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STATUTORY INSTRUMENTS

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**2019 No. 335**

**The Over the Counter Derivatives, Central Counterparties  
and Trade Repositories (Amendment, etc., and  
Transitional Provision) (EU Exit) Regulations 2019**

**PART 3**

**AMENDMENT AND REVOCATION OF RETAINED DIRECT EU LEGISLATION**

**CHAPTER 1**

**AMENDMENT OF THE EMIR REGULATION**

**Amendments to the EMIR regulation**

**9.** The EMIR regulation is amended in accordance with this Chapter.

**Subject matter and scope**

**10.**—(1) Article 1 is amended as follows.

(2) In paragraph 3, for the words from “point (18)(a)” to the end substitute “Articles 2(1)(24) and 2(1)(25A) of MIFIR”.

(3) In paragraph 4, for point (a) substitute—

“(a) the Bank of England and other public bodies in the United Kingdom charged with or intervening in the management of the public debt;”.

(4) In paragraph 5—

(a) in point (a), for the words from “Section 4.2” to the end of the point substitute “Article 117 of the Capital Requirements Regulation”;

(b) in point (b), for “point (18) of Article 4 of [Directive 2006/48/EC](#)” substitute “Article 4(1) (8) of the Capital Requirements Regulation”.

(5) For paragraph 6 substitute—

“**6.** The Treasury may by regulations amend the list set out in paragraph 4 of this Article.”.

**Definitions**

**11.**—(1) Article 2 is amended as follows.

(2) Before point (1) insert—

“(A1) “FSMA” means the Financial Services and Markets Act 2000(1);

(A2) “MIFIR” 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) 648/2012(2);

(A3) “Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) 648/2012;

(A4) “2013 Regulations” means the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013(3);

(A5) “Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(4);

(A6) “PRA-authorised person” has the meaning given in section 2B(5) of the FSMA(5);”.

(3) For point (1) substitute—

“(1) “CCP” means a body corporate or unincorporated association which 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;”.

(4) For point (4) substitute—

“(4) “trading venue” means a UK trading venue within the definition in Article 2(1) (16A) of the MIFIR;”.

(5) For point (5) substitute—

“(5) “derivative” or “derivative contract” means a financial instrument referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order;”.

(6) In point (7)—

(a) for the words “regulated market within the meaning of Article 4(1)(14) of [Directive 2004/39/EC](#)” substitute “UK regulated market within the meaning given in Article 2(1) (13A) of the MIFIR”;

(b) for “regulated market in accordance with Article 2a of this Regulation” substitute “a UK regulated market in accordance with an implementing act adopted by the Commission under Article 2a of this Regulation before exit day or in accordance with regulations made by the Treasury under that Article after exit day”.

(7) For point (8) substitute—

“(8) “financial counterparty” means:

(a) an investment firm within the meaning given in Article 2(1A) of the MIFIR which:

(i) has its registered office or head office in the United Kingdom;

(ii) has permission under Part 4A of the FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;

(iii) would require an authorisation given under [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending [Directive 2002/92/EC](#) and 2011/61/

(2) As amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/ ).

(3) [S.I. 2013/504](#).

(4) [S.I. 2001/544](#).

(5) Section 2B is inserted by section 6(1) of the Financial Services Act 2012 (c. 21).

- EU(6) (as it had effect immediately before exit day) if it had its registered office (or if it does not have a registered office, its head office) in an EEA state; and
- (iv) is not a firm which has permission under Part 4A of the FSMA to carry on regulated activities as an exempt investment firm, within the meaning given in regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(7);
- (b) a credit institution which is a CRR firm (within the meaning given in Article 4(1) (2A) of the Capital Requirements Regulation);
- (c) an insurance undertaking or a reinsurance undertaking within the meaning given in section 417 of the FSMA;
- (d) a UK UCITS (within the meaning given in section 237(3) of the FSMA) and, where relevant, its management company (within the meaning given in section 237(2) of the FSMA);
- (e) an occupational pension scheme within the meaning given in section 1(1) of the Pension Schemes Act 1993(8); or
- (f) an AIF (within the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013(9)) managed by an AIFM (within the meaning given in regulation 4 of those Regulations) authorised or registered in accordance with those Regulations;”.
- (8) In point (9), for “Union” substitute “United Kingdom”.
- (9) For point (13) substitute—
- “(13) “competent authority” means:
- (a) the relevant competent authority referred to in the legislation (or the relevant competent authority of the firm, institution, undertaking or other entity) referred to in paragraphs (a) to (f) of point (8);
- (b) the competent authority referred to in Article 10(5); or
- (c) the authority designated under Article 22;”.
- (10) In point (16)—
- (a) for “Articles 1 and 2 of Directive 83/349/EEC” substitute “section 1162 of the Companies Act 2006(10)”;
- (b) for the words from “the group of undertakings” in the second place where it appears to the end of the point substitute “a group of undertakings meeting the conditions in Article 113(6) of the Capital Requirements Regulation”.
- (11) In point (17), for the words from “of the activities” to the end of the point substitute “of the Annex I activities listed in points (2) to (12) and for this purpose “Annex I activities” has the meaning given in Article 4(1)(26A) of the Capital Requirements Regulation”.
- (12) In point (18), for the words from “Article 2(15)” to the end of the point substitute “Article 4(1)(21) of the Capital Requirements Regulation”.
- (13) In each of points (21) and (22), for “Articles 1 and 2 of Directive 83/349/EEC” substitute “section 1162 of the Companies Act 2006”.

