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## STATUTORY INSTRUMENTS

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# 2019 No. 266

## The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019

### PART 10

#### Amendment of retained direct EU legislation

##### Amendment of Regulation (EC) No 1060/2009

51. The CRA Regulation is amended as follows.

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##### Commencement Information

- I1** Reg. 51 in force at 31.12.2020 in force on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(3)

52. In Article 1—

- (a) after “This Regulation introduces a”, omit “common”;
- (b) for “Union”, substitute “ United Kingdom ”;
- (c) after “smooth functioning of the”, omit “internal”;
- (d) in the second paragraph, for “Union” substitute “ United Kingdom ”.

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##### Commencement Information

- I2** Reg. 52 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

53. In Article 2—

- (a) in paragraph 1, for “Union”, substitute “ United Kingdom ”;
- (b) in paragraph 2—
  - (i) in point (c), for “point 1.3 of Part 1 of Annex VI to Directive [2006/48/EC](#)”, substitute “ Article 114 and Article 137 of Regulation (EU) No 575/2013 ”;
  - (ii) in point (d), for “the central banks”, substitute “ central banks ”;
  - (iii) in point (d)(iv), for “respective central banks' Member States”, substitute “ United Kingdom Government ”;
- (c) in paragraph 4—
  - (i) for “the Commission”, in each place it occurs, substitute “ the Treasury ”;

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (ii) omit, “upon submission of a request by a Member State, in accordance with the regulatory procedure referred to in Article 38(3) and”.

#### Commencement Information

- I3** Reg. 53 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 54. In Article 3—

- (a) for paragraph 1 substitute—

“1. For the purpose of this Regulation:

‘alternative investment fund manager’ has the meaning in regulation 4(1) of the Alternative Investment Managers Regulations 2013;

‘beneficial owner’ has the meaning given to it in regulation 3(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;

‘central counterparty’ or ‘CCP’ means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer, which is authorised under the Financial Services and Markets Act 2000;

‘common management relationship’, means a relationship between two or more undertakings which satisfies the following conditions:

- (i) the undertakings are not connected in the manner described in section 1162 of, and Schedule 7 to, the Companies Act 2006 (c. 46), and
- (ii) either:
  - (a) the undertakings are managed on a unified basis pursuant to a contract with one of them, or provisions in the undertakings' memorandum or articles of association; or
  - (b) the administrative, management or supervisory bodies of those undertakings consist, for the major part, of the same credit rating agencies in office during the financial year in respect of which it is being decided whether such a relationship exists;

‘competent authority’, means the FCA;

‘control’ means the relationship between a parent undertaking and a subsidiary, as described in section 1162(2) of the Companies Act 2006 (c. 46), or a close link between any natural or legal person and an undertaking;

‘credit institution’ has the meaning given by Article 2.1.19 of the markets in financial instruments regulation;

‘credit rating’ means an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, or of an issuer of such a debt or financial obligation, debt security, preferred share or other financial instrument, issued using an established and defined ranking system of rating categories;

‘credit rating activities’ means data and information analysis and the evaluation, approval, issuing and review of credit ratings;

‘credit rating agency’ means a legal person whose occupation includes the issuing of credit ratings on a professional basis;

‘credit score’ means a measure of creditworthiness derived from summarising and expressing data based only on a pre-established statistical system or model, without any additional substantial rating-specific analytical input from a rating analyst;

[<sup>F1</sup>‘EU CRAR’ means Regulation (EC) 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies as it had effect in the European Union immediately before IP completion day;]

‘EU regulated market’ has the meaning given in Article 2.1.13.B of the markets in financial instruments regulation;

‘the FCA’, means the Financial Conduct Authority;

‘financial instrument’ has the meaning given by Article 2.1.9 of the markets in financial instruments regulation, 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;

‘group of credit rating agencies’ means a group of undertakings established in the United Kingdom consisting of a parent undertaking and its subsidiaries within the meaning of section 1162 of the Companies Act 2006 (c. 46) as well as undertakings linked to each other by a common management relationship and whose occupation includes the issuing of credit ratings. For the purposes of Article 4.3(a), a group of credit rating agencies shall also include credit rating agencies established in third countries;

‘institution for occupational retirement provision’ means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:

