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STATUTORY INSTRUMENTS

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**2017 No. 701**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000  
(Markets in Financial Instruments) Regulations 2017**

*Made - - - - 21st June 2017*  
*Laid before Parliament 22nd June 2017*  
*Coming into force in accordance with regulation 1*

The Treasury are a government department designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 286(1)(3) and (4F)(4), and 428(3) of the Financial Services and Markets Act 2000 make the following Regulations.

**PART 1**

**Introductory provisions**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

(2) These Regulations come into force on 29th June 2017 —

(a) to enable the following to be done under the Act, as amended and applied by these Regulations—

(i) rules to be made under section 137R(5) (financial promotion rules) of the Act;

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(1) [S.I. 2012/1759](#).

(2) [1972 c.68](#). Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 ([c. 51](#)) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 ([c.51](#)) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(3) Subsection (1) was amended by paragraph 2(2) of Schedule 8 to the Financial Services Act 2012 ([c.21](#)).

(4) Subsection (4F) was inserted by section 30 of the Financial Services Act 2012.

(5) Section 137R was inserted by section 24(1) of the Financial Services Act 2012.

- (ii) rules to be made under sections 213(6) (the compensation scheme) or 214(7) (general) of the Act;
  - (iii) rules to be made under paragraph 23 of Schedule 1ZA(8) (the Financial Conduct Authority) to the Act, including rules that may be made as a result of amendments by these Regulations to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(9);
  - (iv) fees to be charged under any rules that are made by virtue of paragraph (iii); and
  - (v) rules to be made under paragraph 19(10) or 20(4C)(10) of Schedule 3 (EEA Passport Rights) to the Act; and
- (b) to enable rules to be made under regulation 11 (FCA rules) of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(11).
- (3) These Regulations come into force on 3rd July 2017—
- (a) to enable—
    - (i) applications to be made under regulation 4;
    - (ii) directions to be given under regulation 16(1) to establish position limits applying on or after 3rd January 2018;
    - (iii) applications to be made, directions to be given, and requirements to be imposed, under regulation 17;
    - (iv) requirements to be imposed and directions to be given under regulation 27;
    - (v) requirements to be imposed under regulations 31 and 33; and
    - (vi) the FCA and the PRA to prepare and issue a statement of policy under paragraph 14 of Schedule 1; and
  - (b) to enable notifications to be given, reports or applications to be made, directions to be given, and requirements to be imposed under regulation 47 for the purposes of—
    - (i) the markets in financial instruments directive, including any directly applicable EU regulation made under the directive, as it has effect on or after 3rd January 2018; and
    - (ii) the markets in financial instruments regulation, including any directly applicable EU regulation made under that regulation, as it applies under Article 55(12) of that regulation; and
  - (c) for the purposes of—
    - (i) paragraphs 6, 7, 16, 19, 20, 22, 23 and 28 of Schedule 1; and
    - (ii) paragraphs 25 and 26 of that Schedule in so far as they relate to a matter referred to in sub-paragraph (a) or (b) or in paragraph (i) of this sub-paragraph.
- (4) These Regulations come into force on 31st July 2017 —

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(6) Section 213 was amended by S.I. 2011/1613 and paragraph 1 and 3 of Schedule 10 to the Financial Services Act 2012.

(7) Section 214 was amended by section 174(1) of the Banking Act 2009 (c.1) and paragraph 1 and 4 of Schedule 10 to the Financial Services Act 2012

(8) Schedule IZA was inserted by paragraph 1 of Schedule 3 to the Financial Services Act 2012.

(9) S.I. 2013/419.

(10) Paragraph 4C was inserted by S.I. 2001/1376.

(11) S.I. 2001/995, to which there are amendments not relevant to these Regulations.

(12) Article 55 was amended by Article 1.14 of Regulation (EU) No 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) no 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories (OJ L 175, 30.6.2016, p. 1).

- (a) to enable the following to be done under the Act, as amended and applied by these Regulations—
- (i) notices to be given or sent under section 312A(1)(b)(**13**) (exercise of passport rights by EEA market operator) or 312C(**14**) (exercise of passport rights by recognised investment exchange) of the Act;
  - (ii) entries to be added, removed, or altered in the record the FCA maintains under section 347(1)(**15**) of the Act;
  - (iii) notices relating to any relevant regulated activity to be given or received under paragraph 13(1)(**16**), (1B)(**17**), or (1C)(**18**) of Schedule 3 to the Act ;
  - (iv) the PRA to give consent under paragraph 13(1D) (**19**) of that Schedule;
  - (v) preparations to be made under paragraph 13(1E)(**20**) or (1F)(**21**) of that Schedule;
  - (vi) notices relating to any relevant regulated activity to be given or received under paragraph 14(1)(ba)(**22**), (1B)(**23**), or (1C)(**24**) of that Schedule ;
  - (vii) preparations to be made under paragraph 14(1D)(**25**) or 14(1E)(**26**) of that Schedule; and
  - (viii) notices relating to any relevant regulated activity to be given or received under paragraph 19(2)(**27**), (4)(**28**), (7B)(**29**), (8)(**30**), (11)(**31**), or (12)(**32**), or paragraph 20(1)(**33**), (3)(**34**), or (4)(**35**) of that Schedule; and
- (b) to enable notices to be given under the following provisions of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(**36**) for the purposes of Schedule 3 to the Act, as amended and applied by these Regulations—
- (i) regulation 4(**37**) (management companies, credit institutions and financial institutions: changes);
  - (ii) regulation 4A(**38**) (investment firms: changes to branch details);