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(6) OJ No. L 173, 12.6.2014, p.349.

(7) S.I. 2017/701.

(8) 1993 c.48. Section 1 is substituted by section 239 of the Pensions Act 2004 (c.35).

(9) S.I. 2013/1773.

(10) 2006 c.46.

(14) In point, (23), for “Article 1 of [Directive 83/349/EEC](#)” substitute “section 1162 of the Companies Act 2006”.

(15) In point (25), omit the words from “within the meaning” to “institutions”.

(16) After point (25) insert—

“(25A) “subscribed capital” comprises all amounts, regardless of their actual designations, which, in accordance with the legal structure of the institution concerned, are regarded under the law of any part of the United Kingdom as equity capital subscribed by the shareholders or other proprietors;”.

(17) For point (26) substitute—

“(26) “reserves” means reserves as set out in item K.IV of balance sheet format 1 in Section B of Part 1 of Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008<sup>(11)</sup> and profits and losses brought forward as a result of the application of the final profit or loss;”.

(18) In point (27), for “national company law” substitute “company law applying in any part of the United Kingdom”.

### **Equivalence decisions for the purposes of the definition of OTC derivatives**

**12.**—(1) Article 2a is amended as follows.

(2) In paragraph 1—

- (a) for “a regulated market within the meaning of Article 4(1)(14) of [Directive 2004/39/EU](#)” substitute “a UK regulated market within the meaning given in Article 2(1)(13A) of the MIFIR”;
- (b) for “laid down in Title III of that Directive” substitute “resulting from provisions of the law of the United Kingdom relied on before exit day to implement Title 3 of [Directive 2014/65/EU](#)”;
- (c) for the words from “the Commission” to the end of the paragraph substitute “the Treasury”.

(3) In paragraph 2—

- (a) for “The Commission may adopt implementing acts” substitute “The Treasury may make regulations”;
- (b) for “laid down in Title III of [Directive 2004/39/EC](#)” substitute “resulting from provisions of the law of the United Kingdom relied on before exit day to implement Title 3 of [Directive 2014/65/EU](#)”;
- (c) omit from “Those implementing acts” to the end of the paragraph.

(4) In paragraph 3—

- (a) for “The Commission and ESMA” “The Treasury and the FCA”;
- (b) for “implementing act referred to in” substitute “regulations made by the Treasury under”.

### **Intragroup transactions**

**13.**—(1) Article 3 is amended as follows.

(2) In paragraph 1—

- (a) for “Union” substitute “United Kingdom”;
- (b) at the end insert “before exit day and the Treasury have made regulations under that Article in respect of that third country after exit day”.

<sup>(11)</sup> [S.I. 2008/410](#). Relevant amending instrument is [S.I. 2015/980](#).

- (3) In paragraph 2—
  - (a) in point (a)—
    - (i) in point (i)—
      - (aa) for “Union” substitute “United Kingdom”;
      - (bb) at the end insert “before exit day and the Treasury have made regulations under that Article in respect of that third country after exit day”;
    - (ii) in point (iv) after “control procedures;” insert “or”;
  - (b) omit points (b) and (c);
  - (c) in point (d)—
    - (i) for “Union” substitute “United Kingdom”;
    - (ii) at the end insert “before exit day and the Treasury have made regulations under that Article in respect of that third country after exit day”.
- (4) In paragraph 3, for point (b) substitute—
  - “(b) covered by the same supervision on a consolidated basis in accordance with the Capital Requirements Regulation, or in relation to a group the parent undertaking of which has its head office in a third country, the same supervision on a consolidated basis by a third-country competent authority verified as equivalent to that governed by the principles laid down in accordance with the Capital Requirements Regulation.”.

### **Clearing obligation**

- 14.—(1) Article 4 is amended as follows.
- (2) In paragraph 1—
  - (a) in point (a), in points (iv) and (v), for “Union” wherever it appears substitute “United Kingdom”;
  - (b) in point (b), in point (ii)—
    - (i) for “notification as referred to in Article 5(1)” substitute “authorisation of a CCP to clear a class of OTC derivatives under Article 14 or 15”;
    - (ii) for “Commission” substitute “Bank of England”.
- (3) In paragraph 2, in the second sub-paragraph—
  - (a) in point (a)—
    - (i) for “Union” substitute “United Kingdom”;
    - (ii) for “their respective competent authorities” substitute “the FCA”;
    - (iii) for “the competent authorities” both times it appears substitute “the FCA”;
    - (iv) omit from “If there is disagreement between” to the end;
  - (b) in point (b)—
    - (i) for “a Member State” substitute “the United Kingdom”;
    - (ii) for “Union” both times it appears substitute “United Kingdom”;
    - (iii) for “its competent authority” substitute “the FCA”;
    - (iv) omit from “The competent authority shall” to the end.
- (4) For paragraph 4, substitute—
  - “4. The FCA may make technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the United Kingdom or the

cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 1(a)(v).

