

STATUTORY INSTRUMENTS

2018 No. 1321

EXITING THE EUROPEAN UNION FINANCIAL SERVICES

The Short Selling (Amendment) (EU Exit) Regulations 2018

Made - - - - 6th December 2018

Coming into force in accordance with regulation 1

^{F1}The Treasury, in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018, make the following Regulations.

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

F1 2018 c.16.

Modifications etc. (not altering text)

C1 Regulations modified (31.12.2020) by [The Gibraltar \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/680\)](#), regs. 1(2), **11(1)(4)(5)** (with reg. 11(8)-(10)) (as amended by [S.I. 2020/1301](#), regs. 1, 3, **Sch. para. 40(f)**); 2020 c. 1, **Sch. 5 para. 1(1)**

PART 1

General provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Short Selling (Amendment) (EU Exit) Regulations 2018.

(2) These Regulations come into force on exit day.

Commencement Information

I1 Reg. 1 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

PART 2

Amendment of primary legislation

Amendment of the Financial Services and Markets Act 2000

- 2.—(1) The Financial Services and Markets Act 2000 ^{F2} is amended as follows.
- (2) In section 131E (power to require information) ^{F3}—
- (a) in subsection (2), at the end insert “ or to respond to a request referred to in subsection (5A) ”;
 - (b) in subsection (5A)—
 - (i) in the opening words, for “functions under the short selling regulation” substitute “relevant functions ”;
 - (ii) for paragraph (a), substitute—
 - “(a) an overseas regulator, or”;
 - (c) omit subsection (5B);
 - (d) for subsection (6), substitute—
 - “(6) In this section—
 - “overseas regulator” means—
 - (a) the competent authority of an EEA State for the purposes of the short selling regulation, as that regulation has effect in the European Union (the “EU short selling regulation”); or
 - (b) the authority of a third country which is not an EEA State which exercises functions corresponding to those of a competent authority under the EU short selling regulation;
 - “relevant functions” means—
 - (a) in relation to a competent authority of an EEA State, its functions under the EU short selling regulation;
 - (b) in relation to ESMA, its functions under the EU short selling regulation;
 - (c) in relation to an authority of a third country which is not an EEA state, its functions corresponding to the functions referred to in paragraph (a);
 - “specified” means specified in the notice.”.
- (3) In section 131F (power to require information: supplementary), after subsection (6), insert—
- “(6A) Where the FCA is exercising its powers under section 131E in response to a request from an overseas regulator or ESMA, references to the short selling regulation are to be read as including the EU short selling regulation, within the meaning of section 131E(6).”
- (4) In section 131FA (investigations in support of EEA Regulator) ^{F4}—
- (a) for subsection (1), substitute—
 - “(1) The FCA may appoint one or more competent persons to investigate any matter if it is requested to do so by—
 - (a) the competent authority of an EEA state acting in the exercise of its functions under the short selling regulation, as that regulation has effect in the European Union; or

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- (b) an authority of a third country which is not an EEA state which is acting in the exercise of functions corresponding to those referred to in paragraph (a).”;
- (b) omit subsection (2);
- (c) in subsection (4), for “the EEA regulator” substitute “ the authority making the request under subsection (1) (“the requesting regulator”) ”;
- (d) in subsection (5), for “EEA” substitute “ requesting ”;
- (e) in the heading, for “EEA” substitute “ overseas ”.
- (5) In section 131FB (entry of premises under warrant)—
 - (a) in subsection (10)—
 - (i) for “EEA” substitute “ overseas ”;
 - (ii) for “its functions under the short selling regulation” substitute “ relevant functions ”;
 - (b) omit subsection (11);
 - (c) in subsection (12), for the definition of “EEA regulator” substitute—

““overseas regulator” and “relevant functions” have the meanings given in section 131E(6);”.

F2 2000 c.8.

F3 Sections 131B to 131K were inserted by s.8 of the [Financial Services Act 2010 \(c.28\)](#). Subsections (5A) and (5B) were inserted by [S.I. 2012/2554](#).

F4 Sections 131FA and 131FB were inserted by [S.I. 2012/2554](#).

Commencement Information

I2 Reg. 2 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

PART 3

Amendments of Regulation (EU) No 236/2012

Introduction to amendments of Regulation (EU) No 236/2012

3. Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14th March 2012 on short selling and certain aspects of credit default swaps (“the Short Selling Regulation”) is amended in accordance with this Part.