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- (13) Section 312A(1)(b) was inserted by [S.I. 2007/126](#) and amended by paragraph 33 of Schedule 8 to the Financial Services Act 2012.
- (14) Section 312C was inserted by [S.I. 2007/126](#) and amended by paragraph 35 of Schedule 8 to the Financial Services Act 2012.
- (15) Section 347(1) was amended by [S.I. 2007/126](#), [2013/1388](#), and [2015/910](#).
- (16) Paragraph 13(1) was amended by [S.I. 2003/1473](#) and [2015/910](#).
- (17) Paragraph 13 (1B) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
- (18) Paragraph 13(1C) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
- (19) Paragraph 13(1D) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
- (20) Paragraph 13(1E) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
- (21) Paragraph 13(1F) was inserted by paragraph 2(3) of Schedule 4 to the Financial Services Act 2012.
- (22) Paragraph 14(1)(ba) was inserted by [S.I. 2007/126](#) and amended by paragraph 3(2) of Schedule 4 to the Financial Services Act 2012.
- (23) Paragraph 14(1B) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
- (24) Paragraph 14(1C) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
- (25) Paragraph 14(1D) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
- (26) Paragraph 14(1E) was inserted by paragraph 3(3) of Schedule 4 to the Financial Services Act 2012.
- (27) Paragraph 19(2) was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
- (28) Paragraph 19(4) was amended by was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
- (29) Paragraph 19(7B) was inserted by [S.I. 2007/126](#) and amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
- (30) Paragraph 19(8) was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
- (31) Paragraph 19(11) was amended by paragraph 10(2) of Schedule 4 to the Financial Services Act 2012.
- (32) Paragraph 19(12) was amended by [S.I. 2003/2066](#), paragraph 10(2) of Schedule 4 to the Financial Services Act 2012, and [S.I. 2013/3115](#).
- (33) Paragraph 20(1) was amended by [S.I. 2007/3253](#), paragraph 11(2) of Schedule 4 to the Financial Services Act 2012, [S.I. 2013/1773](#), and [S.I. 2015/575](#).
- (34) Paragraph 20(3) was amended by [S.I. 2003/2066](#), [S.I. 2007/126](#), paragraph 11(2) of Schedule 4 to the Financial Services Act 2012, [S.I. 2013/3115](#), and [S.I. 2015/910](#).
- (35) Paragraph 20(4) was amended by [S.I. 2001/1376](#) and paragraph 11(2) of Schedule 4 to the Financial Services Act 2012
- (36) [S.I. 2001/2511](#).
- (37) Regulation 4 was amended by [S.I. 2003/2066](#), [2006/3385](#), and [2013/642](#).
- (38) Regulation 4A was inserted by [S.I. 2006/3385](#).

- (iii) regulation 5A(39) (investment firms: changes to services);
- (iv) regulation 11(40) (UK management companies, credit institutions and financial institutions);
- (v) regulation 11A(41) (UK investment firms: changes to branch details); and
- (vi) regulation 12A(42) (UK investment firms: changes to services).

(5) In paragraph (4) “relevant regulated activity” means a regulated activity which relates to any specified activity or specified investment in Part 2 or 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(43) that was amended or inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017(44).

(6) These Regulations come into force for all other purposes on 3rd January 2018.

## Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000(45);

“algorithmic trading” has the meaning given by Article 4.1.39 (definitions) of the markets in financial instruments directive;

“ancillary services” has the meaning given by Article 4.1.3 (definitions) of the markets in financial instruments directive;

“authorised person” has the same meaning as in section 31(2) (authorised persons) of the Act;

“branch” has the meaning given by Article 4.1.30 (definitions) of the markets in financial instruments directive;

“client” has the meaning given by Article 4.1.9 of the markets in financial instruments directive;

“the Commission” means the Commission of the European Union;

“commodity derivative” has the meaning given by Article 4.1.50 of the markets in financial instruments directive;

“competent authority” has the meaning given by Article 4.1.26 of the markets in financial instruments directive;

“credit institution” has the meaning given by Article 4.1.27 of the markets in financial instruments directive;

“derivative” means a financial instrument listed in points (4) to (10) of Section C of Annex 1 of the markets in financial instruments directive;

“direct electronic access” has the meaning given by Article 4.1.41 of the markets in financial instruments directive;

“EEA” means the European Economic Area created by the EEA agreement;

“emission allowance” means an emission allowance as described in point (11) of Section C of Annex 1 of the markets in financial instruments directive;

(39) Regulation 5A was inserted by [S.I. 2006/3385](#).

(40) Regulation 11 was amended by [S.I. 2006/3385](#), [2003/2066](#), [2013/642](#), and [2013/3115](#).

(41) Regulation 11A was inserted by [S.I. 2006/3385](#) and amended by [S.I. 2013/642](#).

(42) Regulation 12A was inserted by [S.I. 2006/3385](#) and amended by [S.I. 2013/642](#).

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

(44) [S.I. 2017/488](#).

(45) [2000 c.8](#).

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)(46);

“the FCA” means the Financial Conduct Authority;

“financial instrument” has the meaning given by Article 4.1.15 of the markets in financial instruments directive, 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(47);

“investment activity” means an activity listed in Section A of Annex I of the markets in financial instruments directive relating to a financial instrument;

“investment firm” has the meaning given by Article 4.1.1 of the markets in financial instruments directive;

“investment service” means any service listed in Section A of Annex I of the markets in financial instruments directive relating to a financial instrument;

“investment services and activities” means any of the services and activities listed in Section A of Annex I of the markets in financial instruments directive relating to a financial instrument;

“market abuse” means a contravention of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or 15 (prohibition of market manipulation) of the market abuse regulation;

“market abuse regulation” means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation)(48);

“markets in financial instruments directive” means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast)(49);

“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(50);

“multilateral trading facility” has the meaning given by Article 4.1.22 (definitions) of the markets in financial instruments directive;

“the PRA” means the Prudential Regulation Authority;

“Part 4A permission” has the meaning given by section 55A(5)(51) (application for permission) of the Act;

“recognised investment exchange” has the meaning given by section 285(1)(a)(52) (exemption for recognised investment exchanges and clearing houses) of the Act;

“regulated activity” has the meaning given by section 22(53) (regulated activities) of the Act;

“trading venue” has the meaning given by Article 4.1.24 of the markets in financial instruments directive; and

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(46) OJ No L 331, 15.12.2010, p.84.