The Bank of England may make technical standards in relation to CCPs, and the FCA may make technical standards in relation to all other cases, specifying the types of indirect contractual arrangements that meet the conditions referred to in the second sub-paragraph of paragraph 3.”.

### **Clearing obligation procedure**

**15.**—(1) Article 5 is amended as follows.

(2) Omit paragraph 1.

(3) For paragraph 2 substitute—

“**2.** Technical standards may be made as follows:

- (a) the Bank of England may make technical standards specifying the class or classes of OTC derivatives that should be subject to the clearing obligation referred to in Article 4;
- (b) the Bank of England may make technical standards for financial counterparties that are PRA-authorised persons and the FCA may make technical standards for all other cases, specifying the date or dates from which the clearing obligation takes effect, including any phase in and the categories of counterparties to which the obligation applies;
- (c) the Bank of England may make technical standards specifying the minimum remaining maturity of the OTC derivative contracts referred to in paragraph 1(b)(ii) of Article 4.

In developing the technical standards under this paragraph, the Bank and the FCA shall not prejudice the transitional provision relating to C6 energy derivative contracts as laid down in Article 89a.”.

(4) For paragraph 3 substitute—

“**3.** The Bank of England shall identify in accordance with the criteria set out in points (a), (b) and (c) of paragraph 4 the classes of derivatives that should be subject to the clearing obligation provided in Article 4 but for which no CCP has yet received authorisation.”.

(5) In paragraph 4—

- (a) in the opening words of the first sub-paragraph, for “draft regulatory” substitute “development by the Bank of England of”;
- (b) in the second sub-paragraph—
  - (i) omit “draft regulatory”;
  - (ii) for “ESMA” substitute “the Bank of England”;
  - (iii) for “Union” substitute “United Kingdom”;
- (c) omit the words from “In order to ensure consistent application” to the end of the paragraph.

(6) In paragraph 5, for the words from the beginning to “paragraph 2(b)” substitute “In developing these technical standards, the Bank of England and the FCA”.

### **Public register**

**16.**—(1) Article 6 is amended as follows.

(2) In paragraph 1—

- (a) for “ESMA” substitute “The Bank of England”;
- (b) for “ESMA’s” substitute “the Bank of England’s”.
- (3) In paragraph 2—
  - (a) in point (b), after “authorised” insert “(and the date of their authorisation to clear a class of derivatives under Article 14 or 15)”;
  - (b) in point (d), for “ESMA” substitute “the Bank of England”;
  - (c) omit point (f).
- (4) In paragraph 3, for “ESMA” substitute “the Bank of England.
- (5) For paragraph 4, substitute—
  - “4. The Bank of England may make technical standards specifying the details to be included in the public register referred to in paragraph 1.”.

#### **Access to a CCP**

- 17.—(1) Article 7 is amended as follows.
- (2) Omit paragraph 5.
- (3) In paragraph 6, for words from “the technical standards” to the end of the paragraph substitute “Commission Delegated Regulation (EU) 2017/581 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties”.

#### **Access to a trading venue**

- 18. In Article 8, for paragraph (5) substitute—
  - “5. The FCA may make technical standards specifying the notion of liquidity fragmentation.”.

#### **Reporting obligation**

- 19.—(1) Article 9 is amended as follows.
- (2) For paragraph 3 substitute—
  - “3. Except where the FCA has suspended the reporting obligation under paragraph 3A, where a trade repository is not available to record the details of a derivative contract:
    - (a) counterparties and CCPs shall ensure that such details are reported to the FCA; and
    - (b) the FCA shall ensure that all the relevant entities referred to in paragraph 3 of Article 81 have access to all the details of derivative contracts they need to fulfil their respective responsibilities and mandates
  - 3A. The FCA may suspend the reporting obligation in paragraph 1. Before it does so it must:
    - (a) provide a report to the Treasury setting out its reasons for suspending the reporting obligation;
    - (b) specify a date:
      - (i) on which the suspension of that obligation will end;
      - (ii) by which it anticipates counterparties and CCPs will be able to report details of any derivative contracts as set out in paragraph 3; and

(c) consult the Treasury and the Bank of England.

**3B.** The FCA may, with the consent of the Treasury, suspend the reporting obligation under paragraph 3A for a period of up to one year or such longer period as the Treasury may by regulations specify.

**3C.** Details of any derivative contracts that counterparties and CCPs have concluded, and of any modification or termination of the contract, that have not been reported to a trade repository in accordance with the reporting obligation in paragraph 1 must be reported by those counterparties and CCPs to a trade repository following the end of the suspension of the reporting obligation in paragraph 3a by no later than the end of the period specified by the FCA for this purpose.”.

(3) In paragraph 4, for “ESMA” substitute “the FCA”.

