding position limits affecting multiple EEA jurisdictions

**22.**—(1) If the FCA establishes a position limit under regulation 16 that affects a trading venue in another EEA State the FCA must put in place cooperation arrangements in order to enable the monitoring and enforcement of the position limit with—

(a) the competent authority of that trading venue; and

- (b) any competent authority of another EEA State which is the competent authority of a person affected by the position limit.
- (2) If the competent authority of another EEA State establishes an EEA position limit the FCA must put in place cooperation arrangements with that competent authority in order to enable the monitoring and enforcement of the EEA position limit if—
  - (a) the EEA position limit affects a trading venue in the United Kingdom; or
  - (b) the FCA is the competent authority of any person holding a position in a commodity derivative or economically equivalent over the counter contract <sup>F23</sup> ... to which the position limit applies.
- (3) A cooperation arrangement put in place under paragraph (1) or (2) must include arrangements for the exchange of data relevant to the cooperation arrangement.
- (4) In this regulation a position limit affects a trading venue or a person if—
  - (a) it is in respect of a commodity derivative traded in significant volumes on that trading venue or any economically equivalent over the counter contract; or
  - (b) that person holds a position in a commodity derivative or economically equivalent over the counter contract subject to the position limit.

#### Textual Amendments

**F23** Word in reg. 22(2)(b) omitted (2.1.2018) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), 22

#### General requirements for position limits

- 23.** Position limits established by the FCA under regulation 16 must be—
- (a) transparent and non-discriminatory;
  - (b) specify how they apply to persons; and
  - (c) take account of the nature and composition of market participants and of the use those market participants make of the contracts admitted to trading.

#### FCA duty to notify ESMA of established position limits and position management controls

**24.—(1)** The FCA must inform ESMA of the details of any position limit it has established under regulation 16.

(2) The FCA must inform ESMA of the details of any position management controls that have been imposed on a trading venue which trades commodity derivatives by the operator of that trading venue if—

- (a) the operator of the trading venue is an investment firm, credit institution, or recognised investment exchange;
- (b) the FCA is the competent authority of the operator of the trading venue; and
- (c) the operator of the trading venue has informed the FCA it has imposed those position management controls.

(3) In paragraph (2) “position management controls” means the position management controls referred to in Article 57.8 of the markets in financial instruments directive.

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### Procedure in exceptional cases

**25.—**(1) The FCA may establish a position limit under regulation 16 which is more restrictive than would be permitted by the ESMA methodology mentioned in regulation 19(1) (“a more restrictive position limit”) in exceptional cases, if the position limit is objectively justified and proportionate taking into account—

- (a) the liquidity of the specific market; and
- (b) the orderly functioning of that market.

(2) Where the FCA establishes a more restrictive position limit the FCA must publish that position limit on its website.

(3) The FCA must not impose a more restrictive position limit for a period of more than six months from the day it is published under paragraph (2).

(4) But the FCA may impose the more restrictive position limit for further periods of no more than six months each if the position limit continues to be objectively justified and proportionate taking into account the matters mentioned in paragraph (1)(a) and (b).

(5) The FCA must notify ESMA if it establishes a more restrictive position limit and the notification must include a justification for establishing a more restrictive position limit.

(6) If the FCA establishes, or continues to apply a more restrictive position limit that is incompatible with an opinion issued by ESMA the FCA must publish a notice without undue delay on the FCA's official website <sup>F24</sup>... explaining its reasons for doing so.

(7) In this regulation “opinion issued by ESMA” means an opinion issued by ESMA for the purposes of Article 57.13 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive stating that it considers a more restrictive position limit is not necessary to address an exceptional case.

#### Textual Amendments

**F24** Words in reg. 25(6) omitted (2.1.2018) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **23**

### Effect of position limits established by the FCA or other competent authorities in the EEA

**26.—**(1) A person must not hold a position which is in excess of a position limit established under regulation 16, regardless as to whether the person is in the United Kingdom or not.

(2) A person situated or operating in the United Kingdom must not hold a position which is in excess of an EEA position limit.

### FCA power to require information

**27.—**(1) The FCA may, in such manner as it may direct, require a person to provide information on, or concerning—

- (a) a position the person holds in a relevant commodity derivative or over the counter contract; or
- (b) trades a person has undertaken, or intends to undertake, in a relevant commodity derivative or over the counter contract.

(2) The FCA may, in such manner as it may direct, require the operator of a trading venue to provide information on, or concerning, trades a person has undertaken, or intends to undertake in a relevant commodity derivative or over the counter contract.