- (i) individually or collectively between the employer and the employee or their respective representatives, or
- (ii) with self-employed persons, in compliance with United Kingdom legislation, and which carries out activities directly arising therefrom;

‘insurance undertaking’ has the meaning given in section 417 of the Financial Services and Markets Act 2000;

‘investment firm’ has the meaning given by Article 2.1A of the markets in financial instruments regulation;

‘investment research’ means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

- (i) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;

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- (ii) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice (meaning the provision of credit rating agencies recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments);

‘issuer’ means a legal entity which issues or proposes to issue securities;

‘lead rating analyst’ means a person with primary responsibility for elaborating a credit rating or for communicating with the issuer with respect to a particular credit rating or, generally, with respect to the credit rating of a financial instrument issued by that issuer and, where relevant, for preparing recommendations to the rating committee in relation to such rating;

‘management company’ has the meaning given in section 237 of the Financial Services and Markets Act 2000 (c. 8);

‘the 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 and amending Regulation (EU) No 648/2012;

‘originator’ means either of the following:

- (i) an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitised; or
- (ii) an entity which purchases a third party's exposure onto its balance sheet and then securitises them;

‘prospectus’ means a prospectus published under Part 6 of the Financial Services and Markets Act 2000;

‘rated entity’ means a legal person whose creditworthiness is explicitly or implicitly rated in the credit rating, whether or not it has solicited that credit rating and whether or not it has provided information for that credit rating;

‘rating analyst’ means a person who performs analytical functions that are necessary for the issuing of a credit rating;

‘rating category’ means a rating symbol, such as a letter or numerical symbol which might be accompanied by appending identifying characters, used in a credit rating to provide a relative measure of risk to distinguish the different risk characteristics of the types of rated entities, issuers and financial instruments or other assets;

‘rating outlook’ means an opinion regarding the likely direction of a credit rating over the short term, the medium term or both;

‘regulated market’ has the meaning given in Article 2.1(13) of the markets in financial instruments regulation;

‘regulatory purposes’ means the use of credit ratings for the specific purpose of complying with the law applicable in the United Kingdom;

‘reinsurance undertaking’ has the meaning given by section 417 of the Financial Services and Markets Act 2000;

‘related third party’ means the originator, arranger, sponsor, servicer or any other party that interacts with a credit rating agency on behalf of a rated entity, including any person directly or indirectly linked to that rated entity by control;

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‘re-securitisation’ means a securitisation where the risk associated with an underlying pool of exposures is tranching and at least one of the underlying exposures is a securitisation position;

‘re-securitisation position’ means an exposure to a re-securitisation;

‘senior management’ means the persons who effectively direct the business of the credit rating agency and the members of its administrative or supervisory board;

‘sovereign rating’ means:

- (i) a credit rating where the entity rated is a State or a regional or local authority of a State;
- (ii) a credit rating where the issuer of the debt or financial obligation, debt security or other financial instrument is a State or a regional or local authority of a State, or a special purpose vehicle of a State or of a regional or local authority;
- (iii) a credit rating where the issuer is an international financial institution established by two or more States which has the purpose of mobilising funding and providing financial assistance for the benefit of the members of that international financial institution which are experiencing or threatened by severe financing problems;

‘sponsor’ means a sponsor as defined in point (42) of Article 4 of Directive [2006/48/EC](#) of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions;

‘sponsoring undertaking’ means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural credit rating agencies, which acts as an employer or in a self-employed capacity or any combination thereof and which pays contributions into an institution for occupational retirement provision;

‘structured finance instrument’ means a financial instrument or other assets resulting from a securitisation transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranching, having the following characteristics:

- (i) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures, and
- (ii) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;

‘third country’, means any country other than the United Kingdom;

‘third country competent authorities’, means a public authority which is empowered under the law applicable in the relevant jurisdiction to supervise credit rating agencies;

‘United Kingdom regulated market’ has the meaning given in Article 2.1(13A) of the markets in financial instruments regulation;

‘unsolicited credit rating’ and ‘unsolicited sovereign rating’ mean, respectively, a credit rating or a sovereign rating assigned by a credit rating agency other than upon request.”;

(b) in paragraph 2, for points (a) and (b) substitute—

- “(a) recommendations, meaning research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public;

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- (b) investment research and other forms of general recommendation, such as ‘buy’, ‘sell’ or ‘hold’, relating to transactions in financial instruments or to financial obligations; or”;
- (c) in paragraph 3, omit “as defined in point (6) of Article 3 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing”.