Commencement Information

I3 Reg. 3 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

Scope

- 4.—(1) In Article 1.1—
 - (a) in point (a), for “Union” substitute “ United Kingdom ”;
 - (b) in point (b) and (c), for “Section C of Annex 1 to Directive [2004/39/EC](#)” substitute “ Part 1 of Schedule 2 to the Regulated Activities Order 2001 ”;

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(2) In Article 1.1(c), for “a Member State or the Union” both times it occurs, substitute “ the United Kingdom ”.

Commencement Information

I4 Reg. 4 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

Interpretation

5.—(1) Article 2 is amended as follows.

(2) In paragraph 1—

- (a) in point (a), for “Section C of Annex I to Directive [2004/39/EC](#)” substitute “ Part 1 of Schedule 2 to the Regulated Activities Order 2001 ”;
- (b) for point (d), substitute—

““sovereign issuer” means the United Kingdom, including any government department, or an agency or a special purpose vehicle of the United Kingdom;”
- (c) omit points (i) and (j);
- (d) in point (k)—
 - (i) for “point (l) of Article 2(1) of Directive [2004/39/EC](#)”, substitute “ point (ka) ”;
 - (ii) after “Article 17(2)” insert “ as it had effect before [^{F5}IP completion day], or by the Treasury in accordance with that paragraph as amended, ”;
- (e) after point (k), insert—

“(ka) for the purposes of point (k), the firms referred to in this point are firms which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets;”
- (f) for point (l), substitute—

““trading venue” means—

 - (i) a UK regulated market within the meaning of point (13B) of Article 2(1) of Regulation (EU) No 600/2014 ^{F6};
 - (ii) a UK multilateral trading facility within the meaning of point (14A) of Article 2(1) of Regulation (EU) No 600/2014;”;
- (g) for point (p), substitute—

“(p) “trading day” in relation to a trading venue, means a day during which the trading venue concerned is open for trading;”;
- (h) for point (q) substitute—

“(q) “turnover”, in relation to a financial instrument, means the sum of the results of multiplying the number of units of that instrument exchanged between buyers and sellers in a defined period of time, pursuant to transactions taking place on a trading venue or otherwise, by the unit price applicable to each transaction;”;
- (i) after point (q), insert—

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- “(r) “FCA” means the Financial Conduct Authority;
 - (s) “competent authority” means—
 - (i) in relation to the United Kingdom, the FCA;
 - (ii) in relation to a Member State of the European Union, the authority which has been designated by that Member State as its competent authority for the purposes of Article 32 of this Regulation as it was in force immediately before [^{F7}IP completion day]; and
 - (iii) in relation to a third country which is not a Member State of the European Union, the supervisory authority which exercises functions equivalent to those exercised by competent authorities in Member States under this Regulation as it was in force immediately before [^{F7}IP completion day];
 - (t) “credit institution” has the meaning given in Article 2(1)(17) of Regulation (EU) No 600/2014;
 - (u) “investment firm” has the meaning given in Article 2(1A) of Regulation (EU) No 600/2014;
 - (v) references to a “third country” (including in expressions including the words “third country”) are to be read as references to a country other than the United Kingdom;
 - (w) “Regulated Activities Order 2001” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ^{F8};
 - (x) “PRA” means the Prudential Regulation Authority”.
- (3) In paragraph 2—
- (i) for “Commission shall be empowered to adopt delegated acts in accordance with Article 42 specifying” substitute “Treasury may by regulations specify”;
 - (ii) for “in particular specifying” substitute “and in particular specify”.

- F5** Words in reg. 5(2)(d)(ii) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 9\(a\)\(i\)](#)
- F6** References to Regulation 2014/600/EU are to that Regulation as amended by the Markets in Financial Instruments (Amendment)(EU Exit) Regulations.
- F7** Words in reg. 5(2)(i) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 9\(a\)\(ii\)](#)
- F8** [S.I. 2001/544](#).

Commencement Information

- I5** Reg. 5 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

Short and long positions

6. In Article 3.7, for the words from the beginning to “specifying”, substitute “ The Treasury may by regulations specify”.

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Commencement Information

- I6** Reg. 6 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

Sovereign credit default swap

7. In Article 4.2, for “Commission shall be empowered to adopt delegated acts in accordance with Article 42 specifying” substitute “ Treasury may by regulations specify ”.

