
STATUTORY INSTRUMENTS

2019 No. 542

**The Transparency of Securities Financing Transactions
and of Reuse (Amendment) (EU Exit) Regulations 2019**

PART 3

Amendment of retained direct EU legislation

Amendment of the SFT regulation

4. The SFT regulation is amended as follows.

5.—(1) In Articles 2 to 20, for “Union” in each place it occurs substitute “United Kingdom”.

(2) In Articles 4 to 20, for “ESMA” in each place it occurs substitute “the FCA”.

(3) The amendments made by paragraph (1) do not apply to occurrences of “Union” or “ESMA” amended by another provision within these Regulations.

6. In Article 2—

(a) in paragraph 1—

(i) for point (b) substitute—

“(b) management companies, managers and operators of UCITS and UCITS investment companies;”;

(ii) in point (c), for “in accordance with [Directive 2011/61/EU](#)” substitute “or registered in accordance with the Alternative Investment Fund Managers Regulations 2013⁽¹⁾”;

(b) in paragraph (2), for point (a) substitute—

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

(c) in paragraph (3), for “to which a member of the ESCB is a counterparty” substitute—

“to which:

(a) the Bank of England; or

(b) another United Kingdom body charged with, or intervening in, the management of the public debt,

is a counterparty.”;

(d) for paragraph (4) substitute—

“(4) The Treasury may by statutory instrument amend the list set out in paragraph (2) of this Article.”.

7. In Article 3—

(1) [S.I. 2013/1773](#).

- (a) in paragraph (3), for points (a) to (h) substitute—
- “(a) an investment firm within the meaning given in Article 2(1A)(2) of 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 authorisation under [Directive 2014/65/EU](#)(3) (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 offices) 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 of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(4);
- (b) a credit institution which is a CRR firm (within the definition in Article 4(1)(2A)(5) of the Capital Requirements Regulation);
- (c) an insurance undertaking or a reinsurance undertaking;
- (d) a UK UCITS (within the definition in section 237(3)(6) of the FSMA) and, where relevant, its management company (within the definition in section 237(2)(7) of the FSMA);
- (e) an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993(8);
- (f) an AIF managed by AIFMs (within the definition in regulation 4 of the Alternative Investment Fund Managers Regulations 2013) authorised or registered in accordance with those Regulations;
- (g) a CCP authorised in accordance with Regulation (EU) No 648/2012;”;
- (b) in paragraph (12), for “Article 5 of [Directive 2002/47/EC](#)” substitute “regulation 16 of the Financial Collateral Arrangements (No.2) Regulations 2003(9)”;
- (c) in paragraph (13), for “point (b) of Article 2(1) of [Directive 2002/47/EC](#)” substitute “regulation 3 of the Financial Collateral Arrangements (No.2) Regulations 2003”;
- (d) in paragraph (14), for “point (c) of Article 2(1) of [Directive 2002/47/EC](#)” substitute “regulation 3 of the Financial Collateral Arrangements (No.2) Regulations 2003”;
- (e) in paragraph (16), for “point (15) of Article 4(1) of [Directive 2014/65/EU](#)” substitute “regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017/701”;
- (f) after paragraph (18) insert—
- “(19) “AIF” has the meaning given in the definition in regulation 3 of the Alternative Investment Fund Managers Regulations 2013;

(2) Article 2(1A) is prospectively inserted by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 [S.I. 2018/1403](#) which comes into force on exit day.

(3) [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 [Directive 2011/61/EU](#) Text with EEA relevance.

(4) [S.I. 2017/701](#).

(5) Article 4(1)(2A) is prospectively inserted by the Capital Requirements (Amendment) (EU Exit) Regulations 2018 [S.I. 2018/1401](#) which come into force on exit day.

(6) The definition of “UK UCITS” was inserted by [S.I. 2011/1613](#) and amended by [S.I. 2013/1388](#).

(7) The definition of “management company” was inserted by [S.I. 2011/1613](#).

(8) 1993 c. 48. Section 1 was amended by the Pensions Act 2004 c. 35.

(9) [S.I. 2003/3226](#). Regulation 16 was amended by [S.I. 2010/2993](#).