**F1** Words in reg. 54(a) inserted (30.9.2020) by [The Equivalence Determinations for Financial Services \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1055\)](#), regs. 1(2), **11(2)**

#### Commencement Information

**I4** Reg. 54 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 55. In Article 4—

- (a) in paragraph 1, 2, 3 and 4, for “Union”, in each place it occurs, substitute “United Kingdom”;
- (b) in paragraph 1, in the second sub-paragraph, for “regulated market” substitute “United Kingdom regulated market”;
- (c) after paragraph 1 insert—

“**1A.** Without prejudice to the general effect of paragraph 37(1) of Schedule 8 to the EU Withdrawal Act 2018, credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers and central counterparties may use, for the time period specified in paragraph 1B, a credit rating for regulatory purposes if:

- (a) the rating is or was issued or endorsed by a credit rating agency established in the Union which is part of a group in respect of which one of its undertakings—
  - (i) is registered in the United Kingdom in accordance with this Regulation, or
  - (ii) has made an advance application under regulation 24 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019 to be registered in the United Kingdom in accordance with this Regulation, and
- (b) the rating was issued or endorsed and not withdrawn immediately before [<sup>F2</sup>IP completion day].

**1B.** The specified time period is one year beginning with [<sup>F2</sup>IP completion day].”;

#### (d) in paragraph 3—

- (i) in point (b), for “the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council”, substitute “the FCA”;
- (ii) in point (c) and (d), for “ESMA”, in each place it occurs, substitute “the FCA”;
- (iii) in point (g), for “competent authorities”, substitute “third country competent authorities”;
- (iv) omit point (h);

[<sup>F3</sup>(e) for paragraph 6 substitute—

“6. The credit rating agency endorsing credit ratings issued in a third country is no longer required to verify or demonstrate that the condition laid down in paragraph 3(g) of this Article is fulfilled where—

- (a) the legal and supervisory framework of that third country has been recognised as equivalent to the requirements of this Regulation by the Treasury in accordance with Article 5(6) and the cooperation arrangements referred to in Article 5(7) have been established by the FCA and are operational; or
- (b) the legal and supervisory framework of that third country has been recognised as equivalent to the requirements of this Regulation by a decision adopted in accordance with Article 5(6) of EU CRAR before IP completion day that forms part of retained EU law.”.]

- F2** Words in reg. 55(c) 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. 16**
- F3** Reg. 55(e) substituted (30.9.2020) by [The Equivalence Determinations for Financial Services \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1055\)](#), regs. 1(2), **11(3)**

#### Commencement Information

- I5** Reg. 55 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**56.** In Article 5—

[<sup>F4</sup>(a) in paragraph 1—

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

(ii) for point (b) substitute—

“(b) the legal and supervisory framework of that third country has been recognised as equivalent to the requirements of this Regulation—

(i) by the Treasury in accordance with paragraph 6 of this Article; or

(ii) by a decision adopted by the European Commission in accordance with Article 5(6) of EU CRAR before IP completion day that forms part of retained EU law;”;

(iii) in point (c)—

(aa) before “the”, insert “where point (b)(i) applies,”;

(bb) for “are operational” substitute “have been established by the FCA in accordance with that paragraph and are operational”;

(iv) in point (d), for “one or more Member States” substitute “the United Kingdom”];

(b) in paragraph 2, for “ESMA”, substitute “ the FCA ”;

(c) in paragraph 3, for “ESMA”, substitute “ The FCA ”;

(d) in paragraph 4—

(i) in point (b), for “Union”, substitute “ United Kingdom ”;

(ii) in the second paragraph—

(aa) for “ESMA”, in each place it occurs, substitute “ the FCA ”;