- (3) In this regulation a commodity derivative or over the counter contract is relevant if the FCA—
- (a) has established a position limit under regulation 16 in respect of that derivative or contract; or
  - (b) is considering whether it is required to establish or modify a position limit in respect of that derivative or contract under regulation 16.

### **FCA power to intervene**

**28.**—(1) If the FCA considers it necessary for the purpose of the exercise by the FCA of functions under the markets in financial instruments directive or the markets in financial instruments regulation the FCA may—

- (a) limit the ability of a person to enter into a contract for a commodity derivative;
- (b) restrict the size of a position a person may hold; or
- (c) require a person to reduce the size of a position held.

(2) The FCA may exercise the power under paragraph (1) notwithstanding that the limitation, restriction, or reduction would be more restrictive than a position limit established by the FCA under regulation 16 or an EEA position limit relating to the commodity derivative.

(3) Paragraph (1) applies regardless as to whether the person is in the United Kingdom or not where the position relates to a commodity derivative traded on a trading venue established in the United Kingdom or an economically equivalent over the counter contract.

(4) If the FCA imposes a limitation, restriction, or requirement under paragraph (1) it must issue a notice to the person.

(5) A person on whom a limitation, restriction or reduction has been imposed under paragraph (1) may refer that matter to the Tribunal.

### **[<sup>F25</sup>Cooperation with ESMA and other competent authorities in respect of interventions to restrict, reduce, or limit positions**

**28A.**—(1) The FCA must notify ESMA and all the competent authorities of the other EEA States of the details of any limitation, restriction, or requirement it imposes under regulation 28(1).

(2) The notification under paragraph (1) must include, where relevant —

- (a) the details of any requirement imposed by the FCA under regulation 27(1) or (2) (“information requirement”) that relates to the limitation, restriction or requirement imposed under regulation 28(1) including—
  - (i) the identity of the person subject to the information requirement; and
  - (ii) the FCA’s reasons for imposing the information requirement.
- (b) if the notification concerns a limitation or restriction imposed under regulation 28(1)(a) or (b)—
  - (i) the person the limitation or restriction concerns;
  - (ii) the financial instrument the limitation or restriction applies to;
  - (iii) any limit under the limitation or restriction on the size of a position a person can hold at all times;
  - (iv) any exemption provided for in the limitation or restriction; and
  - (v) the FCA’s reasons for imposing the limitation or restriction.
- (c) if the notification concerns a requirement imposed under regulation 28(1)(c)—
  - (i) the identity of the person subject to the requirement; and

**Status:** Point in time view as at 02/01/2018.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 is up to date with all changes known to be in force on or before 20 June 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)

(ii) the FCA's reasons for imposing the requirement.

(3) The FCA must make the notification under paragraph (1) not less than 24 hours before the limitation, restriction, or requirement concerned takes effect unless—

- (a) there are exceptional circumstances; and
- (b) it is not possible for the FCA to make the notification 24 hours before the limitation, restriction, or requirement concerned takes effect.

(4) The FCA may exercise the power under regulation 28(1) if—

- (a) the competent authority of an EEA State other than the United Kingdom notifies the FCA for the purposes of Article 79.5 (obligation to cooperate) of the markets in financial instruments directive that it has taken measures in accordance with Article 69(2)(o) or (p) of the directive; and
- (b) the FCA is satisfied that it is necessary to exercise the power under regulation 28(1) to achieve the objective of the measures taken by that competent authority.

(5) Where the FCA proposes to exercise its power under paragraph (4), it must notify in accordance with paragraphs (1) to (3) of this regulation.

(6) Regulation 28(2) to (5) applies to the exercise by the FCA of its power under regulation 28(1) for the purposes of paragraph (4) as they do to the exercise by the FCA of its power under regulation 28(1) generally.]

#### Textual Amendments

**F25** Reg. 28A inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **24**

### Interpretation of Part 3

**29.**—(1) In this Part an over the counter contract is economically equivalent to a commodity derivative if it satisfies the criteria set out in regulatory technical standards referred to in sub-paragraph (c) of Article 57.12 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article.