(20) “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;

(21) “CCP” has the meaning given in Article 2(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

(22) “CRR firm” has the meaning given in Article 4.1(2A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

(23) “FCA” means the Financial Conduct Authority;

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

(25) “insurance undertaking” and “reinsurance undertaking” have the meanings given in section 417(1)(10) of the FSMA;

(26) “investment firm” has the meaning given in Article 2(1A)(11) of 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;

(27) “management company” and “the operator” have the meanings given in section 237(2)(12) of the FSMA;

(28) “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;

(29) “open ended investment company” has the meaning given by section 236 of the FSMA;

(30) any reference in this Regulation to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA under FSMA as in force on exit day(13);

(31) “UCITS” has the meaning given in section 236A(14) of the FSMA;

(32) “UK law in relation to collective investment undertakings” means the law of any part of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Directives 2009/65/EC and 2011/61/EU.”.

8. In Article 4—

(a) for paragraph (5) substitute—

“(5) Where a trade repository is not available to record the details of SFTs:

- (a) except where the FCA has suspended the reporting obligation under point (b), counterparties shall ensure that such details are reported to the FCA. In this case the FCA shall ensure that all the relevant entities referred to in Article 12(2) have

(10) Both definitions were inserted into section 417(1) by [S.I. 2015/575](#).

(11) Article 2(1)(a) is prospectively inserted by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 which come into force on exit day.

(12) The definition of “management company” was inserted by [S.I. 2011/1613](#). The definition of “the operator” was amended by [S.I. 2011/1613](#) and [S.I. 2013/1388](#).

(13) Sourcebooks made by the Financial Conduct Authority are available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where it is also available for inspection.

(14) Section 236A is prospectively inserted by the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 ([S.I. 2019/325](#)) which come into force on exit day.

access to all the details of SFTs they need to fulfil their respective responsibilities and mandates;

- (b) the FCA may, having:
 - (i) provided a report to the Treasury setting out its reasons for suspending the reporting obligation in point (a);
 - (ii) specified a date:
 - (aa) on which the suspension of that obligation will end; and
 - (bb) by which it anticipates counterparties will be able to report details of any SFTs as set out in paragraph 5a; and
 - (iii) consulted the Treasury and the Bank of England, with the consent of the Treasury, suspend the reporting obligation in point (a) for a period of up to one year;
- (c) the Treasury may by regulations amend point (b) so as to extend the period for the time being specified in that provision.

(5a) Details of any SFTs that counterparties have concluded, and of any modification or termination of the SFT, that have not been reported to a trade repository in accordance with the reporting obligations in paragraph 1 during a period when the FCA has suspended the reporting obligation under paragraph (5)(b), must be reported by those counterparties to a trade repository following the end of the suspension of the reporting obligation by no later than the end of the period specified by the FCA for this purpose.”;

- (b) in paragraph (6), omit from “and ESMA shall respect” to “protection of information and”;
- (c) in paragraph (9)—

- (i) in the first subparagraph, for “ESMA shall, in close cooperation with, and taking into account the needs of, the ESCB, develop draft” substitute “the Bank of England and the FCA shall make”;
- (ii) in the second subparagraph, for “In developing those draft technical standards, ESMA” substitute “In making those technical standards the Bank of England and the FCA”;
- (iii) after the second subparagraph insert—

“The Bank of England shall make the regulatory standards referred to in the first subparagraph which apply to CCPs and central securities depositories authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives [98/26/EC](#) and [2014/65/EU](#) and Regulation (EU) No 236/2012.

The FCA shall make the regulatory standards referred to in the first subparagraph which apply to other counterparties.”;

- (iv) omit from “ESMA shall submit those draft regulatory technical standards” to the end.
- (d) in paragraph (10)—
- (i) in the first subparagraph, for “ESMA shall, in close cooperation with, and taking into account the needs of, the ESCB, develop draft” substitute “the Bank of England and the FCA shall make”;
- (ii) in the third subparagraph—

(aa) for “In developing those draft technical standards, ESMA” substitute “In making those technical standards, the Bank of England and the FCA”;

- (bb) for “Union” substitute “national”;
- (iii) after the second subparagraph insert—

“The Bank of England shall make the implementing standards referred to in the first subparagraph which apply to CCPs and central securities depositories authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

The FCA shall make the implementing standards referred to in the first subparagraph which apply to other counterparties.”;
- (iv) omit from “ESMA shall submit those draft implementing technical standards” to the end.