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- (bb) for “one or more Member States”, substitute “ the United Kingdom ”;
- (e) in paragraph 6—
  - [<sup>F5</sup>(i) in subparagraph 1, for “The Commission may adopt an equivalence decision in accordance with the regulatory procedure referred to in Article 38(3), stating” substitute “ The Treasury may specify by regulations ”;
  - (ii) in subparagraph 3, for “the Commission shall adopt, by means of delegated acts in accordance with Article 38a, and subject to the conditions of Articles 38b and 38c, measures” substitute “ The Treasury may make regulations ”;]
- [<sup>F6</sup>(f) in paragraph 7—
  - (i) for “ESMA shall establish cooperation agreements” substitute “The FCA must take such steps as it considers appropriate to establish cooperation arrangements”;
  - (ii) for “in accordance with paragraph 6” substitute “by the Treasury in accordance with paragraph 6 of this Article or by a decision adopted by the European Commission in accordance with Article 5(6) of EU CRAR before IP completion day that forms part of retained EU law”;
  - (iii) in point (a), for “ESMA” substitute “the FCA”;
- (g) in paragraph 8, omit “, 23b”.

- F4** Reg. 56(a) substituted (30.9.2020) by [The Equivalence Determinations for Financial Services \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1055\)](#), regs. 1(2), **11(4)(a)**
- F5** Reg. 56(e)(i)(ii) substituted for reg. 56(e)(i)-(iii) (31.12.2020 immediately before IP completion day) by [The Financial Services \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/628\)](#), regs. 1(3), **9(2)**
- F6** Reg. 56(f) substituted (30.9.2020) by [The Equivalence Determinations for Financial Services \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1055\)](#), regs. 1(2), **11(4)(b)**

#### Commencement Information

- I6** Reg. 56 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**57.** In Article 5a, paragraph 2, for “Sectorial competent authorities”, substitute “ The relevant competent authority ”.

#### Commencement Information

- I7** Reg. 57 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**58.** Omit Article 5b.

#### Commencement Information

- I8** Reg. 58 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)



**59.** For Article 5c substitute—

“**5C.** Without prejudice to its right of initiative, the Treasury shall continue to review whether references to credit ratings in UK law trigger or have the potential to trigger sole or mechanistic reliance on credit ratings by the FCA, the entities referred to in the first subparagraph of Article 4(1) or other financial market participants.”

**Commencement Information**

**I9** Reg. 59 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**60.** In Article 6, in paragraph 3, in each place it occurs, for “ESMA”, substitute “ the FCA ”;

**Commencement Information**

**I10** Reg. 60 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**61.** In Article 6b, omit paragraph 6.

**Commencement Information**

**I11** Reg. 61 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**62.** In Article 8—

- (a) in paragraph 6, point (aa), for “ESMA”, substitute “ the FCA ”;
- (b) in paragraph 7, point (a), for “ESMA”, substitute “ the FCA ”.

**Commencement Information**

**I12** Reg. 62 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**63.** In Article 8a—

- (a) in paragraph 1, for “Member State”, substitute “ country ”;
- (b) in paragraph 3, for “ESMA”, substitute “ the FCA ”.

**Commencement Information**

**I13** Reg. 63 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

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## PROSPECTIVE

**F7 64.** . . . . .

**F7** Reg. 64 omitted (31.12.2020 immediately before IP completion day) by virtue of [The Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/710), regs. 1(2), **23**; 2020 c. 1, Sch. 5 para. 1(1)

**65.** In Article 8d, for “ESMA”, in each place it occurs, substitute “ the FCA ”.

### Commencement Information

**I14** Reg. 65 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**66.** In Article 9, for “ESMA”, substitute “ the FCA ”.

### Commencement Information

**I15** Reg. 66 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**67.** In Article 10—

(a) in paragraph 2a—

(i) for “Directive [2003/6/EC](#)”, substitute “ Regulation (EU) No 596/2014 ”;

(ii) for “Article 6(3) of that Directive”, substitute “ Regulation (EU) No 596/2014 ”;

(b) in paragraph 6, for “ESMA or any competent authority”, in each place it occurs, substitute “ the FCA ”.

### Commencement Information

**I16** Reg. 67 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**68.** In Article 11, in paragraph 2—

(a) in the first sentence, for “ESMA”, in each place it occurs, substitute “ the FCA ”;

(b) in the second sentence, for “ESMA” substitute “ The FCA ”.

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#### Commencement Information

**I17** Reg. 68 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 69. In Article 11a—

- (a) in the heading, for “European rating platform”, substitute “ Public rating database ”;
- (b) in paragraph 1, for “ESMA”, substitute “ the FCA ”;
- (c) in paragraph 2—
  - (i) for “ESMA”, substitute “ The FCA ”;
  - (ii) omit “(European rating platform)”;
  - (iii) omit the second paragraph.