(4) For paragraph 5 substitute—

“**5.** The Bank of England may make technical standards for CCPs, and the FCA may make technical standards for all other cases specifying the details and type of the reports referred to in paragraphs 1 and 3 for the different classes of derivatives.

The reports referred to in paragraphs 1 and 3 shall specify at least:

- (a) the parties to the derivative contract and, where different, the beneficiary of the rights and obligations arising from it;
- (b) the main characteristics of the derivative contracts, including their type, underlying maturity, notional value, price, and settlement date.”.

(5) For paragraph 6 substitute—

“**6.** The Bank of England may make technical standards for CCPs, and the FCA may make technical standards in all other cases specifying:

- (a) the format and frequency of the reports referred to in paragraphs 1 and 3 for the different classes of derivatives;
- (b) the date by which derivative contracts are to be reported, including any phase-in for contracts entered into before the reporting obligation applies.”.

## **Non-financial counterparties**

**20.**—(1) Article 10 is amended as follows.

(2) In paragraph 1, in point (a)—

- (a) omit “ESMA and”;
- (b) omit “thereof”.

(3) In paragraph 2 for “authority designated in accordance with paragraph 5” substitute “FCA”.

(4) For paragraph 4 substitute—

“**4.** The FCA may make technical standards specifying:

- (a) criteria for establishing which OTC derivative contracts are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity referred to in paragraph 3; and
- (b) values of the clearing thresholds, which are determined taking into account the systemic relevance of the sum of net positions and exposures per counterparty and per class of OTC derivatives.

The FCA shall periodically review the thresholds specified under point (b) and, where necessary, make technical standards to amend them.”.



(5) For paragraph 5 substitute—

“5. The authority responsible for ensuring that the obligation under paragraph 1 is met is the FCA.”.

**Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP**

21.—(1) Article 11 is amended as follows.

(2) In paragraph 5, for “same Member State” substitute “United Kingdom”.

(3) Omit paragraphs 6 and 7;

(4) In paragraph 8, for “Union”, in both places where it appears, substitute “United Kingdom”.

(5) In paragraph 9, in the first sub-paragraph, for “Union” substitute “United Kingdom”.

(6) Omit paragraph 10.

(7) Omit the second sub-paragraph of paragraph 11.

(8) In paragraph 12, for “Union” in both places where it appears, “United Kingdom”.

(9) For paragraph 13 substitute—

“13. The Bank of England shall regularly monitor the activity in derivatives not eligible for clearing in order to identify cases where a particular class of derivatives may pose systemic risk. The FCA and the PRA shall regularly monitor the activity in derivatives not eligible for clearing in order to prevent regulatory arbitrage between cleared and non-cleared derivative transactions.

In particular—

(a) the Bank of England shall —

(i) take action in accordance with paragraph 3 of Article 5; and

(ii) review the technical standards on margin requirements laid down in Article 41;

(b) the FCA and the PRA shall review the technical standards on margin requirements laid down in paragraph 15.”.

(10) In paragraph 14—

(a) for the words from the beginning to “regulatory” where it first appears substitute “The FCA may make”;

(b) in point (c), for “paragraphs 7, 9 and 10” substitute “paragraph 9”;

(c) omit point (e);

(d) omit from “ESMA shall submit” to the end of the paragraph.

(11) After paragraph 14 insert—

“14A. The FCA may make technical standards specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the United Kingdom or the cases where it is necessary or appropriate to prevent the evasion of any provision of this Regulation as referred to in paragraph 12.”

(12) For paragraph 15 substitute—

“15. The PRA may make technical standards for financial counterparties that are PRA-authorised persons and the FCA may make technical standards for all other cases, specifying the risk-management procedures, including the levels and type of collateral and segregation arrangements, required for compliance with paragraph 3.”.

(13) After paragraph 15 insert—

“16. The FCA may make technical standards specifying the procedures for the counterparties and the relevant competent authorities to be followed when applying exemptions under paragraphs 8 and 9.

17. The PRA may make technical standards in respect of financial counterparties that are PRA-authorised persons in respect of United Kingdom to United Kingdom intragroup exemptions (see paragraph 5) and the FCA may make technical standards in all other cases, specifying the applicable criteria referred to in paragraphs 5, 8 and 9, including in particular what should be considered as a practical or legal impediment to the prompt transfer of own funds and repayment of liabilities between the counterparties.”.

### **Penalties**

22.—(1) Article 12 is amended as follows.

(2) For paragraph 1 substitute—

“1. Regulation 9 of the 2013 Regulations sets out the penalties applicable to infringements of the rules under this Title.”.

(3) Omit paragraph 2.

### **Mechanism to avoid duplicative or conflicting rules**

23.—(1) Article 13 is amended as follows.

(2) Omit paragraph 1.

(3) In paragraph 2—

(a) for “The Commission may adopt implementing acts declaring” substitute “The Treasury may by regulations determine”;

(b) omit from “Those implementing acts” to the end of the paragraph.

(4) In paragraph 3, for “An implementing act” substitute “Regulations”.

(5) Omit paragraph 4.