9. In Article 5—

- (a) in paragraph (7)—
 - (i) for “ESMA shall develop draft regulatory” substitute “the FCA may make”;
 - (ii) omit from “ESMA shall submit those draft regulatory” to the end;
- (b) in paragraph (8)—
 - (i) for “ESMA shall develop draft implementing” substitute “the FCA may make”;
 - (ii) omit from “ESMA shall submit those draft implementing” to the end.

10. Omit Article 6.

11. In Article 8—

- (a) in paragraph (1) omit the second subparagraph;
- (b) omit paragraph (2).

12. Omit Article 9.

13. For Article 10 substitute—

“Article 10

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 six 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.** A decision to withdraw the registration of a trade repository under paragraphs 1, 2 or 3 shall be reflected in the Register.

Article 10a

Publication and notification of decisions

1. The FCA must publish on its website a list of trade repositories registered in accordance with Article 7 (“the Register”).
2. On the adoption of a decision under Article 7 or 10, the FCA must notify its decision to the trade repository concerned.
3. A refusal of an application to register under Article 7 comes into effect on the fifth working day following its adoption.
4. A withdrawal of registration under Article 10 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 registration on the FCA’s own initiative under paragraph 1 or 2 of Article 10 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 5
 - (b) to exercise the FCA’s power under paragraph 1 or 2 of Article 10 to withdraw the registration of the trade repository on the FCA’s own initiative; or
 - (c) to refuse an application made by a trade repository under paragraph 3 of Article 10 to withdraw the registration of the trade repository,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 make any decision (“the new decision”) it could have made 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 7;
 - (b) to refuse to revoke a decision made under paragraph 1 or 2 of Article 10 to withdraw the registration of the trade repository on the FCA’s own initiative; or
 - (c) to maintain a decision to refuse an application from a trade repository under paragraph 3 of Article 71 to withdraw the registration of the trade repository.
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 10b

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 7;
 - (b) exercise its power under paragraph 1 or 2 of Article 10 to withdraw the registration of a trade repository; or
 - (c) refuse the trade repository’s application under paragraph 3 of Article 10 to withdraw its registration.
 2. Where there is a review under paragraph 8 of Article 10a, paragraph 1 applies only in relation to the FCA’s decision in response to that review.”.
14. In Article 11—
- (a) in paragraph (1)—
 - (i) for “delegated acts” substitute “statutory instruments”;
 - (ii) omit from “as well as the reimbursement of any costs” to “shall be construed as references to paragraph 2 of this Article”;
 - (b) in paragraph (2) for “The Commission shall be empowered to adopt a delegated act in accordance with Article 30 to” substitute “The Treasury may, by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament,”.
15. In Article 12—
- (a) in paragraph (2)—
 - (i) for point (b) substitute—