#### Commencement Information

**I18** Reg. 69 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 70. In Article 14—

- (a) in paragraph 1, for “Union” substitute “ United Kingdom ”;
- (b) in paragraph 2—
  - (i) for “ESMA” substitute “ the FCA ”;
  - (ii) omit “for the entire territory of the Union”;
- (c) in paragraph 3—
  - (i) for “Union” substitute “ United Kingdom ”;
  - (ii) for “ESMA” substitute “ the FCA ”;
- (d) in paragraphs 4 and 5, for “ESMA” substitute “ the FCA ”.

#### Commencement Information

**I19** Reg. 70 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 71. In Article 15—

- (a) in paragraph 1 and 2, for “ESMA”, in each place it occurs, substitute “ the FCA ”;
- (b) in paragraph 3, for “any of the official languages of the institutions of the Union”, substitute “ English ” and omit the second sentence;
- (c) in paragraph 4, for “ESMA”, in each place it occurs, substitute “ the FCA ”.

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#### Commencement Information

**I20** Reg. 71 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 72. In Article 16—

- (a) in the heading, for “ESMA” substitute “ the FCA ”;
- (b) in paragraph 1, for “ESMA” substitute “ the FCA ”;
- (c) in paragraph 2, for “ESMA” substitute “ The FCA ”;
- (d) in paragraph 3 and 4, for “ESMA”, in each place it occurs, substitute “ the FCA ”.

#### Commencement Information

**I21** Reg. 72 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 73. In Article 17—

- (a) in the heading, for “ESMA” substitute “ the FCA ”;
- (b) in paragraph 1 and 2, for “ESMA” substitute “ The FCA ”;
- (c) in paragraph 3 and 4, for “ESMA”, substitute “ the FCA ”.

#### Commencement Information

**I22** Reg. 73 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 74. For Article 18 substitute—

##### *“Article 18*

##### *Notification of decisions*

1. Within 5 working days of the adoption of a decision under Article 16, 17, 20 or 24, the FCA must notify its decision to the credit rating agency concerned.

2. If the decision referred to in paragraph 1 is:

- (a) to refuse the application for registration made under Article 16 or 17,
- (b) to exercise the FCA's power under Article 20(1) or 20(2) to withdraw the registration of the credit rating agency on the FCA's own initiative,
- (c) to refuse an application made by a credit rating agency under Article 20(3) to withdraw the registration of the credit rating agency, or
- (d) to give a direction under Article 24(1),

the FCA must give the credit rating agency a written notice.

**3.** A written notice under paragraph 2 must:

- (a) give details of the decision made by the FCA,
- (b) state the FCA's reasons for the decision,
- (c) state when the decision takes effect, and
- (d) inform the credit rating agency that it may either:
  - (i) request a review of the decision by the FCA, and make written representations for the purpose of the review, within such period as may be specified in the notice, or
  - (ii) refer the matter to the Upper Tribunal within such period as may be specified in the notice, and
- (e) indicate the procedure on a reference to the Upper Tribunal.

**4.** Subject to paragraph 5, a withdrawal of registration under Article 20, or a direction under Article 24(1), takes effect:

- (a) immediately, upon the adoption of the decision, if the notice states that is the case,
- (b) on such date as may be specified in that notice, or
- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

**5.** In respect of a decision to withdraw registration under Article 20, a notice that a decision is to take effect immediately is subject to the transitional period for the use of credit ratings for regulatory purposes under Article 24(3).

**6.** A decision to withdraw registration on the FCA's own initiative under Article 20(1) or (2), or to give a direction under Article 24(1), may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power reasonably considers that it is necessary for the withdrawal or direction to take effect immediately (or on that date).

**7.** A refusal of an application to register under Article 16 or 17 comes into effect on the fifth working day following its adoption.

**8.** If the credit rating agency requests a review of the decision made by the FCA ("the original decision") the FCA must consider any written representations made by the credit rating agency and review the original decision.

**9.** On a review under paragraph 8 the FCA may make any decision ("the new decision") it could have made on the application.