(2) In this Part—

“EEA position limit” means a position limit established by a competent authority of an EEA State other than the United Kingdom for the purposes of Article 57 of the markets in financial instruments directive;

“the ESMA methodology” means the methodology determined by ESMA under Article 57.3 of the markets in financial instruments directive;

“position” means a net position in a commodity derivative traded on a trading venue in an EEA State and any economically equivalent over the counter contract that has been calculated in accordance with the methodology determined by regulatory technical standards referred to in sub-paragraph (e) of Article 57.12 of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article;

“position limit” means a limit on the maximum size of a position which a person may hold at any time; and

[<sup>F26</sup>“significant volumes” has the meaning given by regulatory technical standards referred to in sub-paragraph (d) of Article 57.12 of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article.]

“trading venue” has the meaning given in regulation 2 but also includes a facility mentioned in—

- (a) paragraph (b) of the definition of “multilateral trading facility” in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>M73</sup>; or
- (b) paragraph (b) of the definition of “organised trading facility” in that article.

#### Textual Amendments

**F26** Words in reg. 29(2) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **25**

#### Marginal Citations

**M73** [S.I. 2001/544](#); article 3(1) was amended by [S.I. 2006/3384](#), there are other amendments but none is relevant.

## PART 4

### Algorithmic trading etc by members of trading venues covered by certain exemptions from the markets in financial instruments directive

#### Algorithmic trading

**30.**—(1) A member of, or participant in, a regulated market or multilateral trading facility (“M”) that engages in algorithmic trading must comply with the requirements of this regulation if—

- (a) M's home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(2) M must have in place effective systems and [<sup>F27</sup>risk] controls, suitable to the business it operates, to ensure that M's trading systems—

- (a) are resilient and have sufficient capacity;
- (b) are subject to appropriate trading thresholds and limits; and
- (c) prevent the sending of erroneous orders or the systems otherwise functioning in a way that may create or contribute to a disorderly market.

(3) M must have in place effective systems and risk controls to ensure that M's trading systems cannot be used for any purpose that is contrary to—

- (a) the market abuse regulation; or
- (b) the rules of a trading venue to which it is connected.

(4) M must have in place effective business continuity arrangements to deal with any failure of its trading systems.

(5) M must ensure M's systems are fully tested and properly monitored to ensure that they meet the requirements set out in paragraph (2) to (4).

(6) If M engages in algorithmic trading in the United Kingdom M must notify the FCA.

(7) If M engages in algorithmic trading in an EEA State other than the United Kingdom M must notify—

**Status:** Point in time view as at 02/01/2018.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 is up to date with all changes known to be in force on or before 20 June 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)

- (a) the FCA; and
- (b) the competent authority of a trading venue on which M engages in algorithmic trading as a member or participant.

(8) M must arrange for records to be kept in relation to the matters referred to in this regulation and ensure that those records are sufficient to enable the FCA to monitor M's compliance with the requirements imposed on M by this regulation.

(9) If M engages in a high-frequency algorithmic trading technique (as defined by Article 4.1.40 (definitions) of the markets in financial instruments directive) M must store accurate and time sequenced records of all its placed orders, cancelled orders, executed orders, and quotations on trading venues, in an approved form.

(10) If M engages in algorithmic trading to pursue a market making strategy M must, taking into account the liquidity, scale, and nature of the specific market and the characteristics of any financial instrument traded—

- (a) carry out market making continuously during a specified proportion of the market or facility's trading hours, except under exceptional circumstances, with the result that liquidity is provided on a regular and predictable basis to that market or facility;
- (b) if the specified circumstances arise, enter into a binding written agreement with the market or facility which—
  - (i) specifies the obligations of M under the agreement;
  - (ii) imposes obligations on M that are in accordance with sub-paragraph (a); and
  - (iii) includes the specified content; and
- (c) have in place effective systems and controls to ensure that M meets the obligations under the agreement mentioned in sub-paragraph (b).

(11) In paragraph (10) M pursues a market making strategy if—

- (a) M is a member of, or participant in, one or more regulated markets or multilateral trading facilities;
- (b) M's strategy, when dealing on M's own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single regulated market or multilateral trading facility, or across different regulated markets or multilateral trading facilities; and
- (c) as a result the result liquidity is provided on a regular and frequent basis to the overall market.

(12) In this regulation—

“approved form” means a form specified as an approved form by regulatory technical standards referred to in sub-paragraph (d) of Article 17.7 of the markets in financial instruments directive and adopted under the last sub-paragraph of that Article;

“exceptional circumstances” means circumstances specified in regulatory technical standards referred to in sub-paragraph (c) of Article 17.7 of the markets in financial instruments directive and adopted by the Commission under the last sub-paragraph of that Article;

“the specified circumstances” means the circumstances specified in regulatory technical standards referred to in sub-paragraph (b) of Article 17.7 of the markets in financial instruments directive and adopted by the Commission under the last sub-paragraph of Article 17.7 of the directive; and

“the specified content” means the content specified by regulatory technical standards referred to in sub-paragraph (b) of Article 17.7 of the markets in financial instruments directive and adopted by the Commission under the last sub-paragraph of Article 17.7 of the directive.