(47) OJ L 87, 31.3.2017, p. 1.

(48) OJ No L 173, 12.06.2014, p.1.

(49) OJ No L 173, 12.06.2014, p.349; the Directive was amended by Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 (OJ No L 257, 28.8.2014 p.1) and Directive (EU) 2016 of the European Parliament and of the Council of 23 June 2016 (OJ No L 175 30.6.2016 p.8).

(50) OJ No L 173, 12.06.2014, p.84.

(51) Section 55A(5) was inserted by section 11(2) of the Financial Services Act 2012.

(52) Section 285(1)(a) was amended by S.I. 2013/504.

(53) Section 22 was amended by section 7(1)(a) to (d) of the Financial Services Act 2012.

“the Tribunal” means the Upper Tribunal.

(2) In these Regulations any reference to the markets in financial instruments directive or the markets in financial instruments regulation includes any EU legislation made under the directive or the regulation.

### **Designation of competent authorities**

**3.**—(1) The FCA is designated to carry out all the duties of a competent authority provided for in Titles 1 to 4, 6 and 7 of the markets in financial instruments directive and in the markets in financial instruments regulation (“duties of a competent authority”) unless paragraph (2), (3) or (4) applies.

(2) The PRA is designated to carry out any duty of a competent authority that relates to a PRA authorised person where the PRA has the function of carrying out that duty under—

- (a) these Regulations;
- (b) Parts 4A<sup>(54)</sup>, 12 to 15, 22, and 25 of the Act and Schedule 3 to the Act; or
- (c) rules made under section 137G<sup>(55)</sup> (the PRA’s general rules) of the Act or any other subordinate legislation conferring functions on the PRA made under the Act.

(3) Where a PRA authorised person is obliged to keep records at the disposal of the competent authority under Article 25 (obligation to maintain records) of the markets in financial instruments regulation both the FCA and PRA are designated as the competent authority.

(4) The Bank of England is designated to carry out any duty of a competent authority that relates to a central counterparty (as defined by section 313(1)<sup>(56)</sup> (interpretation of Part 18) of the Act) and is provided for in the following provisions of the markets in financial instruments regulation—

- (a) Article 29 (clearing obligation for derivatives traded on regulated markets and timing of acceptance for clearing);
- (b) Article 30 (indirect clearing arrangements);
- (c) Article 35 (non-discriminatory access to a CCP);
- (d) Article 36 (non-discriminatory access to a trading venue);
- (e) Article 37 (non-discriminatory access to and obligation to licence benchmarks); and
- (f) Article 54.2 (transitional provisions).

(5) In this regulation “PRA authorised person” has the meaning given by section 2B(5)<sup>(57)</sup> (the PRA’s general objective) of the Act.

<sup>(54)</sup> Part 4A was inserted by section 11(2) of the Financial Services Act 2012.

<sup>(55)</sup> Section 137G was inserted by section 24(1) of the Financial Services Act 2012.

<sup>(56)</sup> Section 313(1) was amended by S.I. 2013/504; there are other amendments but none is relevant.

<sup>(57)</sup> Section 2B(5) was inserted by section 6(1) of the Financial Services Act 2012.

## PART 2

### Exempt and third-country investment firms

#### CHAPTER 1

##### Exempt investment firms

###### **Applications to be an exempt investment firm**

4.—(1) A person may apply in accordance with section 55A(58) (application for permission) of the Act for a Part 4A permission to carry on regulated activities as an exempt investment firm.

(2) An authorised person may become entitled to carry on regulated activities as an exempt investment firm only by applying for a variation of its Part 4A permission in accordance with section 55H(59) (variation by FCA) or 55I(60) (variation by PRA) of the Act.

(3) A person may only apply for a Part 4A permission as mentioned in paragraph (1), and an authorised person may only apply for a variation of their Part 4A permission as mentioned in paragraph (2), if the person or authorised person has its relevant office in the United Kingdom.

(4) In this regulation “relevant office” means—

- (a) in relation to a body corporate, its registered office or, if it has no registered office, its head office; and
- (b) in relation to a person, or authorised person other than a body corporate, the person’s head office.

###### **Limitation on exempt investment firms**

5. An exempt investment firm has no entitlement —

- (a) to establish a branch by making use of the procedures in paragraph 19 (establishment) of Schedule 3 (EEA passport rights) to the Act; or
- (b) to provide any services by making use of the procedures in paragraph 20 (services) of Schedule 3 to the Act,

in a case where the entitlement of the firm to do so would, but for this paragraph, derive from the markets in financial instruments directive.

###### **Requirements applying to exempt investment firms**

6.—(1) If the appropriate regulator—

- (a) gives to a person who has applied under regulation 4(1) a Part 4A permission to carry on regulated activities as an exempt investment firm; or
- (b) varies the Part 4A permission of an authorised person who has applied as mentioned in regulation 4(2) for a variation to permit them to carry on regulated activities as an exempt investment firm,

the requirements specified in paragraph (3) (“the specified requirements”) shall be treated as being imposed under section 55L(61) (imposition of requirements by FCA) (where the FCA is the

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(58) Section 55A was inserted by section 11(2) of the Financial Services Act 2012.

(59) Section 55H was inserted by section 11(2) of the Financial Services Act 2012 and amended by [S.I. 2013/1773](#).

(60) Section 55I was inserted by section 11(2) of the Financial Services Act 2012.

(61) Section 55L was inserted by section 11(2) of the Financial Services Act 2012.

appropriate regulator) or 55M(62) (imposition of requirements by PRA) (where the PRA is the appropriate regulator) of the Act.

