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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

#### **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 ”;

**Changes to legislation:** The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019, Section 21 is up to date with all changes known to be in force on or before 29 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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, [<sup>F1</sup>referred to in paragraph 3, and the supervisory procedures to ensure initial and ongoing validation of those risk-management procedures. ”].

- (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.”.

**F1** Words in reg. 21(12) substituted (30.10.2019) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) \(No. 2\) Regulations 2019 \(S.I. 2019/1416\)](#), regs. 1(2), **18**

#### Commencement Information

**II** Reg. 21 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

**Changes to legislation:**

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

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