### Textual Amendments

- F27** Word in reg. 30(2) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **26**

### Provision of information to the FCA concerning algorithmic trading

**31.**—<sup>F28</sup>(1) If a member of, or participant in, a regulated market or multilateral trading facility (“M”) is subject to the requirements set out in regulation 30 the FCA may require M to provide the information specified in paragraph (2) on a regular or ad hoc basis.]

(2) The specified information for the purposes of paragraph (1) is—

- (a) a description of the nature of M's algorithmic trading strategies;
- (b) details of the trading parameters or limits to which M's trading systems are subject;
- (c) information concerning the <sup>F29</sup>compliance and risk controls] M has in place to ensure M meets any requirements imposed on M by regulation 30(2) to (4) (“M's <sup>F29</sup>compliance and risk controls]”);
- (d) details of M's testing of M's systems <sup>F30</sup>... for the purposes of regulation 30(5);
- (e) any records M keeps for the purposes of regulation 30(8) and (9); and
- (f) any further information about M's algorithmic trading and systems used for that trading.

(3) If M is engaged in algorithmic trading on a trading venue in an EEA State other than the United Kingdom the FCA must, on request, provide the competent authority for that trading venue with any information it receives from M under paragraph (1).

### Textual Amendments

- F28** Reg. 31(1) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **27(a)**
- F29** Words in reg. 31(2)(c) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **27(b)(i)**
- F30** Words in reg. 31(2)(d) omitted (2.1.2018) by virtue of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **27(b)(ii)**

### Direct electronic access

**32.**—(1) A member of, or participant in, a regulated market or multilateral trading facility that provides direct electronic access to the market or facility (“M”) must comply with the requirements set out in paragraphs (4) to (9) if condition A or B is met.

(2) Condition A is that—

- (a) M's home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(3) Condition B is that M provides direct electronic access in accordance with the relevant United Kingdom national regime for the purposes of Article 54.1(transitional provisions) of the markets in financial instruments regulation.

(4) M must have in place effective systems and controls which ensure—

**Status:** Point in time view as at 02/01/2018.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 is up to date with all changes known to be in force on or before 20 June 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)

- (a) M conducts an assessment and review of the suitability of clients using the service;
  - (b) clients using the service are prevented from exceeding appropriate pre-set trading and credit thresholds;
  - (c) trading by clients using the service is properly monitored; and
  - (d) risk controls prevent trading by clients which—
    - (i) may create risks to M itself;
    - (ii) could create, or contribute to, a disorderly market;
    - (iii) could be contrary to the market abuse regulation; or
    - (iv) could be contrary to the rules of the regulated market or multilateral facility to which M provides direct electronic access.
- (5) M must monitor the transactions made by clients to which it provides direct electronic access to a regulated market or multilateral trading facility to identify—
- (a) infringements of the rules of the regulated market or multilateral trading facility;
  - (b) disorderly trading conditions; or
  - (c) conduct which may involve market abuse.
- (6) If M's monitoring under paragraph (5) identifies an infringement of the rules of a regulated market or multilateral trading facility, disorderly trading conditions, or conduct which may involve market abuse M must notify the FCA.
- (7) M must have a binding written agreement with each client which—
- (a) details the rights and obligations of both parties arising from the provision of the service; and
  - (b) states that M is responsible for ensuring the client complies with the requirements of the markets in financial instruments directive and the rules of the regulated market or a multilateral trading facility; and
- (8) M must notify—
- (a) the FCA that M is providing direct electronic access services; and
  - (b) the competent authority of any regulated market or a multilateral trading facility in the EEA to which M provides direct electronic access services that M is doing so.
- (9) M must arrange for—
- (a) records to be kept on the matters referred to in [<sup>F31</sup>paragraphs (4), (5), and (7)]; and
  - (b) records to be kept to enable M to meet any requirement imposed on them under regulation [<sup>F32</sup>33].
- (10) In this regulation the provision of direct electronic access is in accordance with the relevant United Kingdom national regime for the purposes of Article 54.1 (transitional provisions) of the markets in financial instruments regulation if it is an activity subject to the exclusion in Article 72 (overseas persons) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2000 <sup>M74</sup>.