(2) Notwithstanding paragraph (1)—

(a) the treatment of the specified requirement as a requirement imposed under section 55L or 55M of the Act does not—

(i) amount for the purpose of section 55X(1)(63) (determination of applications: warning notices and decision notices) of the Act to a proposal to exercise the power of the appropriate regulator under section 55L(1) or 55M(1) of the Act;

(ii) amount for the purpose of section 55X(4)(64) of the Act to a decision to exercise the power of the appropriate regulator under section 55L(1) or 55M(1) of the Act; or

(iii) entitle the person to refer a matter under section 55Z3(1)(65) (right to refer matters to the Tribunal) of the Act;

(b) the specified requirements shall not expire until the person ceases to be an exempt investment firm; and

(c) no application under section 55L(5) or 55M(5) of the Act to vary or cancel any of the specified requirements may be made by the person unless they inform the appropriate regulator when making the application that they wish to cease to be an exempt investment firm.

(3) The requirements are that the person—

(a) does not hold clients' funds or securities and does not, for that reason, at any time, place themselves in debit with their clients;

(b) does not provide any investment service other than the—

(i) reception and transmission of orders in transferable securities and units in collective investment undertakings; and

(ii) provision of investment advice in relation to the financial instruments mentioned in paragraph (i); and

(c) in the course of providing the investment services mentioned in sub-paragraph (b), transmits orders only to—

(i) an investment firm authorised in accordance with the markets in financial instruments directive;

(ii) a credit institution authorised in accordance with [Directive 2013/36/EU](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms(66);

(iii) a branch of an investment firm or of a credit institution authorised under the law of an EEA State to market units to the public and to the managers of such undertakings;

(iv) a collective investment undertaking authorised under the law of an EEA State to market units to the public and to a manager of such an undertaking; or

(v) an investment company with fixed capital, the securities of which are listed or dealt in on a regulated market in an EEA State.

(4) In paragraph (3) “investment company with fixed capital” has the meaning given by Article 17.7 of [Directive 2012/30/EU](#) of the European Parliament and of the Council of 25 October 2012

(62) Section 55M was inserted by section 11(2) of the Financial Services Act 2012.

(63) Section 55X(1) was inserted by section 11(2) of the Financial Services Act 2012.

(64) Section 55X(4) was inserted by section 11(2) of the Financial Services Act 2012.

(65) Section 55Z3 was inserted by section 11(2) of the Financial Services Act 2012.

(66) OJ No L 176, 27.6.2013, p. 338.

on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent<sup>(67)</sup>.

(5) Terms and expressions used in paragraph (3)(c)(i) to (v) which are not otherwise defined in these Regulations and are used in Article 3.1(c)(i) to (v) (optional exemptions) of the markets in financial instruments directive have the same meaning as in those provisions of the directive.

#### **Transitional provision: exempt investment firms**

7.—(1) An authorised person who immediately before 3rd January 2018 was—

- (a) an exempt investment firm by virtue of regulation 9A<sup>(68)</sup>(transitional provision: exempt investment firms) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007; or
- (b) permitted to carry on regulated activities as an exempt investment firm in accordance with permission granted in accordance with regulation 4C<sup>(69)</sup> (requirements to be applied to exempt investment firms) of those Regulations,

becomes an exempt investment firm with effect from that day as if they had applied as mentioned in regulation 4(1) or (2)<sup>(70)</sup> and had been granted the permission or variation on that day.

#### **Meaning of “exempt investment firm” in Chapter 1**

8. In this Chapter “exempt investment firm” means an authorised person who—

- (a) is an investment firm; and
- (b) has a Part 4A permission;

but to whom Title II of the markets in financial instruments directive does not apply by virtue of Article 3 of the markets in financial instruments directive.

## CHAPTER 2

### Third country investment firms

#### **Third country firms with an EEA branch: provision of services**

9.—(1) A third country firm with an EEA branch is not to be regarded as carrying on a regulated activity if it carries on the activity in the course of exercising rights under Article 47.3 (equivalence decision) of the markets in financial instruments regulation.

(2) But paragraph (1) only applies once the third country firm with an EEA branch satisfies the service conditions for incoming EEA investment firms.

(3) The service conditions for incoming EEA investment firms apply to a third country firm for the purposes of paragraph (1) with the modifications set out in paragraphs (5) and (6).

(4) A reference to the home state regulator has effect as if in each place it were a reference to the competent authority of the EEA State in which the third country firm with an EEA branch is established (“supervising EEA competent authority”).

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<sup>(67)</sup> OJ L315, 14/11/2012, p.74.

<sup>(68)</sup> S.I. 2007/126; regulation 9A was inserted by S.I. 2007/763.

<sup>(69)</sup> Regulation 4C was inserted by S.I. 2007/263 and was amended by S.I. 2013/472 and 2013/3115.

<sup>(70)</sup> Regulation 4(1) and (2) were amended by S.I. 2013/472.

(5) In paragraph 14(1)(b)(71)(services) of Schedule 3 (EEA passport rights) the requirement for a regulator’s notice to contain such information as may be prescribed has effect as if it were a requirement for the notice to contain—

- (a) a statement by that competent authority that the branch—
  - (i) is authorised in accordance with Article 39 (establishment of a branch) of the markets in financial instruments directive;
  - (ii) is entitled to exercise rights under Article 47.3 of the markets in financial services regulation; and
  - (iii) intends to exercise those rights in the United Kingdom; and
- (b) the branch’s programme of operations provided to the supervising EEA competent authority in accordance with Article 40(b) (obligation to provide information) of the markets in financial instruments directive.

(6) In this regulation “service conditions for incoming EEA investment firms” means the service conditions set out in paragraph 14(1)(72) of Schedule 3 to the Act which apply to an EEA firm as defined by paragraph 5(a)(73) (EEA firm) of that Schedule.