Commencement Information

- I7** Reg. 7 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

Transparency of Net Short Positions

8.—(1) In Article 5—

- (a) in paragraph 1, for “relevant competent authority” substitute “ FCA ”;
- (b) omit paragraph 3;
- (c) in paragraph 4, for “Commission shall be empowered to adopt delegated acts in accordance with Article 42 modifying” substitute “ Treasury may by regulations modify ”.

(2) In Article 6—

- (a) omit paragraph 3;
- (b) in paragraph 4, for “Commission shall be empowered to adopt delegated acts in accordance with Article 42 modifying” substitute “ Treasury may by regulations modify ”;
- (c) in paragraph 5, for “supervisory authorities appointed by Member States pursuant to Article 4 of Directive [2004/25/EC](#) of the European Parliament and of the Council of 21 April 2004 on takeover bids” substitute “ Panel on Takeovers and Mergers ”.

(3) In Article 7—

- (a) in paragraph 1—
 - (i) for “relevant competent authority” substitute “ FCA ”;
 - (ii) omit “concerned”;
- (b) in paragraph 2—
 - (i) for “each sovereign” substitute “ the sovereign ”;
 - (ii) after “paragraph 3”, insert “ before [^{F9}IP completion day], or in regulations made by the Treasury in accordance with that paragraph as amended ”;
 - (iii) for the final sentence substitute “ The FCA shall publish on its website the notification thresholds for the United Kingdom. ”;
- (c) in paragraph 3—
 - (i) for “Commission shall be empowered to adopt delegated acts in accordance with Article 42 specifying” substitute “ Treasury may by regulations specify ”;
 - (ii) for “Commission”, in the second place it occurs, substitute “ Treasury ”;
 - (iii) in point (b) in the second sub-paragraph—

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- (aa) for “each sovereign” substitute “ the sovereign ”;
- (bb) for “that sovereign” substitute “ the sovereign ”;
- (iv) in point (c) for “each sovereign” substitute “ the sovereign ”.
- (4) In Article 8—
 - (a) for “a competent authority” substitute “ the FCA ”;
 - (b) for “relevant competent authority” substitute “ FCA ”.
- (5) In Article 9—
 - (a) in paragraph 2, in the final sentence, for the words from “Member State” to the end of the sentence, substitute “ United Kingdom ”;
 - (b) in paragraph 3, for “a relevant competent authority” substitute “ the FCA ”;
 - (c) in paragraph 4—
 - (i) for “relevant competent authority” substitute “ FCA ”;
 - (ii) omit the final sentence;
 - (d) for paragraph 5, substitute—

“5. The FCA may make technical standards specifying the details of the information to be provided for the purposes of paragraph 1.”;
 - (e) for paragraph 6, substitute—

“6. For the purposes of paragraph 4, the FCA may make technical standards specifying the means by which information may be disclosed to the public.”.
- (6) In Article 10, for “Union” substitute “ United Kingdom ”.
- (7) Omit Article 11.

F9 Words in reg. 8(3)(b)(ii) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 9\(b\)](#)

Commencement Information

I8 Reg. 8 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

Uncovered short sales

- 9.—(1) In Article 12(2)—
 - (a) in the first sub-paragraph—
 - (i) in the first sentence, for the words from the beginning to “develop draft” substitute “ For the purposes of paragraph 1, the FCA may make ”;
 - (ii) in the second sentence, for “ESMA” substitute “ the FCA ”;
 - (b) omit the second and third sub-paragraphs.
- (2) In Article 13—
 - (a) in paragraph 3—
 - (i) in the first sub-paragraph—

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- (aa) after “referred to in”, the first time it occurs, insert “ Commission Delegated Regulation (EU) No 918/2012 or in regulations made by the Treasury under ”;
- (bb) for “relevant competent authority” substitute “ FCA ”;
- (cc) omit the final sentence;
- (ii) in the second sub-paragraph, for “relevant competent authority” substitute “ FCA ”;
- (iii) omit the third sub-paragraph;
- (b) in paragraph 4—
 - (i) in the first sub-paragraph, for “Commission shall adopt delegated acts in accordance with Article 42 specifying” substitute “ Treasury may by regulations specify ”;
 - (ii) in the second sub-paragraph, omit “for Member States”;
 - (iii) in the third sub-paragraph, for “each sovereign” substitute “ the sovereign ”;
- (c) in paragraph 5—
 - (i) in the first sub-paragraph—
 - (aa) in the first sentence, for the words from the beginning to “develop draft” substitute “ For the purposes of paragraph 1, the FCA may make ”;
 - (bb) in the second sentence, for “ESMA”, substitute “ The FCA ”;
 - (ii) omit the second and third sub-paragraphs.
- (3) In Article 14, in paragraph 2—
 - (a) in the first sub-paragraph—
 - (i) for “A competent authority” substitute “ The FCA ”;
 - (ii) for “sovereign issuers” substitute “ the sovereign issuer ”;
 - (iii) for “issuers' ability” substitute “ issuer's ability ”;
 - (b) in the second sub-paragraph, for “competent authority” substitute “ FCA ”;
 - (c) omit the third and fifth sub-paragraphs;
 - (d) in the fourth sub-paragraph, for “relevant competent authority” substitute “ FCA ”.