“(b) the Prudential Regulation Authority;”;
 - (ii) for point (c) substitute—

“(c) the Pensions Regulator;”;
 - (iii) for point (d) substitute—

- “(d) the Bank of England;”;
 - (iv) omit points (e) and (f);
 - (v) in point (g), for “an implementing act” to the end substitute “the regulations pursuant to Article 19(1) have been prescribed by the Treasury”;
 - (vi) for point (h) substitute—
 - “(e) the Panel on Takeovers and Mergers;”;
 - (vii) omit points (i) to (m);
 - (b) in paragraph (3)—
 - (i) in the first subparagraph—
 - (aa) omit “in close cooperation with the ESCB and”;
 - (bb) for “develop draft regulatory” substitute “make”;
 - (ii) in the first subparagraph after point (d), omit “draft regulatory”;
 - (iii) omit from “ESMA shall submit those draft regulatory technical standards” to the end.
- 16.** In Article 13—
- (a) in paragraph (1)—
 - (i) in point (a), for “Article 68 of [Directive 2009/65/EC](#)” substitute “section 4.5.3 of the Collective Investment Schemes sourcebook”;
 - (ii) in point (b), for “Article 22 of [Directive 2011/61/EU](#)” substitute “section 3.3 of the Investment Funds sourcebook”;
 - (b) in paragraph (3)—
 - (i) in the first subparagraph—
 - (aa) for “Directives [2009/65/EC](#) and [2011/61/EU](#)” substitute “the UK law in relation to collective investment undertakings”;
 - (bb) for “develop draft regulatory” substitute “make”;
 - (ii) omit the second subparagraph.
- 17.** In Article 14—
- (a) in paragraph (1)—
 - (i) for “Article 69 of [Directive 2009/65/EC](#)” substitute “section 4.2.2 of the Collective Investment Schemes sourcebook”;
 - (ii) for “Article 23(1) and (3) of [Directive 2011/61/EU](#)” substitute “section 3.2.2 of the Investment Funds sourcebook”;
 - (b) in paragraph (3)—
 - (i) in the first subparagraph, for “Directives [2009/65/EC](#) and [2011/61/EU](#), develop draft regulatory” substitute “the UK law in relation to collective investment undertakings, make”;
 - (ii) omit the third subparagraph.
- 18.** In Article 15—
- (a) in paragraph (1), for “Article 5 of [Directive 2002/47/EC](#)” in both places it occurs substitute “regulation 16 of the Financial Collateral Arrangements (No.2) Regulations 2003”;
 - (b) in paragraph (3), omit from “stricter sectoral legislation” to “and to”.
- 19.** Omit Articles 16 and 17.

20. In Article 18—

- (a) in paragraph (2)—
 - (i) omit “and the competent authorities referred to in Article 16, for ESMA, EBA and EIOPA”;
 - (ii) for “competent authorities or ESMA, EBA and EIOPA” substitute “FCA”;
 - (iii) for “those persons receive in the course of their duties” substitute “the FCA receives in the course of its duties”;
- (b) in paragraph (3)—
 - (i) for “national criminal or tax law, the competent authorities, ESMA, EBA, EIOPA, bodies or natural or legal persons other than competent authorities, which receive,” substitute “the law applying in any part of the United Kingdom, the FCA, when it receives”;
 - (ii) for “their duties and for the exercise of their functions, in the case of the competent authorities” substitute “its duties and for the exercise of its functions”;
 - (iii) for “ESMA, EBA, EIOPA, the competent authority” substitute “the FCA”;
- (c) omit paragraph (4);
- (d) for paragraph (5) substitute—

“(5) Paragraphs 2 and 3 shall not prevent the FCA from exchanging or transmitting confidential information, in accordance with the law applying in any part of the United Kingdom, that has been received from a third country regulatory authority.”

21. In Article 19—

- (a) for “The Commission” in each place it occurs substitute “the Treasury”;
- (b) in paragraph (1)—
 - (i) in the first subparagraph, for “adopt implementing acts” substitute “make provision, by regulations,”;
 - (ii) 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 Article 12(2)”;
 - (iii) omit point (d);
 - (iv) in the subparagraph after point (d), for “The implementing act referred to in the first point of this paragraph shall be adopted” to the end substitute “Regulations made under this paragraph must also specify the relevant authorities in third countries which are entitled to access the data on SFTs held in trade repositories established in the United Kingdom.”;
- (c) omit paragraph (2);
- (d) in paragraph (5)—
 - (i) in point (a), for “an implementing act” substitute “regulations”;
 - (ii) in point (b)(i), omit “and any other Union authority that exercises responsibilities as a result of any delegation of tasks pursuant to Article 9(1)”;
 - (iii) omit from “ESMA shall apply Regulation (EC) No 45/2001” to the end.

22. In Article 21—

- (a) for “The Commission” in each place it occurs substitute “the Treasury”;
- (b) in paragraph (1), for “adopt implementing acts” substitute “by regulations make provision”;

(c) in paragraph (2)—

(i) for “adopted an implementing act” substitute “made regulations”;

(ii) omit from “That implementing act shall be adopted in accordance” to the end.

23. For Article 22 substitute—

“Article 22

Regulations: general provisions

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

2. Such regulations may:

(a) contain incidental, supplemental, consequential and transitional provision, and

(b) may make different provision for different purposes.

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

24. Omit Articles 23 to 32.