#### **FCA power to intervene in relation to third country firms with an EEA branch**

**10.**—(1) The FCA may exercise its power of intervention in relation to a third country firm with an EEA branch where the FCA has clear and demonstrable grounds for believing that the firm has contravened, or is contravening, a requirement imposed on the firm—

- (a) by or under any provision adopted for the purpose of implementing the markets in financial instruments directive by an EEA State where a branch of the firm is located and authorised in accordance with Article 39 (establishment of a branch) of the markets in financial instruments directive;
- (b) by or under the markets in financial instruments regulation; or
- (c) by any directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation.

(2) Section 197(74) (procedure on exercise of power of intervention) applies to the exercise by the FCA of its power of intervention under paragraph (1) as it does to the exercise by the FCA of its power of intervention under Part 13 of the Act generally.

(3) Section 199(75) (additional procedure for EEA firms in certain cases) applies when the FCA’s power of intervention is exercisable under paragraph (1) as it does if it appears to the FCA that its power of intervention is exercisable in relation to an EEA firm exercising EEA rights in the United Kingdom in respect of the contravention of a relevant requirement.

- (4) Section 199 has effect for the purposes of paragraph (3) as if—
  - (a) a reference to the regulator were in each place a reference to the FCA;
  - (b) a reference to an EEA firm were in each place a reference to a third country firm with an EEA branch;

(71) Paragraph 14(1)(b) was amended by [S.I. 2003/1473](#), paragraph 3(2) of Schedule 4 to the Financial Services Act 2012, and [S.I. 2015/910](#).

(72) Sub-paragraphs (1)(b) and (ba) of paragraph 14 were amended as mentioned previously. The remaining provisions of paragraph 14 were amended by [S.I. 2003/1473](#), paragraphs (2), (3), (4), (5), (6)(a) and (b), and (7) of Schedule 4 to the Financial Services Act 2012, [S.I. 2012/1906](#), [S.I. 2013/1773](#), and [S.I. 2015/910](#).

(73) Paragraph 5(a) was amended by [S.I. 2007/126](#).

(74) Section 197 was amended by paragraph 37(2), (3), (4)(a) and (b), and (5) of Schedule 4 to the Financial Services Act 2012.

(75) Section 199 was amended by [S.I. 2007/126](#), [S.I. 2007/3253](#), [S.I. 2011/1613](#), paragraph 39(2) to (5) of Schedule 4 to the Financial Services Act 2012, and [S.I. 2012/916](#), [S.I. 2012/2015](#) and [S.I. 2013/1773](#).

- (c) a reference to EEA rights were in each place a reference to rights under Article 47.3 (equivalence decision) of the markets in financial instruments regulation;
- (d) a reference to the home state regulator were in each place a reference to the competent authority responsible for the supervision of the firm with an EEA branch under Article 41.2 (granting of the authorisation) of the markets in financial instruments directive and Article 47.3 of the markets in financial instruments regulation;
- (e) subsection (1) and (2) were omitted;
- (f) subsection (3A) were omitted; and
- (g) subsections (8) to (12) were omitted.

### **Third country firms registered with ESMA: provision of services**

**11.** A third country firm registered with ESMA is not to be regarded as carrying on a regulated activity if it carries on the activity in the course of exercising rights under Article 46.1 (general provisions) of the markets in financial instruments regulation.

### **FCA power to intervene in relation to third country firms registered with ESMA**

**12.—(1)** The FCA may exercise its power of intervention in relation to a third country firm registered with ESMA where it considers that —

- (a) the firm has acted, or is acting, in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of the markets; or
- (b) the firm has seriously infringed provisions—
  - (i) applicable to the firm in the country in which it is established; and
  - (ii) on the basis of which the Commission has adopted a decision under Article 47.1 in relation to the country.

(2) Section 197 (procedure on exercise of power of intervention) applies to the exercise by the FCA of its power of intervention under paragraph (1) as it does to the exercise by the FCA of its power of intervention under Part 13 of the Act generally.

(3) Where it appears to the FCA that the power of intervention is exercisable under paragraph (1) in relation to a third country firm registered with ESMA the FCA must give—

- (a) ESMA written notice of its concerns; and
- (b) the firm written notice of its concerns which—
  - (i) requires the firm to put an end to the conduct which gives rise to the concern;
  - (ii) states that the FCA's power of intervention will become exercisable in accordance with this regulation; and
  - (iii) indicates any requirements that the FCA proposes to impose on the firm in exercise of its power of intervention in the event the power becomes exercisable.

(4) The FCA may then only exercise its power of intervention under paragraph (1) if—

- (a) the FCA considers a reasonable time has elapsed since it gave the written notices under paragraph (3);
- (b) the firm has not put an end to the concerning conduct;
- (c) ESMA has not withdrawn the registration of the firm under Article 49 (withdrawal of registration) of the markets in financial instruments regulation; and
- (d) the FCA considers the exercise of its power of intervention is not inconsistent with any course of action ESMA has given the FCA written notice it has taken, is taking, or will

take under the markets in financial instruments regulation in relation to the notice of the FCA's concerns given to ESMA by the FCA under paragraph (3)(a).

(5) If the FCA exercises its power of intervention under paragraph (1) in relation to a third country firm registered with ESMA it must at the earliest opportunity inform ESMA of—

- (a) the fact that it has exercised that power in relation to the firm; and
- (b) any requirements it has imposed on the firm in the exercise of the power.

(6) For the purposes of paragraph (4)(a) a reasonable time includes a reasonable time for ESMA to take the steps referred to in Article 49.1(c) and (d) (withdrawal of registration) of the markets in financial instruments regulation.

### **Third country firms: provision of services to eligible counterparties or clients considered to be professionals**

**13.** A third country firm is not to be regarded as carrying on a regulated activity if it carries on the activity in the course of exercising rights under the third paragraph of Article 46.5 (general provisions) of the markets in financial instruments regulation.

