
STATUTORY INSTRUMENTS

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(1) (financial promotion rules) of the Act;
- (ii) rules to be made under sections 213(2) (the compensation scheme) or 214(3) (general) of the Act;
- (iii) rules to be made under paragraph 23 of Schedule 1ZA(4) (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(5);
- (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)(6) 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(7).

(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;

(1) Section 137R was inserted by section 24(1) of the Financial Services Act 2012.
(2) Section 213 was amended by [S.I. 2011/1613](#) and paragraph 1 and 3 of Schedule 10 to the Financial Services Act 2012.
(3) 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
(4) Schedule 1ZA was inserted by paragraph 1 of Schedule 3 to the Financial Services Act 2012.
(5) [S.I. 2013/419](#).
(6) Paragraph 4C was inserted by [S.I. 2001/1376](#).
(7) [S.I. 2001/995](#), to which there are amendments not relevant to these Regulations.

- (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
- (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(8) 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)(9) (exercise of passport rights by EEA market operator) or 312C(10) (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)(11) of the Act;
 - (iii) notices relating to any relevant regulated activity to be given or received under paragraph 13(1)(12), (1B)(13), or (1C)(14) of Schedule 3 to the Act ;
 - (iv) the PRA to give consent under paragraph 13(1D) (15) of that Schedule;
 - (v) preparations to be made under paragraph 13(1E)(16) or (1F)(17) of that Schedule;
 - (vi) notices relating to any relevant regulated activity to be given or received under paragraph 14(1)(ba)(18), (1B)(19), or (1C)(20) of that Schedule ;

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- (8) 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).
 - (9) 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.
 - (10) Section 312C was inserted by S.I. 2007/126 and amended by paragraph 35 of Schedule 8 to the Financial Services Act 2012.
 - (11) Section 347(1) was amended by S.I. 2007/126, 2013/1388, and 2015/910.
 - (12) Paragraph 13(1) was amended by S.I. 2003/1473 and 2015/910.
 - (13) Paragraph 13 (1B) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
 - (14) Paragraph 13(1C) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
 - (15) Paragraph 13(1D) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
 - (16) Paragraph 13(1E) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
 - (17) Paragraph 13(1F) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
 - (18) 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.
 - (19) Paragraph 14(1B) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
 - (20) Paragraph 14(1C) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.

- (vii) preparations to be made under paragraph 14(1D)(21) or 14(1E)(22) of that Schedule; and
 - (viii) notices relating to any relevant regulated activity to be given or received under paragraph 19(2)(23), (4)(24), (7B)(25), (8)(26), (11)(27), or (12)(28), or paragraph 20(1)(29), (3)(30), or (4)(31) 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(32) for the purposes of Schedule 3 to the Act, as amended and applied by these Regulations—
- (i) regulation 4(33) (management companies, credit institutions and financial institutions: changes);
 - (ii) regulation 4A(34) (investment firms: changes to branch details);
 - (iii) regulation 5A(35) (investment firms: changes to services);
 - (iv) regulation 11(36) (UK management companies, credit institutions and financial institutions);
 - (v) regulation 11A(37) (UK investment firms: changes to branch details); and
 - (vi) regulation 12A(38) (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(39) that was amended or inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017(40).

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

Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000(41);

“algorithmic trading” has the meaning given by Article 4.1.39 (definitions) of the markets in financial instruments directive;

(21) Paragraph 14(1D) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
(22) Paragraph 14(1E) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
(23) Paragraph 19(2) was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
(24) Paragraph 19(4) was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
(25) 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.
(26) Paragraph 19(8) was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
(27) Paragraph 19(11) was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
(28) 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.
(29) 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.
(30) 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.
(31) Paragraph 20(4) was amended by S.I. 2001/1376 and paragraph 11(2) of Schedule 4 to the Financial Services Act 2012.
(32) S.I. 2001/2511.
(33) Regulation 4 was amended by S.I. 2003/2066, 2006/3385, and 2013/642.
(34) Regulation 4A was inserted by S.I. 2006/3385.
(35) Regulation 5A was inserted by S.I. 2006/3385.
(36) Regulation 11 was amended by S.I. 2006/3385, 2003/2066, 2013/642, and 2013/3115.
(37) Regulation 11A was inserted by S.I. 2006/3385 and amended by S.I. 2013/642.
(38) Regulation 12A was inserted by S.I. 2006/3385 and amended by S.I. 2013/642.
(39) S.I. 2001/544.
(40) S.I. 2017/488.
(41) 2000 c.8.

“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)⁽⁴²⁾;

“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⁽⁴³⁾;

“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;

⁽⁴²⁾ OJ No L 331, 15.12.2010, p.84.

⁽⁴³⁾ OJ L 87, 31.3.2017, p. 1.

“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)(44);

“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)(45);

“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(46);

“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)(47) (application for permission) of the Act;

“recognised investment exchange” has the meaning given by section 285(1)(a)(48) (exemption for recognised investment exchanges and clearing houses) of the Act;

“regulated activity” has the meaning given by section 22(49) (regulated activities) of the Act;

“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.

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(50), 12 to 15, 22, and 25 of the Act and Schedule 3 to the Act; or
- (c) rules made under section 137G(51) (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.

(44) OJ No L 173, 12.06.2014, p.1.

(45) 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).

(46) OJ No L 173, 12.06.2014, p.84.

(47) Section 55A(5) was inserted by section 11(2) of the Financial Services Act 2012.

(48) Section 285(1)(a) was amended by [S.I. 2013/504](#).

(49) Section 22 was amended by section 7(1)(a) to (d) of the Financial Services Act 2012.

(50) Part 4A was inserted by section 11(2) of the Financial Services Act 2012.

(51) Section 137G was inserted by section 24(1) of the Financial Services Act 2012.

(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)(**52**) (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)(**53**) (the PRA’s general objective) of the Act.

(**52**) Section 313(1) was amended by [S.I. 2013/504](#); there are other amendments but none is relevant.

(**53**) Section 2B(5) was inserted by section 6(1) of the Financial Services Act 2012.