#### Textual Amendments

**F31** Words in reg. 32(9)(a) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **28(a)**

**F32** Word in reg. 32(9)(b) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **28(b)**

### Marginal Citations

**M74** S.I. 2001/544; article 72 was amended by S.I. 2003/1476, 2006/2383 and 3384, 2009/1342, 2013/504 and 2015/910.

### Provision of information to the FCA concerning direct electronic access

**33.**—(1) The FCA may require a member of, or participant in, a regulated market or multilateral trading facility subject to the requirements set out in regulation 32 (“M”) to provide on a regular or ad hoc basis—

- (a) a description of the systems [<sup>F33</sup>and controls] mentioned in regulation [<sup>F34</sup>32(4)];
- (b) evidence that those systems [<sup>F35</sup>and controls] have been applied; and
- (c) the information stored in accordance with regulation 32(9) .

(2) If Condition A in regulation 32(2) applies to M and M provides direct electronic access to a regulated market or multilateral trading facility in an EEA State other than the United Kingdom the FCA must, on request, provide the competent authority for that market or facility any information it receives from M under paragraph (1).

### Textual Amendments

- F33** Words in reg. 33(1)(a) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **30(a)(i)**
- F34** Word in reg. 33(1)(a) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **30(a)(ii)**
- F35** Words in reg. 33(1)(b) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **30(b)**

### Acting as a general clearing member

**34.**—(1) A member of, or participant in, a regulated market or multilateral trading facility that acts as a general clearing member for other persons (“M”) must comply with the requirements set out in paragraph (2) if—

- (a) M’s home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(2) M must have in place effective systems and controls to ensure—

- (a) M’s clearing services are only provided to persons who —
  - (i) are suitable recipients of those services; and
  - (ii) meet clear criteria applied by those systems and controls regarding which persons are suitable to receive clearing services; and
- (b) requirements are imposed on the persons to whom clearing services are being provided to reduce risks to M and to the market.

(3) M must have a binding written agreement with any person to whom they are providing clearing services detailing the rights and obligations of both parties arising from the provision of the service.

(4) In this regulation “clearing services” means the services provided by M in the course of acting as a general clearing member for other persons.

**Status:** Point in time view as at 02/01/2018.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 is up to date with all changes known to be in force on or before 20 June 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)

### Synchronisation of business clocks

**35.**—(1) A member of, or participant in, a trading venue (“M”) must comply with the requirement set out in paragraph (2) if—

- (a) M's home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(2) M must synchronise the business clock M uses to record the date and time of any reportable event with the business clock the trading venue uses for that purpose to the level of accuracy specified in regulatory technical standards adopted by the Commission under Article 50.2 (synchronisation of business clocks) of the markets in financial instruments directive.

### FCA power to impose requirements

**36.**—(1) The FCA may impose a requirement mentioned in paragraph (2) on a person to whom any of regulations 30 to 35 applies if it appears to the FCA that—

- (a) the person has contravened, or is likely to contravene, a requirement imposed on it by or under these Regulations or the markets in financial instruments regulation;
- (b) the person has, in purported compliance with any requirement imposed on it by or under these Regulations or the markets in financial instruments regulation, knowingly or recklessly given the FCA information which is false or misleading in a material particular; or
- (c) it is desirable to exercise the power in order to advance one or more of the FCA's operational objectives (as defined by section 1B(3) <sup>M75</sup> (the FCA's general duties)) of the Act.

(2) For the purposes of paragraph (2) the FCA may impose a requirement that the person—

- (a) take specified action; or
- (b) refrain from taking specified action.

(3) A requirement imposed under paragraph (2) may—

- (a) be imposed by reference to the person's relationship with another person;
- (b) be expressed to expire at the end of such period as the FCA may specify, but the imposition of a requirement that expires at the end of a specified period does not affect the FCA's power to impose a new requirement in accordance with paragraph (2); and
- (c) refer to the past conduct of the person (for example, by requiring the person to review or take remedial action in respect of past conduct).

(4) If the FCA imposes a requirement under this regulation it must issue a notice to the person.

(5) A person on whom a requirement has been imposed under this regulation may refer that matter to the Tribunal.

#### Marginal Citations

**M75** Section 1B(3) was inserted by section 6(1) of the Financial Services Act 2012.

## **Interpretation of Part 4**

**37.**—(1) In this Part a person has a Part 4A permission for the purposes of the markets in financial instruments directive if;

- (a) the directive applies to the person; and
- (b) the permission relates to the provision of investment services or the performance of investment activities.