**10.** The FCA must give the credit rating agency written notice of its new decision, if the new decision is:

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (a) to maintain a decision to refuse an application for registration, made under Article 16 or 17,
- (b) to refuse to revoke a decision made under Article 20(1) or 20(2) to withdraw the registration of the credit rating agency on the FCA's own initiative,
- (c) to maintain a decision to refuse an application from a credit rating agency under Article 20(3) to withdraw the registration of the credit rating agency,
- (d) to refuse to revoke a direction given under Article 24(1), or
- (e) to impose a different direction to that given in the original decision under Article 24(1).

**12.** The written notice under paragraph 10 must:

- (a) give details of the new decision made by the FCA;
- (b) state the FCA's reasons for the new decision;
- (c) state whether the decision takes effect immediately or on such date as may be specified in the notice;
- (d) inform the credit rating agency that it may, within such period as may be specified in the notice, refer the new decision to the Upper Tribunal; and
- (e) indicate the procedure on a reference to the Upper Tribunal.”

#### Commencement Information

**I23** Reg. 74 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**75.** After Article 18 insert—

*“Article 18A*

*Upper Tribunal*

**1.** Subject to paragraph 2, a credit rating agency may refer to the Upper Tribunal the FCA's decision to:

- (a) refuse to register the credit rating agency under Article 16 or 17,
- (b) exercise its power under Article 20(1) or 20(2) to withdraw the registration of a credit rating agency,
- (c) refuse the credit rating agency's application under Article 20(3) to withdraw its registration, or
- (d) give a direction under Article 24(1).

**2.** Where there is a review under Article 18(7), paragraph 1 applies in relation to the new decision only.”

**Status:** This version of this part contains provisions that are prospective.

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#### Commencement Information

**I24** Reg. 75 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 76. Omit Article 19.

#### Commencement Information

**I25** Reg. 76 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 77. For Article 20 substitute—

##### *“Article 20*

##### *Withdrawal of registration*

1. Without prejudice to Article 24, the FCA may on its own initiative withdraw the registration of a credit rating agency where the credit rating agency:

- (a) expressly renounces the registration or has provided no credit ratings for the preceding 6 months,
- (b) obtained the registration by making false statements or by any other irregular means, or
- (c) no longer meets the conditions under which it was registered.

2. The FCA may also, on its own initiative, withdraw the registration of a credit rating agency where it is desirable to do so to advance one or more of its operational objectives as set out in section 1B(3) of the Financial Services and Markets Act 2000.

3. The FCA may, on an application by a credit rating agency, withdraw the registration of the credit rating agency.

4. The decision on the withdrawal of registration of a credit rating agency under paragraph 1, 2 or 3 shall be reflected in the Register and shall take immediate effect in the United Kingdom, subject to the transitional period for the use of credit ratings referred to in Article 24(3).”

#### Commencement Information

**I26** Reg. 77 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

*Status: This version of this part contains provisions that are prospective.*

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**78.** In the heading to Chapter 2, for “ESMA”, substitute “ the FCA ”.

#### Commencement Information

**I27** Reg. 78 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**79.** In Article 21—

- (a) for the heading substitute “ The FCA ”;
- (b) in paragraph 1, for “ESMA”, substitute “ the FCA ”;
- (c) omit paragraph 2;
- (d) omit paragraph 3;
- (e) in paragraph 4—
  - (i) for “ESMA shall develop draft regulatory” substitute “ The FCA may adopt ”;
  - (ii) in point (e), for “ESMA” substitute “ the FCA ”;
  - (iii) omit the second and third paragraphs;
- (f) in paragraph 4a—
  - (i) for “ESMA shall develop draft regulatory”, substitute “ The FCA may adopt ”;
  - (ii) in point (a) and (b), for “ESMA” substitute “ the FCA ”;
  - (iii) omit the second subparagraph and third subparagraph;
- (g) omit paragraph 4b;
- (h) in paragraph 5, for “ESMA”, substitute “ The FCA ”;
- (i) in paragraph 6—
  - (i) for “ESMA”, where first occurring, substitute “ The FCA ”;
  - (ii) for “ESMA”, where next occurring, substitute “ the FCA ”;
  - (iii) for “the European Parliament, the Council and the Commission”, substitute “ the Treasury. ”;
- (j) omit paragraph 7.