Commencement Information

I9 Reg. 9 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

Exemptions

- 10.**—(1) In Article 16—
- (a) in paragraph 1—
 - (i) for “Union” substitute “ United Kingdom ”;
 - (b) in paragraph 2—
 - (i) for the first sub-paragraph, substitute—

“**2.** Where the shares of a company are traded on a trading venue in the United Kingdom and a venue located in a third country the FCA shall

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determine, at least every two years, whether the principal trading venue for the trading of those shares is located in a third country.”;

(ii) after the first sub-paragraph, insert—

“Where the shares of a company traded on a trading venue in the United Kingdom and a venue located in a third country were included in the most recent list published by ESMA under Article 16.2 of this Regulation as it had effect before [F¹⁰IP completion day], those shares are to be treated as entitled to the exemption provided for in paragraph 1 for a period of two years beginning with [F¹⁰IP completion day].”;

(iii) omit the second sub-paragraph;

(iv) in the third sub-paragraph, for “ESMA” substitute “ the FCA ”;

(c) in paragraph 3—

(i) in the first sub-paragraph for the words from the beginning to “develop draft regulatory”, substitute “ For the purposes of this Article, the FCA may make ”;

(ii) omit the second and third sub-paragraphs;

(d) in paragraph 4—

(i) in the first sub-paragraph—

(aa) for the words from the beginning to “develop draft implementing”, substitute “ For the purposes of paragraphs 1 and 2, the FCA may make ”;

(bb) omit point (b);

(cc) in point (c), for “ESMA” substitute “ the FCA ”;

(ii) delete the second and third sub-paragraphs.

(2) In Article 17—

(a) in the first sub-paragraph of paragraph 2—

(i) for “Commission may, in accordance with the procedure referred to in Article 44(2), adopt decisions determining” substitute “ Treasury may by regulations determine ”;

(ii) for “Title III of Directive 2004/39/EC” substitute “ Title III of Directive 2014/65/EU and Articles 3, 4, 6 and 7 of Regulation (EU) No 600/2014 ”;

(iii) for “Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)” substitute “ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April on market abuse ”;

(b) in paragraph 4, for “Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments” substitute “ Commission Delegated Regulation (EU) No 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures ”;

(c) in paragraph 5, for “competent authority of its home Member State” substitute “ FCA ”;

(d) in paragraph 6, for “relevant competent authority” substitute “ FCA ”;

(e) insert after paragraph 6—

“**6A.** A notification made under paragraph 5 or 6 before [F¹¹IP completion day] to a competent authority other than the FCA is only valid after [F¹¹IP completion day] if a copy

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of that notification has been provided to the FCA not less than 30 calendar days before the day of [FIIIP completion day].”;

- (f) in paragraph 7—
 - (i) in the first sentence, for “competent authority referred to in paragraphs 5 and 6” substitute “ FCA ”;
 - (ii) in the second sentence, for “competent authority” substitute “ FCA ”;
- (g) omit paragraph 8;
- (h) in paragraph 9, for “competent authority of its home Member State” substitute “ FCA ”;
- (i) in paragraph 10, for “relevant competent authority” substitute “ FCA ”;
- (j) in paragraph 11, for “competent authority of the home Member State” substitute “ FCA ”;
- (k) omit paragraph 12;
- (l) in paragraph 13, for “ESMA” substitute “ The FCA ”;
- (m) omit paragraph 14.

F10 Words in reg. 10(1)(b)(ii) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 9\(c\)\(i\)](#)

F11 Words in reg. 10(2)(e) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 9\(c\)\(ii\)](#)

Commencement Information

I10 Reg. 10 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

Powers of intervention

11.—(1) In the heading to Chapter V, omit “and of ESMA”.