(2) In this Part “home Member State” has the meaning given by Article 4.1.55 (definitions) of the markets in financial instruments directive.

## **PART 5**

### **Removal of persons from the management board of an investment firm, credit institution, or recognised investment exchange**

#### **FCA and PRA power to remove a person from a management board**

**38.**—(1) The appropriate regulator may require an investment firm, credit institution, or recognised investment exchange to remove a person from the management board if the regulator considers it necessary for the purpose of the exercise by it of functions under the markets in financial instruments directive or the markets in financial instruments regulation.

(2) For the purposes of this Part “the appropriate regulator” means—

- (a) in a case where an investment firm or credit institution is a PRA-authorised person, the FCA or PRA;
- (b) in any other case, the FCA.

(3) The FCA must consult the PRA before requiring an investment firm or credit institution which is a PRA-authorised person to remove a person from the management board under paragraph (1).

(4) In this regulation “PRA-authorised person” has the same meaning as in section 2B(5) (the PRA's general objective) of the Act.

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

**39.** If the appropriate regulator requires an investment firm, credit institution, or recognised investment exchange to remove a person from the management board under regulation 38—

- (a) the firm, credit institution, or exchange may refer the matter to the Tribunal; and
- (b) the person to whom the requirement relates may refer the matter to the Tribunal.

#### **Removal of persons from management boards: procedure**

**40.**—(1) A requirement under regulation 38 may be expressed to come into effect—

- (a) immediately; or
- (b) on a specified date.

(2) The time or date on which a requirement under regulation 38 is expressed to come into effect under paragraph (1) must be a time or date that the appropriate regulator considers it necessary for the requirement to come into effect, having regard to the grounds for imposing the requirement.

(3) If the appropriate regulator proposes to impose a requirement on an investment firm, credit institution, or recognised investment exchange, or imposes such a requirement with immediate effect, it must give written notice—

**Status:** Point in time view as at 02/01/2018.

**Changes to legislation:** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 is up to date with all changes known to be in force on or before 20 June 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)

- (a) to that investment firm, credit institution, or recognised investment exchange, and
  - (b) to each person on the management board of the investment firm, credit institution, or recognised investment exchange to whom the requirement relates (“interested party”).
- (4) A notice given under paragraph (3) must—
- (a) give details of the requirement;
  - (b) identify each interested party;
  - (c) give the regulator's reasons for imposing the requirement—
    - (i) in the case of a notice given to the investment firm, credit institution, or recognised investment exchange, in relation to [<sup>F36</sup>each interested party];
    - (ii) in the case of a notice given to the interested party, in relation to that interested party;
  - (d) inform the investment firm, credit institution, or recognised investment exchange and the interested party that each of them may make representations to the regulator within such period as may be specified in the notice (whether or not the matter has been referred <sup>F37</sup>... to the Tribunal);
  - (e) state when the requirement takes effect; and
  - (f) inform the investment firm, credit institution, or recognised investment exchange and the interested party of their right to refer the matter to the Tribunal.
- (5) The regulator may extend the period allowed by the notice given under paragraph (3) for making representations.
- (6) If, having considered any representations made by a person to whom notice has been given under paragraph (3) (the “original notice”), the regulator decides—
- (a) not to impose the requirement;
  - (b) to impose the requirement; or
  - (c) not to rescind the imposition of any such requirement which has already taken effect,
- the regulator must give written notice to the person to whom the original notice was given.
- (7) A notice under paragraph (6)(b) or (c) must inform the person to whom it is given of that person's right to refer the matter to the Tribunal <sup>F38</sup>....
- [<sup>F39</sup>(8) If a notice under paragraph (3) or (6)(b) or (c) informs a person of that person’s right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.]

#### Textual Amendments

- F36** Words in reg. 40(4)(c)(i) substituted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **29(a)(i)**
- F37** Words in reg. 40(4)(d) omitted (2.1.2018) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **29(a)(ii)**
- F38** Words in reg. 40(7) omitted (2.1.2018) by virtue of [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **29(b)**
- F39** Reg. 40(8) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), regs. 2(a), **29(c)**

## PART 6

### Miscellaneous FCA functions in relation to the markets in financial instruments directive and markets in financial instruments regulation

#### Provision of FCA record of recognised investment exchanges to ESMA and other competent authorities

41. The FCA must—

- (a) provide ESMA and all the competent authorities of the other EEA States with a copy of the part of the record maintained by the FCA under section 347<sup>M76</sup> (the record of authorised persons etc) which contains entries relating to recognised investment exchanges made for the purposes of subsection (1)(e) of that section; and
- (b) inform ESMA and those competent authorities of any change to that part of the record.

