

## STATUTORY INSTRUMENTS

# 2017 No. 701

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

### 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

<sup>F1</sup>41. ....

**F1** Reg. 41 omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **15(1)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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

<sup>F2</sup>42. ....

**F2** Reg. 42 omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **15(1)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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

<sup>F3</sup>43. ....

**F3** Reg. 43 omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **15(1)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### 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)—

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“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>F4</sup>; and

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

<sup>F5</sup>(3) .....

**F4** [S.I. 2001/995](#); there are amendments to regulation 3 but none is relevant.

**F5** [Reg. 44\(3\)](#) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **15(2)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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

<sup>F6</sup>**45.** .....

**F6** [Reg. 45](#) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **15(3)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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

<sup>F7</sup>**46.** .....

**F7** [Reg. 46](#) omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **15(3)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### **Notifications, reports, and applications relating to <sup>F8</sup>... 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 [<sup>F9</sup>regulation 30(1A)(e)], that the person is making use of the exemption under [<sup>F10</sup>that regulation];
- (b) report to the FCA, for the purposes of [<sup>F11</sup>the words after paragraph (ii) of sub-paragraph (e) of regulation 30(1A)], the basis on which a person considers an activity [<sup>F12</sup>described in paragraphs (i) and (ii) of that sub-paragraph] to be ancillary to that person's main business;
- (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

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(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.

- F8** Words in [reg. 47](#) heading omitted (31.12.2020) by S.I. 2018/1403, reg. 15(3A) (as inserted by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/710), regs. 1(2), **16(6)(a)**; 2020 c. 1, Sch. 5 para. 1(1))
- F9** Words in [reg. 47\(1\)\(a\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **15(4)(a)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in [reg. 47\(1\)\(a\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **15(4)(a)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in [reg. 47\(1\)\(b\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **15(4)(b)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in [reg. 47\(1\)\(b\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **15(4)(b)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

### [<sup>F13</sup>Position management and publication of position reports

**47A.—**(1) The FCA must maintain a database containing—

- (a) the position limits established by the FCA under regulation 16; and
- (b) the information the FCA receives from—
  - (i) market operators operating trading venues summarising the position management controls in effect in relation to trading venues under paragraph 7BA(3) of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (“the Recognition Requirements Regulations”); and
  - (ii) firms operating MTF or OTF in the United Kingdom summarising the position management controls in effect in relation to trading venues under rule 10.3.3R of the Market Conduct sourcebook.

(2) The FCA must ensure that the database referred to in paragraph (1) is published on its website.

(3) The FCA must publish all weekly reports it receives from market operators and firms operating trading venues in the United Kingdom under—

- (a) paragraph 7BB(5) of the Schedule to the Recognition Requirements Regulations;
- (b) rule 10.4.3 of the Market Conduct sourcebook.

(4) For the purpose of this regulation, “market operator” has the meaning given in Article 2(1) (10) of the markets in financial instruments regulation.]

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**F13** Reg. 47A inserted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **15(5)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

## [<sup>F14</sup>Statements of Policy

**47B.**—(1) The FCA must prepare and issue a statement of its policy in relation to the exercise of—

- (a) the following functions in the markets in financial instruments regulation—
  - (i) suspending the use of waivers under Article 5(3B);
  - (ii) withdrawing a waiver under Article 9(3);
  - (iii) suspending the obligations referred to in Article 8 under Article 9(4A);
  - (iv) suspending the obligations referred to in Article 10 under Article 11(2A);
  - (v) determining the class to which financial instruments belong under Article 14.6A;
  - (vi) suspending the obligations referred to in Article 21(1) under Article 21(4A); and
- (b) its functions under Article 5(1A) of Commission Delegated Regulation 2017/567/EU supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions.

(2) No statement may be issued under paragraph (1) or amended without the approval of the Treasury.

(3) The Treasury may refuse to approve a statement of policy or amended statement of policy if it appears to the Treasury that—

- (a) the issue of that statement would prejudice any current or proposed negotiations for an international agreement between the United Kingdom and one or more other countries, international organisations or institutions; or
- (b) they may direct the FCA not to issue the statement of policy under section 410 (international obligations) of the Financial Services and Markets Act 2000.

(4) For the purposes of paragraph (3), “international organisations” includes the European Union.

(5) The Treasury must notify the FCA in writing whether or not they approve a statement of policy within four weeks from the day on which that statement is submitted to the Treasury for approval (“the relevant period”).

(6) Provision of a draft statement of policy to the Treasury for consultation does not amount to submission of the statement for approval.

(7) If the Treasury do not give notice under paragraph (5) before the end of the relevant period, the Treasury is deemed to have approved the statement of policy.

(8) The FCA must publish any statement of policy issued under this Article in the way appearing to the FCA to be best calculated to bring it to the attention of the public.]

**F14** Reg. 47B inserted (20.12.2018) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(2), **15(5)** (as amended by [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/710\)](#), regs. 1(2), **16(6)(b)**); 2020 c. 1, Sch. 5 para. 1(1)

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 15A inserted by [2023 c. 29 Sch. 2 para. 45](#)
- reg. 16(1A)(1B) omitted by [2023 c. 29 Sch. 2 para. 46\(4\)](#)