(2) In Article 18—

- (a) in paragraph (1)—
 - (i) in the words before point (a)—
 - (aa) omit “Subject to Article 22,”;
 - (bb) for “a competent authority” substitute “ The FCA ”;
 - (cc) for “competent authority”, the second time it occurs, substitute “ FCA ”;
 - (ii) in point (a)—
 - (aa) for “Member State concerned” substitute “ United Kingdom ”;
 - (bb) omit “or in one or more other Member States”.
- (b) in paragraph (2), for “competent authority” substitute “ FCA ”.

(3) In Article 19—

- (a) in paragraph (1)—
 - (i) in the words before point (a)—
 - (aa) omit “Subject to Article 22,”;
 - (bb) for “a competent authority” substitute “ The FCA ”;

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- (ii) in point (a)—
 - (aa) for “Member State concerned” substitute “ United Kingdom ”;
 - (bb) omit “or in one or more other Member States”;
 - (b) in paragraph (2), for “A competent authority” substitute “ The FCA ”.
- (4) In Article 20—
- (a) in paragraph (1)—
 - (i) in the words before point (a)—
 - (aa) omit “Subject to Article 22,”;
 - (bb) for “a competent authority” substitute “ The FCA ”;
 - (ii) in point (a)—
 - (aa) for “Member State concerned” substitute “ United Kingdom ”;
 - (bb) omit “or in one or more other Member States”.
 - (b) in paragraph (2), for “A competent authority” substitute “ The FCA ”;
 - (c) in paragraph (3), for “competent authority” substitute “ FCA ”.
- (5) In Article 21—
- (a) in paragraph (1)—
 - (i) in the words before point (a)—
 - (aa) omit “Subject to Article 22”;
 - (bb) for “a competent authority” substitute “ The FCA ”;
 - (ii) in point (a)—
 - (aa) for “Member State concerned” substitute “ United Kingdom ”;
 - (bb) omit “or in one or more other Member States”;
 - (b) in paragraph (2), for “competent authority” substitute “ FCA ”.
- (6) Omit Article 22.
- (7) In Article 23—
- (a) for “competent authority” each time it occurs, substitute “ FCA ”;
 - (b) in paragraph 1, omit “of the home Member State for that venue”;
 - (c) omit paragraph 4;
 - (d) for paragraph 5, substitute—

“5. The fall in value shall be—

- (a) 10% or more in the case of a share which is considered to have a liquid market under Article 1 of Commission Delegated Regulation (EU) No 2017/567 of 18 May 2016 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; and
- (b) the amount specified in Commission Delegated Regulation (EU) No 918/2012, or in regulations made by the Treasury under paragraph 7, in the case of any share which is not considered to have a liquid market, or for other classes of financial instruments.”;

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- (e) in paragraph 6—
 - (i) omit the first sub-paragraph;
 - (ii) in the second sub-paragraph, for “Commission shall be empowered to adopt delegated acts in accordance with Article 42 modifying” substitute “ Treasury may by regulations modify ”;
- (f) in paragraph 7, for “Commission shall adopt delegated acts in accordance with Article 42 specifying” substitute “ Treasury may by regulations specify ”;
- (g) in paragraph 8—
 - (i) in the first sub-paragraph—
 - (aa) for the words from the beginning to “develop draft regulatory”, substitute “ For the purposes of this Article, the FCA may make ”;
 - (bb) for “Commission” substitute “ Treasury ”;
 - (ii) omit the second and third sub-paragraphs.
- (8) In Article 25—
 - (a) in paragraph 1, for “A competent authority” substitute “ The FCA ”;
 - (b) in paragraph 2(b), for “competent authority” substitute “ FCA ”.
- (9) Omit Article 26.

Commencement Information

- I11** Reg. 11 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

ESMA

- 12.**—(1) In the heading for Section 2, for “ESMA” substitute “ the Treasury ”.
- (2) Omit Articles 27 to 29.
- (3) For Article 30, substitute—

“Article 30

Further specification of adverse events or developments

The Treasury may by regulations specify the criteria and factors to be taken into account by the FCA in determining in which cases the adverse events or developments referred to in Articles 18 to 21 arise.”

- (4) Omit Article 31.