#### Marginal Citations

**M76** Section 347 was amended by S.I. 2007/126 paragraph 16(2), (3), (4)(a) and (b) and (5) of the Financial Services Act 2012, section 34(2)(a) and (b), (3) and (4) of, and paragraph 11 of Schedule 5 to, the Financial Services (Banking Reform) Act (c.33) 2013, S.I. 2013/1388, and S.I. 2015/910.

#### Provision of information to ESMA about multilateral trading facilities etc

42.—(1) The FCA must notify ESMA when a recognised investment exchange is permitted to operate a multilateral trading facility or an organised trading facility (as defined by Article 4.1.23 (definitions) of the markets in financial instruments directive) under<sup>F40</sup> ... Part 18 of the Act.

(2) If an investment firm, credit institution, or recognised investment exchange provides the FCA with any of the information specified in paragraph (3) about a multilateral trading facility operated by the firm, institution, or exchange the FCA must, on request, give the information to ESMA.

(3) The specified information for the purposes of paragraph (2) is—

- (a) a detailed description of the functioning of the facility;
- (b) any links to another trading venue owned by the same exchange or to a systematic internaliser owned by the same exchange; and
- (c) a list of the facility's members, participants and users.

(4) The FCA must as soon as reasonably practicable notify ESMA if the FCA—

- (a) registers a multilateral trading facility operated by a recognised investment exchange, credit institution, or recognised investment exchange as an SME growth market for the purposes of Article 33 (SME growth markets) of the markets in financial instruments directive; or
- (b) deregisters such a facility as an SME growth market.

(5) In this regulation “SME growth market” has the same meaning as in Article 4.1.12 (definitions) of the markets in financial instruments directive.

#### Textual Amendments

**F40** Word in reg. 42(1) omitted (2.1.2018) by virtue of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), 31

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### **Provision to ESMA of reports by recognised investment exchanges of infringements of the exchange's rules, disorderly trading, suspected market abuse, and systems disruptions**

**43.—**(1) If the FCA receives a report from a recognised investment exchange informing the FCA of—

- (a) significant infringements of the exchange's rules;
- (b) disorderly trading conditions;
- (c) conduct that may indicate behaviour which is prohibited under the market abuse regulation; or
- (d) system disruptions in relation to a financial instrument;

on, or related to, a trading venue operated by the exchange, the FCA must communicate that information to ESMA and the competent authorities of all the other EEA States.

(2) But where the report informs the FCA of conduct that may indicate behaviour which is prohibited under the market abuse regulation the FCA must be satisfied such behaviour is being, or has been, carried out before it communicates the information to ESMA and the competent authorities of all the other EEA States.

### **Authorisation of members of management bodies to hold additional non-executive directorship**

**44.—**(1) Where a relevant recognition requirement limits the number of non-executive directorships a member of the management body of an exchange may hold at the same time, the FCA may authorise that member to hold one additional directorship.

(2) In paragraph (1)—

“management body” has the meaning given by regulation 3 (interpretation) of Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001<sup>M77</sup>; and

“relevant recognition requirement” means a requirement set out in paragraph 2B(1)(a)(i) or (ii) of the Schedule to those Regulations.

(3) The FCA must regularly inform ESMA of—

- (a) any authorisation given by the FCA under paragraph (1); and
- (b) any direction given by the FCA under section 138A<sup>M78</sup> (modification or waiver of rules) of the Act for the purposes of Article 9.2 (management body) of the markets in financial instruments directive.

#### **Marginal Citations**

**M77** [S.I. 2001/995](#); there are amendments to regulation 3 but none is relevant.

**M78** [Section 138A](#) was inserted by section 24(1) of the Financial Services Act 2012 and amended by paragraph 8 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 and [S.I. 2013/1388](#).

### **Provision of information to ESMA regarding sanctions and measures imposed for the purposes of the markets in financial instruments directive**

**45.—**(1) The FCA must annually provide ESMA with aggregated information in respect of sanctions and measures imposed by the competent authorities designated under regulation 3 [<sup>F41</sup>and paragraph 17(1) of the Data Reporting Services Regulations 2017].



(2) In paragraph (1) “aggregated information in respect of sanctions and measures” means the aggregated information mentioned in Article 71.4 (publication of decisions) of the markets in financial instruments directive.