### **Third country firms: financial promotions**

**14.—**(1) The communication, in the course of business, of an invitation or inducement to engage in investment activity is not to be regarded as a communication for the purposes of section 21(1) (restrictions on financial promotion) of the Act if it is made in the course of exercising rights under Title 8 of the markets in financial instruments regulation.

(2) For the purposes of paragraph (1) a communication is made in the course of exercising rights under Title 8 of the markets in financial instruments regulation if it is made—

- (a) by a third country firm registered with ESMA to eligible counterparties or to clients considered to be professionals in the course of exercising rights under Article 46.1 (general provisions);
- (b) by a third country firm to eligible counterparties or to clients considered to be professionals in the course of exercising rights under Article 46.5 of the Regulation provided that—
  - (i) the counterparty or client has initiated at his or her own exclusive initiative the provision by the firm of an investment service or activity under that Article to the counterparty or client; and
  - (ii) the communication is in respect of the investment service or activity; or
- (c) by a third country firm with an EEA branch to eligible counterparties or to clients considered to be professionals in the course of exercising rights under Article 47.3 (equivalence decision) of the markets in financial instruments regulation.

(3) An order made by the Treasury under section 21(5) of the Act does not apply to a person who, in the course of business, communicates an invitation or inducement to engage in investment activity if—

- (a) the communication is made in the course of providing investment services or performing investment activities with or without ancillary services to eligible counterparties or clients considered to be professionals; and
- (b) the person is—
  - (i) established in a country which is subject to an equivalence decision; or
  - (ii) permitted to provide those services under Article 46.5 of the markets in financial instruments regulation.

(4) For the purposes of paragraph (3)—

- (a) “equivalence decision” means a decision adopted by the Commission in relation to a country under Article 47.1 of the markets in financial instruments regulation which has not been withdrawn by a subsequent decision adopted by the Commission under that Article; and
- (b) a country is subject to an equivalence decision if a period of more than three years has elapsed since the adoption of the decision by the Commission, beginning on the day after the date of the adoption of the decision.

## **Interpretation of Chapter 2**

### **15. In this Chapter—**

“clients considered to be professionals” means professional clients (as defined by Article 4.1.10 of the markets in financial instruments directive) who fall within Section I of Annex II to the directive;

“power of intervention” means the power conferred on the FCA by section 196 (the power of intervention) of the Act;

“third country firm” has the same meaning as in Article 4.1.57 of the markets in financial instruments directive;

“third country firm registered with ESMA” means a third country firm which—

- (a) is registered in the register of third-country firms kept by ESMA in accordance with Article 47 (equivalence decision); and
- (b) has the right under Article 46.1 (general provisions) to provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to clients considered to be professionals;

“third country firm with an EEA branch” means a third country firm which—

- (a) is established in a country whose legal and supervisory framework has been recognised to be effectively equivalent in accordance with Article 47.1 (equivalence decision) of the markets in financial instruments regulation;
- (b) has a branch located in an EEA state other than the United Kingdom which is authorised in that state in accordance with Article 39 (establishment of a branch) of the markets in financial instruments directive; and
- (c) has the right under Article 47.3 of the markets in financial instruments regulation to provide the services and activities covered under the authorisation to eligible counterparties and clients considered to be professionals in other EEA States without the establishment of a branch in those states.

## **PART 3**

### **Position limits and position management controls in commodity derivatives**

#### **FCA duty to establish position limits**

**16.—**(1) The FCA must, by giving directions, establish position limits in respect of commodity derivatives traded on trading venues in the United Kingdom and economically equivalent over the counter contracts.

(2) The FCA must establish position limits under paragraph (1) on the basis of all positions held by a person in the contract to which the limit relates and those held on the person’s behalf at an aggregate group level in order to—

- (a) prevent market abuse; and
- (b) support orderly pricing and settlement conditions, which includes, but is not restricted to—
  - (i) preventing market distorting positions; and
  - (ii) ensuring convergence between prices of commodity derivatives in the delivery month and spot prices for the underlying commodity without prejudice to price discovery on the market for the underlying commodity.
- (3) The FCA must determine if a position is held at an aggregate group level for the purpose of paragraph (2) in accordance with the relevant methods.
- (4) Position limits established by the FCA under this regulation must be published in a manner the FCA considers appropriate.
- (5) In this regulation—
  - “group” has the meaning given by Article 4.1.34 (definitions) of the markets in financial instruments directive; and
  - “the relevant methods” means the methods determined by regulatory technical standards referred to in sub-paragraph (b) of Article 57.12 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article.

#### **Exemption for non-financial entities**

- 17.—(1) The calculation of the size of a position a person holds for the purposes of regulation 16(2) must not include a position which is—
- (a) held by or on behalf of a non-financial entity;
  - (b) objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity; and
  - (c) approved by the FCA in accordance with—
    - (i) the relevant criteria and methods; and
    - (ii) the relevant procedure.
  - (2) An application to the FCA for approval under paragraph (1)(c) must—
    - (a) be made in such manner as the FCA may direct; and
    - (b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.
  - (3) At any time after receiving an application and before determining it the FCA may require the applicant to provide the FCA with such further information as the FCA reasonably considers necessary to enable the FCA to determine the application.
  - (4) The FCA may give different directions, and may impose different requirements, in relation to different applications.
  - (5) In this regulation—
    - “the relevant criteria and methods” means the criteria and methods determined by regulatory technical standards referred to in sub-paragraph (a) of Article 57.12 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article; and
    - “the relevant procedure” means the procedure determined by regulatory technical standards referred to in sub-paragraph (f) of Article 57.12 of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article.

### **Content of position limits**

18. A position limit established by the FCA under regulation 16 must specify clear quantitative thresholds for the maximum size of a position in a commodity derivative that a person can hold.