#### Commencement Information

**I28** Reg. 79 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**80.** Omit Article 22.

#### Commencement Information

**I29** Reg. 80 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)



81. In Article 22a, in paragraphs 1 and 2, for “ESMA”, substitute “ the FCA ”.

**Commencement Information**

**I30** Reg. 81 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

82. In Article 23, for “ESMA, the Commission or any public authorities of a Member State”, substitute “ the FCA, any public authorities of the United Kingdom or the Treasury ”.

**Commencement Information**

**I31** Reg. 82 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

83. Omit Articles 23a to 23e.

**Commencement Information**

**I32** Reg. 83 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

84. For Article 24 substitute—

*“Article 24*

*Supervisory measures*

1. Where it appears to the FCA that a credit rating agency has failed, or is likely to fail, to comply with any of the obligations imposed on it by or under this Regulation or under the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019, the FCA may make one or more of the following directions:

- (a) that the credit rating agency is temporarily prohibited from issuing credit ratings with effect throughout the United Kingdom;
- (b) that the use, for regulatory purposes, of credit ratings issued by the credit rating agency are suspended with effect throughout the United Kingdom.

2. When considering whether to impose a direction under paragraph 1, the FCA shall take into account the nature and seriousness of the failure or likely failure.

3. Credit ratings may continue to be used for regulatory purposes following the publication of a direction under paragraph 1(b) or a decision under Article 20(3) during a period not exceeding—

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- (a) ten working days from the date the FCA's direction is made if there are credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation;
- (b) three months from the date the FCA's direction is made if there are no credit ratings of the same financial instrument or entity issued by other credit rating agencies registered under this Regulation.”

#### Commencement Information

**I33** Reg. 84 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**85.** Omit Articles 25 and 25a.

#### Commencement Information

**I34** Reg. 85 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**86.** For the heading to Chapter 3 substitute “ Professional secrecy ”.

#### Commencement Information

**I35** Reg. 86 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**87.** Omit Article 26 and 27.

#### Commencement Information

**I36** Reg. 87 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**88.** Omit Article 30 and 31.

#### Commencement Information

**I37** Reg. 88 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**89.** In Article 32—

(a) in paragraph 1—

(i) for “ESMA”, in each place it occurs, substitute “ the FCA ”;

- (ii) omit “the competent authorities,”;
- (iii) omit “for the competent authorities”;
- (b) in paragraph 2—
  - (i) for “ESMA”, in each place it occurs substitute “ the FCA ”;
  - (ii) for “the competent authorities”, substitute “ any other United Kingdom public authority ”;
  - (iii) for “the sectoral competent authorities”, substitute “ or third country competent authorities ”;
  - (iv) omit “or other authorities and bodies referred to in Article 27(2)”;
  - (v) omit “or the competent authority”;
  - (vi) omit “or body”.

#### Commencement Information

**I38** Reg. 89 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 90. In Article 34—

- (a) for “ESMA”, where first occurring, substitute “ The FCA ”;
- (b) for “ESMA”, wherever else occurring, substitute “ the FCA ”;
- (c) for the third paragraph substitute—

“Nothing in this Regulation is to be taken as authorising a disclosure of personal data in contravention of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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.”

#### Commencement Information

**I39** Reg. 90 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 91. In Article 35—

- (a) for “ESMA”, where first occurring, substitute “ The FCA ”;
- (b) for “ESMA”, where next occurring, substitute “ the FCA ”;
- (c) omit “or a competent authority”.

#### Commencement Information

**I40** Reg. 91 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### 92. In Article 35a—

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- (a) in paragraph 2, in the second subparagraph omit “competent national”;
- (b) paragraph 3, point (b), for “applicable national law”, substitute “ law applicable in the United Kingdom ”;
- (c) in paragraph 4—
  - (i) for “applicable national law”, in each place it occurs substitute “ law applicable in the United Kingdom ”;
  - (ii) omit the last sentence;
- (d) in paragraph 5, for “national law”, substitute “ law applicable in the United Kingdom ”;
- (e) in paragraph 6—
  - (i) for “ESMA”, substitute “ the FCA ”;
  - (ii) for “as laid down in Article 36a” substitute “ to impose fines under the Credit Rating Agencies (EU Exit) (Amendments etc.) Regulations 2019 or under this Regulation ”;

#### Commencement Information

- I41** Reg. 92 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**93.** For the heading to Title 4 substitute “ Amendment to Annexes ”.