#### Textual Amendments

**F41** Words in [reg. 45\(1\)](#) inserted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), [regs. 2\(a\)](#), **32**

### Provision of information to other competent authorities regarding persons engaged in algorithmic trading or providing direct electronic access

**46.**—(1) If the FCA is the competent authority of a person (“P”)—

- (a) engaging in algorithmic trading on a trading venue; or
- (b) providing direct electronic access to a trading venue;

the FCA must, on request, provide any competent authority of an EEA State which is the competent authority of the trading venue concerned any specified information it has received from P.

(2) The specified information for the purposes of paragraph (1) is—

- (a) if P is engaging in algorithmic trading on a trading venue, any information referred to in the second sub-paragraph of Article [<sup>F42</sup>17.2 of the markets in financial instruments directive] concerning the person's algorithmic trading on the trading venue mentioned in paragraph (1)(a) and the systems used for that trading; or
- (b) if P is providing direct electronic access to a trading venue—
  - (i) any information referred to in the [<sup>F43</sup>fourth] sub-paragraph of Article 17.5 of the markets in financial instruments directive on the systems and controls that the person has put in place in respect of the provision of direct electronic access to the trading venue mentioned in paragraph (1)(b); and
  - (ii) any evidence that those systems and controls have been applied.

#### Textual Amendments

**F42** Words in [reg. 46\(2\)\(a\)](#) substituted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), [regs. 2\(a\)](#), **33(a)**

**F43** Word in [reg. 46\(2\)\(b\)\(i\)](#) substituted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017 \(S.I. 2017/1255\)](#), [regs. 2\(a\)](#), **33(b)**

### Notifications, reports, and applications relating to the markets in financial instruments directive or the markets in financial instruments regulation

**47.**—(1) The FCA may direct the manner in which a person must—

- (a) notify the FCA, for the purposes of Article 2.1(j)(exemptions) of the markets in financial instruments directive, that the person is making use of the exemption under Article 2.1(j) of that directive;
- (b) report to the FCA, for the purposes of the final point of Article 2.1(j) (exemptions) of the markets in financial instruments directive, the basis on which a person considers an activity under that Article to be ancillary to that person's main business;

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- (c) make an application for—
- (i) a waiver under Article 4 (waivers for equity instruments) of the markets in financial instruments regulation;
  - (ii) an authorisation under Article 7 (authorisation of deferred publication) of the markets in financial instruments regulation;
  - (iii) a waiver under Article 9 (waivers for non-equity instruments) of the markets in financial instruments regulation; and
  - (iv) an authorisation under Article 11 (authorisation of deferred publication) of the markets in financial instruments regulation.

(2) An application mentioned in paragraph (1)(c) must contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application mentioned in paragraph (1)(c) and before determining it the FCA may require the applicant to provide the FCA with such further information as the FCA reasonably considers necessary to enable the FCA to determine the application.

(4) The FCA may give different directions, and may impose different requirements, in relation to different applications.

## PART 7

### Miscellaneous

#### Refund of fees by the Gambling Commission

**48.**—(1) The Gambling Commission may refund the whole or part of any fee paid for an operating licence if immediately before 3rd January 2018 the licence authorised a person to carry on an activity which became a regulated activity on 3rd January 2018 by virtue of Article 85(4A) and (4B) <sup>M79</sup> (contracts for differences etc.) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(2) In paragraph (1) “operating licence” means an operating licence issued by the Gambling Commission under Part 5 of the Gambling Act 2005 <sup>M80</sup>.

#### Marginal Citations

**M79** S.I. 2001/544; article 85(4A) and (4B) were inserted by S.I. 2017/488.

**M80** 2005 c.19.

#### Administration and enforcement of the Regulations

**49.** Schedule 1 on the administration and enforcement of these Regulations has effect.

#### Amendments to legislation

**50.**—(1) Schedule 2, which contains amendments to the Act, has effect.

(2) Schedule 3, which contains amendments to secondary legislation made under the Act, has effect.

(3) Schedule 4, which contains amendments to primary legislation other than the Act, has effect.

(4) Schedule 5, which contains amendments to secondary legislation which was not made under the Act, has effect.

## Review

**51.**—(1) The Treasury must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the markets in financial instruments directive and markets in financial instruments regulation are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision made by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations are made.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

*David Evennett*  
*Andrew Griffiths*  
Two Lords Commissioners of Her Majesty's  
Treasury

**Status:**

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