### **Conditions for making technical standards**

24. After Article 13 insert—

#### *“Article 13a*

#### *Conditions for making technical standards*

The FCA, the PRA and the Bank of England, as appropriate, must co-ordinate the exercise of their functions when making technical standards under:

- (a) the second sub-paragraph of paragraph 4 of Article 4,
- (b) paragraph 5 of Article 9,
- (c) paragraph 6 of Article 9,
- (d) paragraph 15 of Article 11, or
- (e) paragraph 17 of Article 11,

with a view to ensuring that the technical standards made under each of those provisions are compatible.”.

### **Authorisation of a CCP**

**25.**—(1) Article 14 is amended as follows.

(2) In paragraph 1—

- (a) for “legal person established in the Union” substitute “body corporate or unincorporated association established in the United Kingdom”;
- (b) for “the competent authority of the Member State where it is established” substitute “its competent authority”.

(3) Omit paragraphs 2 and 5.

### **Extension of activities and services**

**26.** In Article 15, omit paragraph 2.

### **Capital requirements**

**27.** In Article 16, in paragraph 3—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit the words from “EBA shall submit” to the end of the paragraph.

### **Procedure for granting and refusing authorisation**

**28.**—(1) Article 17 is amended as follows.

(2) In paragraph 1, omit “of the Member State where it is established”.

(3) In paragraph 2, omit the second sentence.

(4) In paragraph 3, omit the words from “and the members” to the end of the paragraph.

(5) In paragraph 4—

- (a) for “notified as a system pursuant to [Directive 98/26/EEC](#)” substitute “a designated system as defined in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999<sup>(12)</sup>”;
- (b) omit from “The competent authority shall duly consider” to the end of the paragraph.

(6) Omit paragraphs 5 and 6.

### **College**

**29.** Omit Article 18.

### **Opinion of the college**

**30.** Omit Article 19.

### **Withdrawal of authorisation**

**31.**—(1) Article 20 is amended as follows.

(2) In paragraph 1, for “Without prejudice to Article 22(3), the” substitute “The”.

(3) Omit paragraphs 2 to 4, 6 and 7.

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(12) [S.I. 1999/2979](#).

**Review and evaluation**

32.—(1) Article 21 is amended as follows.

(2) In paragraph 1, for the words from the beginning to “authorities” substitute “The competent authority”.

(3) In paragraph 3 and 5, for “competent authorities” substitute “competent authority”.

(4) Omit paragraphs 4 and 6.

**Competent authority**

33. For Article 22 substitute—

*“Article 22**Competent authority*

The competent authority responsible for carrying out the duties resulting from this Regulation for the authorisation and supervision of CCPs is the Bank of England.”.

**Cooperation**

34. Omit Chapter 3 (Articles 23 and 24).

**Organisational requirements: general provisions**

35. In Article 26, in paragraph 9—

(a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;

(b) omit from “ESMA shall submit” to the end of the paragraph.

**Record keeping**

36.—(1) Article 29 is amended as follows.

(2) In paragraph 3, omit from “, to ESMA” to the end of the paragraph.

(3) In paragraph 4—

(a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;

(b) omit from “ESMA shall submit” to the end of the paragraph;

(4) In paragraph 5—

(a) for the words from the beginning to “implementing” where it first appears substitute “The Bank of England may make”;

(b) omit from “ESMA shall submit” to the end of the paragraph.

**Information**

37.—(1) Article 31 is amended as follows.

(2) In the title, for “competent authorities” substitute “competent authority.”

(3) In paragraph 4—

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

(b) for point (b) substitute—

“(b) a person not subject to supervision:

(i) under this regulation; or

(ii) in the United Kingdom because the person is not—

(aa) an investment firm within the meaning given in Article 2(1A) of the MIFIR which has permission under Part 4A of the FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;

(bb) a credit institution which is a CRR firm (within the meaning given in Article 4(1)(2A) of the Capital Requirements Regulation) which has permission under Part 4A of FSMA to carry on the regulated activity of accepting deposits within the meaning given in article 5 of the Regulated Activities Order;

(cc) an insurance undertaking and reinsurance undertaking within the meaning given in section 417 of the FSMA;

(dd) a UK UCITS (within the meaning given in section 237(3) of the FSMA) and, where relevant, its management company (within the meaning given in section 237(2) of the FSMA);

(ee) an occupational pension scheme within the meaning given in section 1(1) of the Pension Schemes Act 1993<sup>(13)</sup>; or

(ff) an AIF (within the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013<sup>(14)</sup>) managed by an AIFM (within the meaning given in regulation 4 of those Regulations) authorised or registered in accordance with those Regulations.

In this point, “regulated activity” has the meaning given in section 22 of the FSMA.”.

(4) In paragraph 5—

(a) for the words from “The competent authority” to “national law,” substitute “Subject to any provision of the law applying in any part of the United Kingdom,”;

(b) for the words from “However, Member States” to the end of the paragraph substitute “The competent authority may make such disclosure in the absence of a request by the proposed acquirer.”.

(5) For paragraph 8 substitute—

“8. The competent authority shall not impose requirements for notification and approval of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Regulation.”.