#### Commencement Information

- I42** Reg. 93 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**94.** Omit Articles 36 to 36e.

#### Commencement Information

- I43** Reg. 94 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

[<sup>F8</sup>**95.** In Article 37, for the words “the Commission” to the end, substitute “ the Treasury may amend Annexes I and II by regulations ”.]

- F8** Reg. 95 substituted (31.12.2020 immediately before IP completion day) by [The Financial Services \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/628\)](#), [regs. 1\(3\), 9\(3\)](#)

#### Commencement Information

- I44** Reg. 95 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

[<sup>F9</sup>**96.**—(1) For Article 38 substitute—

## “Article 38

### Treasury Regulations

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

2. Such regulations may—

- (a) make incidental, supplemental, consequential or transitional provision;
- (b) make different provision for different purposes; and
- (c) amend or revoke any decision to which Article 5(1)(b)(ii) refers.

3. Unless paragraph 4 applies, a statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.

4. A statutory instrument containing regulations made in exercise of the power in subparagraph 3 of Article 5(6) may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.”.

(2) Omit Articles 38a to 41.]

**F9** Reg. 96 substituted (31.12.2020 immediately before IP completion day) by [The Financial Services \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/628\)](#), regs. 1(3), **9(4)** (as amended by [S.I. 2020/1055](#), regs. 1(2), **14(a)(b)(c)**)

#### Commencement Information

**I45** Reg. 96 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

97. In Annex 1—

- (a) for “ESMA”, in each place it occurs, substitute “ the FCA ”;
- (b) in paragraph 1 of section C, for “Article 1(2) of Directive [2004/72/EC](#)” substitute “ point 26 of Article 3(1) of Regulation (EU) No 596/2014 ”;
- (c) in section D, in paragraph 3 of Part 3, for “regulated markets” substitute “ EU regulated markets ”;
- (d) in section E, in paragraph 1 of Part 3, for “regulated markets” substitute “ United Kingdom regulated markets ”;
- (e) in section E, in paragraph 8 of Part 3—
  - (i) for “Article 46a(1) of Council Directive [78/660/EEC](#) of 25 July 1978” substitute “ the United Kingdom provisions which implemented Article 20(1) of Directive 2013/34/EU ”;
  - (ii) for “Article 46a(1)(d) of that Directive” substitute “ those provisions ”.

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#### Commencement Information

**I46** Reg. 97 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**98.** In Annex 2, in point 1 for “Union” substitute “ United Kingdom ”.

#### Commencement Information

**I47** Reg. 98 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**99.** In Annex 3—

- (a) omit the heading;
- (b) in Part 1—
  - (i) in point 10, for “ESMA”, substitute “ the FCA ”;
  - (ii) in point 50, for “ESMA”, substitute “ the FCA ”;
  - (iii) in point 52, for “ESMA or any competent authority”, in each place it occurs, substitute “ the FCA ”;
  - (iv) in point 55, for “ESMA”, substitute “ the FCA ”;
- (c) in Part 2—
  - (i) in points 2, 3a, 3c, 5 and 6, for “ESMA” substitute “ the FCA ”;
  - (ii) omit points 7 and 8;
- (d) in Part 3, in point 4a, for “ESMA”, substitute “ the FCA ”.

#### Commencement Information

**I48** Reg. 99 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**100.** Omit Annex 4.

#### Commencement Information

**I49** Reg. 100 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

### Revocation of Commission Delegated Regulation (EU) No. 272/2012

**101.** Commission Delegated Regulation (EU) No 272/2012 of 7 February 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to credit rating agencies is revoked.

**Status:** This version of this part contains provisions that are prospective.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

#### Commencement Information

**I50** Reg. 101 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

#### Revocation of Commission Delegated Regulation (EU) No. 946/2012

**102.** Commission Delegated Regulation (EU) No. 946/2012 of 12 July 2012 supplementing Regulation [\(EC\) No 1060/2009](#) of the European Parliament and of the Council with regard to rules of procedure on fines imposed to credit rating agencies by the European Securities and Markets Authority, including rules on the right of defence and temporal provisions is revoked.

#### Commencement Information

**I51** Reg. 102 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

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

- Regulations power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 2](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)