

2023 No. 1409

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023

Made - - - - *19th December 2023*

Coming into force in accordance with regulation 1

The Treasury make the following Regulations in exercise of the powers conferred by sections 3(1) and 84(2) of the Financial Services and Markets Act 2023(a).

In accordance with section 3(6) of the Financial Services and Markets Act 2023, the Treasury have consulted the Prudential Regulation Authority and the Financial Conduct Authority.

In accordance with sections 3(10) and 84(3) of the Financial Services and Markets Act 2023, a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023.

(2) Except as provided for in paragraph (3), these Regulations come into force on the day after the day on which they are made.

(3) Regulation 3 comes into force on 1st January 2024.

(4) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Amendment of Regulation (EU) No 575/2013

2. In Article 384(1) (standardised method) of 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) No 648/2012(b), in the definition of “EAD^{total}”, after “counterparty credit risk for that counterparty.” insert as a new paragraph—

“An institution using one of the methods set out in Sections 3 to 5 of Chapter 3 of the Counterparty Credit Risk (CRR) Part of the PRA Rulebook may use, as the fully adjusted exposure value, the value calculated in accordance with Article 223(5) (financial collateral comprehensive method). For an institution not using the method set out in Section 6 of Chapter 6 of Title II, the exposure shall be discounted applying the following factor:

(a) 2023 c. 29.

(b) EUR 2013/575. The definition of “EAD^{total}” in Article 384(1) was amended by paragraph 11 of Schedule 4 to the Financial Services Act 2021 (c. 22).

$$\frac{1 - e^{-0.05 \cdot M_i}}{0.05 \cdot M_i} \text{ ”.}$$

Amendment of Regulation (EU) 2016/1011

3.—(1) Article 51(5) (transitional provisions) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014(a) is amended as follows.

(2) In subparagraph (a), for “31 December 2025” substitute “31 December 2030”.

(3) In subparagraph (b)—

(a) for “1 January 2026” substitute “1 January 2031”;

(b) for “31 December 2025” substitute “31 December 2030”.

*Joy Morrissey
Amanda Milling*

19th December 2023

Two of the Lords Commissioners of His Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 of these Regulations amends Article 384 of 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) No 648/2012, which requires certain financial institutions to calculate a particular type of capital requirements in accordance with a specific formula. Article 384(1) defines the total counterparty credit risk exposure value (“EADi total”) for the purposes of that formula. Regulation 2 amends the definition of EADi total by inserting a discount factor which reduces the amount of capital that small and medium-sized firms are required to hold for their derivative activities under Regulation (EU) No. 575/2013.

Regulation 3 amends Article 51(5) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014. Regulation 3 extends the expiry date of the transitional period allowing for continued access by UK markets to third country benchmarks from 31 December 2025 to 31 December 2030. It also extends the provision which permits continued use of a legacy third country benchmark by UK markets so that, where a benchmark is used in an existing contract, financial instrument or for measuring the performance of that investment fund on 31 December 2030, it may continue to be used on and after 1 January 2031. UK supervised entities will be permitted to continue with only legacy use of third country benchmarks on and after 1 January 2031.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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(a) EUR 2016/1011. Paragraphs (5), (5A) and (5B) of Article 51 were substituted for paragraph (5) by S.I. 2019/657 as amended by S.I. 2020/1301. Paragraph (5) was subsequently amended by section 20 of the Financial Services Act 2021.

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