### **FCA duty to use ESMA methodology to establish position limits and to review if market changes**

19.—(1) The FCA must, unless regulation 25 applies, establish position limits under regulation 16 in accordance with the ESMA methodology.

(2) The FCA must review a position limit it has established under regulation 16 where there is—

- (a) a significant change in deliverable supply or open interest; or
- (b) any other significant change on the market, based on the FCA's determination of deliverable supply or open interest.

(3) Where following a review the FCA believes that the position limit should be reset it must establish a new position limit under regulation 16.

### **ESMA opinions on position limits**

20.—(1) The FCA must notify ESMA of any position limit it intends to establish under regulation 16.

(2) If the establishment of the position limit would be, or is, incompatible with an opinion issued by ESMA in respect of the position limit the FCA must—

- (a) modify the position limit in accordance with ESMA's opinion; or
- (b) notify ESMA of the reasons why it considers that amending the established limit is unnecessary in light of the opinion.

(3) The FCA must publish a notice on the FCA's official website explaining the reasons for its decision where it does not modify a position limit following an ESMA opinion recommending that it should.

(4) In this regulation an "opinion issued by ESMA" means an opinion issued by ESMA for the purposes of Article 57.5 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive.

### **Position limits affecting multiple EEA jurisdictions**

21.—(1) Where the same commodity derivative is traded in significant volumes on trading venues in more than one jurisdiction in the EEA the FCA must only establish a position limit under regulation 16 in respect of that commodity derivative or any economically equivalent over the counter contract if the FCA is the competent authority of the trading venue where the largest volume of trading takes place.

(2) The volume of trading in a commodity derivative on a trading venue is to be determined for the purposes of paragraph (1) using the relevant method for calculation.

(3) The FCA must consult the competent authority of a trading venue in another EEA State on—

- (a) a position limit to be established under regulation 16; or
- (b) any revision to such a position limit,

if the position limit would be, or is, in respect of a commodity derivative traded in significant volumes on that trading venue or any economically equivalent over the counter contract.

(4) If the FCA and the competent authority of an EEA State other than the United Kingdom ("EEA competent authority") disagree on a decision by—

- (a) the competent authority concerning the establishment or revision of an EEA position limit in respect of a commodity derivative traded in significant volumes on a trading venue for which the FCA is the competent authority; or
- (b) the FCA concerning the establishment or revision of a position limit under regulation 16 in respect of a commodity derivative traded in significant volumes on a trading venue for which the competent authority of the other EEA State is responsible,

the FCA must state in writing to the competent authority of the other EEA State the full and detailed reasons why the FCA considers that the requirements laid down in Article 57.1 of the markets in financial instruments directive are, or are not, met in respect of that position limit.

(5) The FCA may bring any disagreement mentioned in paragraph (4) to ESMA's attention for consideration in accordance with Article 19 (settlement of disagreements between competent authorities in cross-border situations) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)(76).

(6) In this regulation—

“the relevant method for calculation” means the method determined by regulatory technical standards referred to in sub-paragraph (g) of Article 57.12 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article;

“the same commodity derivative” has the meaning given by regulatory technical standards referred to in sub-paragraph (d) of Article 57.12 of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article; and

“significant volumes” has the meaning given by regulatory technical standards referred to in sub-paragraph (d) of Article 57.12 of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article.

### **Cooperation with other competent authorities regarding position limits affecting multiple EEA jurisdictions**

**22.**—(1) If the FCA establishes a position limit under regulation 16 that affects a trading venue in another EEA State the FCA must put in place cooperation arrangements in order to enable the monitoring and enforcement of the position limit with—

- (a) the competent authority of that trading venue; and
- (b) any competent authority of another EEA State which is the competent authority of a person affected by the position limit.

(2) If the competent authority of another EEA State establishes an EEA position limit the FCA must put in place cooperation arrangements with that competent authority in order to enable the monitoring and enforcement of the EEA position limit if—

- (a) the EEA position limit affects a trading venue in the United Kingdom; or
- (b) the FCA is the competent authority of any person holding a position in a commodity derivative or economically equivalent over the counter contract subject to which the position limit applies.

(3) A cooperation arrangement put in place under paragraph (1) or (2) must include arrangements for the exchange of data relevant to the cooperation arrangement.

(4) In this regulation a position limit affects a trading venue or a person if—

(76) OJ L331, 15/12/2010, p.84.

- (a) it is in respect of a commodity derivative traded in significant volumes on that trading venue or any economically equivalent over the counter contract; or
- (b) that person holds a position in a commodity derivative or economically equivalent over the counter contract subject to the position limit.

### **General requirements for position limits**

**23.** Position limits established by the FCA under regulation 16 must be—

- (a) transparent and non-discriminatory;
- (b) specify how they apply to persons; and
- (c) take account of the nature and composition of market participants and of the use those market participants make of the contracts admitted to trading.

### **FCA duty to notify ESMA of established position limits and position management controls**

**24.—**(1) The FCA must inform ESMA of the details of any position limit it has established under regulation 16.

(2) The FCA must inform ESMA of the details of any position management controls that have been imposed on a trading venue which trades commodity derivatives by the operator of that trading venue if—

- (a) the operator of the trading venue is an investment firm, credit institution, or recognised investment exchange;
- (b) the FCA is the competent authority of the operator of the trading venue; and
- (c) the operator of the trading venue has informed the FCA it has imposed those position management controls.

(3) In paragraph (2) “position management controls” means the position management controls referred to in Article 57.8 of the markets in financial instruments directive.

### **Procedure in exceptional cases**

**25.—**(1) The FCA may establish a position limit under regulation 16 which is more restrictive than would be permitted by the ESMA methodology mentioned in regulation 19(1) (“a more restrictive position limit”) in exceptional cases, if the position limit is objectively justified and proportionate taking into account—

- (a) the liquidity of the specific market; and
- (b) the orderly functioning of that market.