## Assessment

**38.**—(1) Article 32 is amended as follows.

(2) In paragraph 1, in point (d), for the words from “money laundering” to “[Directive 2005/60/EC](#)” substitute “terrorist financing or money laundering within the meaning given respectively in paragraph 2(1) and (2) of Schedule 7 to the Counter-Terrorism Act 2008<sup>(15)</sup>”.

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<sup>(13)</sup> 1993 c.48. Section 1 is substituted by section 239 of the Pensions Act 2004 (c.35).

<sup>(14)</sup> S.I. 2013/1773.

<sup>(15)</sup> 2008 c.28.

- (3) In paragraph 2, for “competent authorities” substitute “competent authority”.
- (4) In paragraph 3—
  - (a) for Member States” substitute “The competent authority”;
  - (b) omit “allow their competent authorities to”.
- (5) In paragraph 4—
  - (a) for “Member States” in both places where those words occur substitute “The competent authority”;
  - (b) for “provided to the competent authorities” substitute “made available”.
- (6) In paragraph 6—
  - (a) for “The relevant competent authorities” substitute “The Bank of England, the PRA and the FCA, as appropriate”;
  - (b) in each of points (a) to (c) omit “authorised in another Member State”.
- (7) In paragraph 7, for “The competent authorities” in both places where those words occur substitute “The Bank of England, the PRA and the FCA, as appropriate”.

#### **Business continuity**

- 39.** In Article 34, in paragraph 3—
  - (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
  - (b) omit from “ESMA shall submit” to the end of the paragraph.

#### **Outsourcing**

- 40.** In Article 35, in paragraph 1, in point (j), for “Union” substitute “United Kingdom”.

#### **Transparency**

- 41.** In Article 38, in paragraph 5, omit “, after consulting ESMA,”.

#### **Segregation and portability**

- 42.** In Article 39, in paragraph 8, for the words from “Article 2(1)(c)” to “collateral arrangements” substitute “regulation 3(1) of the Financial Collateral Arrangements (No.2) Regulations 2003(16)”.

#### **Margin requirements**

- 43.**—(1) Article 41 is amended as follows.
- (2) In paragraph 2, omit “and subject to an opinion in accordance with Article 19”.
- (3) In paragraph 5—
  - (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
  - (b) omit from “ESMA shall submit” to the end of the paragraph.

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(16) [S.I. 2003/3226](#). Relevant amending instrument is [S.I. 2010/2993](#).

### **Default fund**

44. In Article 42, in paragraph 5—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

### **Liquidity risk controls**

45. In Article 44, in paragraph 2—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

### **Default waterfall**

46. In Article 45, in paragraph 5—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

### **Collateral requirements**

47. In Article 46, in paragraph 3—

- (a) for the words from the beginning to “regulatory” where it first appear substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

### **Investment policy**

48. In Article 47, in paragraph 8—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

### **Default procedures**

49. In Article 48, in paragraph 3, for the words from “ESMA” to the end of the paragraph substitute “the authority responsible for the supervision of the defaulting clearing member”.

### **Review of models, stress testing and back testing**

50.—(1) Article 49 is amended as follows.

(2) In paragraph 1—

- (a) omit “and ESMA”;
- (b) for “their” substitute “its”;
- (c) omit from “The adopted models” to the end of the paragraph;

(3) In paragraph 4—

- (a) for the words from the beginning to “regulatory” where it first appears substitute “The Bank of England may make”;
- (b) omit from “ESMA shall submit” to the end of the paragraph.

#### **Calculation of $K_{cep}$**

**51.** In Article 50a, in paragraph 4—

- (a) for the words from “EBA” to “specify” substitute “the Bank of England, having consulted the PRA and the FCA, may make technical standards specifying”;
- (b) omit from “EBA shall submit” to the end of the paragraph.

#### **Reporting of information**

**52.** In Article 50c, in paragraph 3—

- (a) for the words from the beginning to “specify” substitute “The Bank of England, having consulted the PRA and the FCA, may make technical standards specifying”;
- (b) omit from “EBA shall submit” to the end of the paragraph.

#### **Risk management**

**53.** In Article 52, in paragraph 1, for “[Directive 98/26/EC](#)” substitute “the Financial Markets and Insolvency (Settlement Finality) Regulations 1999<sup>(17)</sup>”.

#### **Provision of margins among CCPs**

**54.** In Article 53, in paragraph 3, for “notified under [Directive 98/26/EEC](#)” substitute “that are designated systems within the meaning given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999”.

#### **Approval of interoperability arrangements**

**55.**—(1) Article 54 is amended as follows.

(2) In paragraph 1, for “competent authorities of the CCPs involved” substitute “CCP’s competent authority”.

(3) In paragraph 2—

- (a) for “competent authorities” substitute “competent authority”;
- (b) omit the words from “or authorised” to “three years”.

(4) For paragraph 3 substitute—

“3. Where the competent authority considers that the requirements laid down in paragraph 2 are not met, it shall provide explanations in writing regarding its risk considerations to the CCPs involved.”.

(5) Omit paragraph 4.

#### **Trade Repositories**

**56.**—(1) Omit Articles 60 to 70.

(2) For Article 71 substitute—

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(17) [S.I. 1999/2979](#).