Commencement Information

- I12** Reg. 12 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

Competent Authorities

- 13.**—(1) Omit Articles 32 and 33.
- (2) In Article 34—

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- (a) in paragraph 1, for “competent authority” in each place it occurs, substitute “ FCA ”;
- (b) in paragraph 2—
 - (i) for “exchanged between the competent authorities” substitute “ exchanged between the Treasury, the PRA or the FCA, or received by the Treasury, the PRA or the FCA from another authority ”;
 - (ii) for “competent authority” substitute “ authority from which the information is received ”.
- (3) Omit Articles 35, 36 and 37.
- (4) In Article 38—
 - (a) in paragraph 1—
 - (i) for “competent authorities”, the first time it occurs, substitute “ FCA ”;
 - (ii) for “competent authorities to carry out their” substitute “ FCA to carry out its ”;
 - (iii) omit the final sentence;
 - (b) in paragraph 2, for “relevant competent authority” substitute “ FCA ”;
 - (c) omit paragraph 3;
 - (d) in paragraph 4—
 - (i) for “competent authorities shall” substitute “ FCA may ”;
 - (ii) for “those competent authorities” substitute “ the FCA ”.
- (5) For Article 39, substitute—

“Article 39

Transfer and retention of personal data

Nothing in this Regulation is to be taken as authorising a disclosure of personal data in contravention of Regulation (EU) No 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data or of the Data Protection Act 2018^{F12}.”

- (6) In Article 40—
 - (a) for the first sentence of the first paragraph, substitute “ The FCA may transfer data and the analysis of data to a supervisory authority of another country where the transfer does not contravene Regulation (EU) No 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data or the Data Protection Act 2018, but such transfer may only be made on a case-by-case basis. ”;
 - (b) in the second sentence of the first paragraph, for “competent authority shall” substitute “ FCA must ”;
 - (c) in the last sentence of the first paragraph, for “competent authority” substitute “ FCA ”;
 - (d) for the second paragraph, substitute—

“The FCA shall disclose information which is confidential pursuant to Article 34 and which is received from a competent authority of a third country to a competent authority of another country only where the FCA has obtained the express agreement of the competent authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.”
- (7) Omit Article 41.

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F12 2018 c.12.

Commencement Information

I13 Reg. 13 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1(2)**

Regulations

14.—(1) In the heading for Chapter VII, for “delegated acts” substitute “Regulations”.

(2) For Article 42, substitute—

*“Article 42
Regulations*

1. Any power to make regulations conferred on the Treasury by this Regulation is exercisable by statutory instrument.

2. Such regulations may—

- (a) contain incidental, supplemental, consequential and transitional provision; and
- (b) may make different provision for different purposes.

3. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.”

(3) Omit Articles 43 to 45.

(4) In Article 46, omit paragraph 1.

(5) Omit Article 47.

(6) In Article 48, omit the fourth sub-paragraph.

Commencement Information

I14 Reg. 14 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see **reg. 1(2)**

PART 4

Amendments of Level 2 Legislation

Amendments of Commission Delegated Regulation (EU) No 918/2012

15.—(1) Commission Delegated Regulation (EU) No 918/2012 of 5th July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for

suspending restrictions, significant falls in the value of financial instruments and adverse events is amended as follows.

(2) In Article 1, in the final sub-paragraph, omit “and Article 27 and the threats referred to in point (a) of Article 28(2)”.

(3) In Article 2—

(a) for paragraph (a) substitute—

“(a) “group” means a parent undertaking and its subsidiary undertakings, and for these purposes, “parent undertaking” and “subsidiary undertaking” have the meanings given in section 420 of the Financial Services and Markets Act 2000;”;

(b) omit paragraph (b).

(4) In Article 8—

(a) in paragraph 1, omit “of different sovereign issuers”;

(b) in paragraph 3—

(i) omit “and with paragraphs 4 and 5”;

(ii) omit the second sentence;

(c) omit paragraphs 4, 5 and 6.

(5) In Article 14, in paragraph 1—

(a) in point (a), for “same Member State” substitute “ United Kingdom ”;

(b) in point (b), in the opening words, for “same Member State” substitute “ United Kingdom ”;

(c) for point (b)(i), substitute—

“(i) references the United Kingdom, including any government department, agency or special purpose vehicle of the United Kingdom;”;

(d) in point (c)(i), for “a Member State” substitute “ the United Kingdom ”.