*“Article 71*

*Withdrawal of registration*

1. The FCA may, on its own initiative, withdraw the registration of a trade repository where the trade repository:
  - (a) expressly renounces the registration or has provided no services 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 for registration.
2. The FCA may also, on its own initiative, withdraw the registration of a trade repository where it is desirable to do so to advance one or more of its operational objectives set out in section 1B(3) of the FSMA.
3. The FCA may, on an application by a trade repository, withdraw the registration of the trade repository.
4. The decision to withdraw the registration of a trade repository under paragraph 1, 2 and 3 shall be reflected in the Register.

*Article 71a*

*Publication and notification of decisions about registration of trade repositories*

1. The FCA must publish on its website a list of trade repositories registered in accordance with Article 58 (“the Register”).
2. On the adoption of a decision under Article 58 or 71, the FCA must notify its decision to the trade repository concerned.
3. A refusal of an application to register under Article 58 comes into effect on the fifth working day following the day on which it is adopted.
4. A withdrawal of registration under Article 71 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. A decision to withdraw a registration on the FCA’s own initiative under paragraph 1 or 2 of Article 71 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).
6. If the decision referred to in paragraph 2 is:
  - (a) to refuse the application for registration made under Article 58;
  - (b) to exercise the FCA’s power under paragraph 1 or 2 of Article 71; or
  - (c) to refuse an application made by a trade repository under paragraph 3 of Article 71,the FCA must give the trade repository a written notice.
7. A written notice under paragraph 6 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 trade repository 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 (“the Tribunal”) within such period as may be specified in the notice; and
- (e) indicate the procedure on a reference to the Tribunal.

**8.** If the trade repository requests a review of the decision made by the FCA (“the original decision”) the FCA must consider any written representations made by the trade repository and review the original decision.

**9.** On a review under paragraph 8, the FCA may adopt any decision (“the new decision”) it could have adopted on the application.

**10.** The FCA must give the trade repository written notice of its decision on the review.

**11.** This paragraph applies to a decision—

- (a) to maintain a decision to refuse an application for registration, made under Article 58;
- (b) to refuse to revoke a decision made under paragraph 1 or 2 of Article 71; or
- (c) to maintain a decision to refuse an application from a trade repository under paragraph 3 of Article 71.

**12.** A written notice in relation to a decision to which paragraph 11 applies 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 trade repository that it may, within such period as may be specified in the notice, refer the new decision to the Tribunal; and
- (e) indicate the procedure on a reference to the Tribunal.

#### *Article 71b*

##### Reference to the Tribunal

**1.** A trade repository may, subject to paragraph 2, refer to the Tribunal the FCA’s decision to:

- (a) refuse to register the trade repository under Article 58;
- (b) exercise its power under paragraph 1 or 2 of Article 71; or
- (c) refuse the trade repository’s application under paragraph 3 of Article 71.

**2.** Where there is a review under paragraph 8 of Article 71a, paragraph 1 applies only in relation to the FCA’s decision in response to that review.”.

(3) Omit Articles 72 to 74.

(4) Article 75 is amended in accordance with paragraphs (5) to (9).

(5) In the heading, omit “and international agreements”.

(6) In paragraph 1—

- (a) for “The Commission may adopt an implementing act determining” substitute “The Treasury may by regulations determine”;
  - (b) at the end of point (a) insert “including compliance with the requirements to give direct and immediate access to the data to the entities referred to in paragraph 3 of Article 81”;
  - (c) for the second sub-paragraph substitute “Regulations made under the first sub-paragraph must also specify the relevant authorities in third countries which are entitled to access data held by trade repositories established in the United Kingdom.”.
- (7) Omit paragraph 2.
- (8) In paragraph 3—
- (a) for the words from the beginning to “ESMA” substitute “The FCA”;
  - (b) in point (a) for the words from “ESMA” to “Regulation” substitute “the FCA”;
- (9) Omit paragraph 4.
- (10) In Article 76—
- (a) for “ESMA” where it first appears substitute “the FCA”;
  - (b) for “ESMA” in the second place where it appears substitute “The FCA”;
  - (c) for “Union trade repositories” in both places where it appears substitute “trade repositories established in the United Kingdom”.
- (11) Article 77 is amended in accordance with paragraphs (12) to (14).
- (12) In paragraph 1—
- (a) for “Union” substitute “United Kingdom”;
  - (b) for “ESMA” substitute “the FCA”;
- (13) In paragraph 2—
- (a) for “ESMA”, wherever it appears, substitute “the FCA”;
  - (b) in the first sub-paragraph, omit the words from “which” to the end of the sub-paragraph;
  - (c) in the second sub-paragraph, after “receipt of the application” insert “or the date on which a cooperation arrangement with a third country prescribed in accordance with paragraph 3 of Article 75 is entered into, whichever is later”.
- (14) After paragraph 2 insert—
- “3. The FCA may grant recognition to a trade repository established in a third country only if:
- (a) the trade repository is authorised and subject to supervision in that third country;
  - (b) the third country is recognised by regulations made by the Treasury as one in which the arrangements for trade repositories are equivalent to those in the United Kingdom (in accordance with paragraph 1 of Article 75); and
  - (c) cooperation arrangements entered into with the third country (in accordance with paragraph 3 of Article 75) provide for the FCA to have immediate and continuous access to the information needed for the performance of their duties, including information on derivative contracts held in trade repositories established in the third country.
4. The FCA may, on its own initiative, withdraw the recognition of a trade repository granted under paragraph 2 where the trade repository:
- (a) no longer meets the conditions for recognition in points (a) to (c) of paragraph 3;

- (b) expressly renounces the recognition or has provided no services for the preceding 6 months; or
- (c) obtained the recognition by making false statements or by any other irregular means.