(6) In Article 15—

(a) in the heading, for “more than one Member State” substitute “ the United Kingdom and a third country ”;

(b) in paragraph 1—

(i) in the opening words, for “more than one Member State” substitute “ the United Kingdom and a third country ”;

(ii) in sub-paragraph (a)—

(aa) for “one Member State” substitute “ a third country ”;

(bb) for “another Member State” substitute “ the United Kingdom ”;

(cc) for “in the Member State” substitute “ in the country ”;

(iii) in sub-paragraph (b)—

(aa) for “different Member States” substitute “ third country ”;

(bb) for “Member State of” substitute “ country of ”;

(iv) in sub-paragraph (c)—

(aa) for “in one Member State” substitute “ in the United Kingdom ”;

(bb) for “second Member State” each time it appears, substitute “ third country ”;

(cc) for “in both Member States” substitute “ in the United Kingdom and the third country ”;

- (dd) for “debt of the Member State in which the company is established” substitute “debt of the United Kingdom”;
- (c) in paragraph 2, in sub-paragraph (a), for “across the Union” substitute “in the United Kingdom and in a third country”;
- (d) after paragraph 2, insert—
 - “3. For the purposes of this Regulation, “sovereign debt” in relation to a third country means a debt instrument issued by—
 - (a) a third country, including a government department, an agency or a special purpose vehicle of the third country; or
 - (b) in the case of a federal country, a member of the federation.
 - 4. For the purposes of this Article, “supra-national issuer” means—
 - (a) the Union;
 - (b) a special purpose vehicle for several third countries;
 - (c) an international financial institution established by two or more countries which has the purpose of mobilising funding and providing financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; or
 - (d) the European Investment Bank.”
- (7) In Article 16—
 - (a) in the opening words, for “competent authority” substitute “FCA”;
 - (b) in points (a) and (b), for “that competent authority” substitute “the FCA”.
- (8) In Article 17—
 - (a) in point (c), for “Member State whose sovereign debt is referenced in the credit default swap” substitute “United Kingdom”;
 - (b) in point (d), for “Member State which is referenced in the sovereign credit default swap” substitute “United Kingdom”.
- (9) In Article 18—
 - (a) in paragraph 2(b), for “Member State” substitute “United Kingdom”;
 - (b) in paragraph 3, for “relevant competent authority” substitute “FCA”.
- (10) In Article 19, in the second sentence of paragraph 1, for “competent authority” substitute “FCA”.
- (11) In Article 21, in paragraph 1, for “relevant competent authority” substitute “FCA”.
- (12) In Article 22—
 - (a) in paragraph 1, for “each competent authority” substitute “the FCA”;
 - (b) in paragraph 3—
 - (i) for “each competent authority” substitute “the FCA”;
 - (ii) omit “, and inform ESMA of the data used thereafter”;
 - (c) in paragraph 4—
 - (i) for “competent authorities exercise” substitute “FCA exercises”;
 - (ii) for “they” substitute “it”.

(13) In Article 24—

(a) in paragraph 1—

(i) in the opening words—

(aa) for “Member State concerned” substitute “ United Kingdom ”;

(bb) omit “or in one or more other Member States”;

(ii) in point (a)—

(aa) for “a Member State” substitute “ the United Kingdom ”;

(bb) for “Union”, both times it occurs, substitute “ United Kingdom ”;

(iii) in point (b)—

(aa) for “any Member State” substitute “ the United Kingdom ”;

(bb) for “Union” substitute “ United Kingdom ”;

(iv) in point (c) for “Union” substitute “ United Kingdom ”;

(v) in point (e)—

(aa) for “Union” substitute “ United Kingdom ”;

(bb) for “a Member State” substitute “ the United Kingdom ”;

(b) omit paragraphs 2 and 3.

Commencement Information

I15 Reg. 15 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(2\)](#)

Paul Maynard
Rebecca Harris
Two of the Lords Commissioners of Her
Majesty's Treasury

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular the deficiencies referred to in subsection (2)(b), (c), (d), (e) and (g) of section 8). They amend the regulation on short selling and certain aspects of credit default swaps (Council Regulation (EU) No 236/2012) and the delegated legislation made by the Commission under that Regulation. They also amend Part 8A of the Financial Services and Markets Act 2000 which implemented parts of Regulation (EU) No 236/2012.

An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 at or about the same time, will have on the costs of business, the voluntary sector and the public sector will be available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and will be published alongside this instrument at www.legislation.gov.uk.

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