**5.** A trade repository must, without undue delay, notify the FCA of any material changes affecting the condition for recognition in point (a) of paragraph 3.”.

(15) In Article 81, in paragraph 3, after point (c) insert—

- “(d) the relevant authorities of a third country where the third country is recognised by regulations made by the Treasury as one in which the arrangements for trade repositories are equivalent to those in the United Kingdom (in accordance with paragraph 1 of Article 75);
- (e) the relevant authorities of a third country that has entered into a cooperation arrangement with the FCA as referred to in Article 76.”.

(16) Omit Article 82.

### **Professional secrecy**

**57.**—(1) Article 83 is amended as follows.

(2) In paragraph 1 omit—

- (a) “designated in accordance with Article 22 and the authorities referred to in Article 81(3), for ESMA”;
- (b) “or ESMA”.

(3) In paragraph 3, omit “ESMA,” in both places where it appears.

(4) In paragraph 4 omit—

- (a) “ESMA,”;
- (b) “or the relevant central banks”;
- (c) “competent authority or other”.

(5) In paragraph 5, for the words from “national law” to the end of the paragraph substitute “any provision of the law applying in any part of the United Kingdom”.

### **Exchange of information**

**58.** Omit Article 84.

### **Transitional and final provisions**

**59.**—(1) At the beginning of Title 9 before Article 85 insert—

*“Article 84a*

*Regulations*

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

**2.** Any power to make regulations under this Regulation includes power to make:

- (a) different provision for different purposes;
- (b) consequential, supplementary, incidental, transitional, transitory or saving provision.

3. A statutory instrument containing regulations under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (2) Omit Articles 85 to 87.
- (3) In Article 88—
- (a) in paragraph 1—
- (i) for “ESMA shall” substitute “The Bank of England and the FCA must each, where appropriate,”;
- (ii) in paragraphs (c), (e) and (f), for “Union” wherever it appears substitute “United Kingdom”;
- (b) omit paragraph 2;
- (c) in paragraph 3, for “All websites” substitute “The websites”.
- (4) In Article 89—
- (a) omit paragraphs 3 to 5;
- (b) for paragraph 5a substitute—
- “5A. Until 15 December 2020 or until a decision is made under Article 25 on the recognition of a CCP, whichever is earlier, that CCP shall apply the treatment specified in the second sub-paragraph of this paragraph.
- Until the deadline defined in the first sub-paragraph of this paragraph, and subject to the third sub-paragraph of this paragraph, where the CCP neither has a default fund nor has in place a binding arrangement with its clearing members that allows it to use all or part of the initial margin received from its clearing members as if they were pre-funded contributions, the information it is to report in accordance with paragraph 1 of Article 50c shall include the total amount of initial margin it has received from its clearing members.
- The Treasury may by regulations extend the deadline referred to in the first sub-paragraph by 12 months.”;
- (c) omit paragraphs 6 to 9.
- (5) After Article 89 insert—

*“Article 89a*

*Further transitional provision*

1. Until 3 January 2021:

- (a) the clearing obligation set out in Article 4 and the risk mitigation procedures set out in paragraph 3 of Article 11 do not apply to C6 energy derivative contracts entered into by non-financial counterparties that meet the conditions in paragraph 1 of Article 10 of this Regulation or by non-financial counterparties that are authorised for the first time as investment firms on or after 3 January 2018; and
- (b) such C6 energy derivative contracts are not considered to be OTC derivative contracts for the purposes of the clearing threshold set out in Article 10.

C6 energy derivative contracts benefiting from the transitional regime set out in point (a) shall be subject to all other requirements laid down in this Regulation.

2. The FCA shall determine whether paragraph 1 applies to the contract concerned. The FCA shall publish on its website a list of those C6 energy derivative contracts to which that paragraph does apply.

3. In this Article:

“C6 energy derivative contracts” means options, futures, swaps, and any other derivative contracts mentioned in paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order relating to coal or oil that are traded on a UK OTF and must be physically settled;

“investment firms” means investment firms within point (a) of point (8) of Article 2;

“UK OTF” has the meaning given in Article 2(1)(13A) of the MIFIR.”.

(6) Omit Articles 90 and 91.

**List of infringements referred to in paragraph 1 of Article 65**

**60.** Omit Annex 1.

**List of the coefficients linked to aggravating and mitigating factors for the application of paragraph 3 of Article 65**

**61.** Omit Annex 2,