(2) Where the FCA establishes a more restrictive position limit the FCA must publish that position limit on its website.

(3) The FCA must not impose a more restrictive position limit for a period of more than six months from the day it is published under paragraph (2).

(4) But the FCA may impose the more restrictive position limit for further periods of no more than six months each if the position limit continues to be objectively justified and proportionate taking into account the matters mentioned in paragraph (1)(a) and (b).

(5) The FCA must notify ESMA if it establishes a more restrictive position limit and the notification must include a justification for establishing a more restrictive position limit.

(6) If the FCA establishes, or continues to apply a more restrictive position limit that is incompatible with an opinion issued by ESMA the FCA must publish a notice without undue delay on the FCA’s official website a notice explaining its reasons for doing so.

(7) In this regulation “opinion issued by ESMA” means an opinion issued by ESMA for the purposes of Article 57.13 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive stating that it considers a more restrictive position limit is not necessary to address an exceptional case.

#### **Effect of position limits established by the FCA or other competent authorities in the EEA**

**26.—**(1) A person must not hold a position which is in excess of a position limit established under regulation 16, regardless as to whether the person is in the United Kingdom or not.

(2) A person situated or operating in the United Kingdom must not hold a position which is in excess of an EEA position limit.

#### **FCA power to require information**

**27.—**(1) The FCA may, in such manner as it may direct, require a person to provide information on, or concerning—

- (a) a position the person holds in a relevant commodity derivative or over the counter contract; or
- (b) trades a person has undertaken, or intends to undertake, in a relevant commodity derivative or over the counter contract.

(2) The FCA may, in such manner as it may direct, require the operator of a trading venue to provide information on, or concerning, trades a person has undertaken, or intends to undertake in a relevant commodity derivative or over the counter contract.

(3) In this regulation a commodity derivative or over the counter contract is relevant if the FCA—

- (a) has established a position limit under regulation 16 in respect of that derivative or contract; or
- (b) is considering whether it is required to establish or modify a position limit in respect of that derivative or contract under regulation 16.

#### **FCA power to intervene**

**28.—**(1) If the FCA considers it necessary for the purpose of the exercise by the FCA of functions under the markets in financial instruments directive or the markets in financial instruments regulation the FCA may—

- (a) limit the ability of a person to enter into a contract for a commodity derivative;
- (b) restrict the size of a position a person may hold; or
- (c) require a person to reduce the size of a position held.

(2) The FCA may exercise the power under paragraph (1) notwithstanding that the limitation, restriction, or reduction would be more restrictive than a position limit established by the FCA under regulation 16 or an EEA position limit relating to the commodity derivative.

(3) Paragraph (1) applies regardless as to whether the person is in the United Kingdom or not where the position relates to a commodity derivative traded on a trading venue established in the United Kingdom or an economically equivalent over the counter contract.

(4) If the FCA imposes a limitation, restriction, or requirement under paragraph (1) it must issue a notice to the person.

(5) A person on whom a limitation, restriction or reduction has been imposed under paragraph (1) may refer that matter to the Tribunal.

### Interpretation of Part 3

**29.**—(1) In this Part an over the counter contract is economically equivalent to a commodity derivative if it satisfies the criteria set out in regulatory technical standards referred to in sub-paragraph (c) of Article 57.12 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article.

(2) In this Part—

“EEA position limit” means a position limit established by a competent authority of an EEA State other than the United Kingdom for the purposes of Article 57 of the markets in financial instruments directive;

“the ESMA methodology” means the methodology determined by ESMA under Article 57.3 of the markets in financial instruments directive;

“position” means a net position in a commodity derivative traded on a trading venue in an EEA State and any economically equivalent over the counter contract that has been calculated in accordance with the methodology determined by regulatory technical standards referred to in sub-paragraph (e) of Article 57.12 of the markets in financial instruments directive and adopted by the Commission under the last paragraph of that Article;

“position limit” means a limit on the maximum size of a position which a person may hold at any time; and

“trading venue” has the meaning given in regulation 2 but also includes a facility mentioned in—

- (a) paragraph (b) of the definition of “multilateral trading facility” in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(77)</sup>; or
- (b) paragraph (b) of the definition of “organised trading facility” in that article.

## PART 4

Algorithmic trading etc by members of trading venues covered by certain exemptions from the markets in financial instruments directive

### Algorithmic trading

**30.**—(1) A member of, or participant in, a regulated market or multilateral trading facility (“M”) that engages in algorithmic trading must comply with the requirements of this regulation if—

- (a) M’s home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(2) M must have in place effective systems and controls, suitable to the business it operates, to ensure that M’s trading systems—

- (a) are resilient and have sufficient capacity;
- (b) are subject to appropriate trading thresholds and limits; and
- (c) prevent the sending of erroneous orders or the systems otherwise functioning in a way that may create or contribute to a disorderly market.

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<sup>(77)</sup> S.I. 2001/544; article 3(1) was amended by S.I. 2006/3384, there are other amendments but none is relevant.

(3) M must have in place effective systems and risk controls to ensure that M's trading systems cannot be used for any purpose that is contrary to—

- (a) the market abuse regulation; or
- (b) the rules of a trading venue to which it is connected.

(4) M must have in place effective business continuity arrangements to deal with any failure of its trading systems.

(5) M must ensure M's systems are fully tested and properly monitored to ensure that they meet the requirements set out in paragraph (2) to (4).

(6) If M engages in algorithmic trading in the United Kingdom M must notify the FCA.

(7) If M engages in algorithmic trading in an EEA State other than the United Kingdom M must notify—

- (a) the FCA; and
- (b) the competent authority of a trading venue on which M engages in algorithmic trading as a member or participant.

(8) M must arrange for records to be kept in relation to the matters referred to in this regulation and ensure that those records are sufficient to enable the FCA to monitor M's compliance with the requirements imposed on M by this regulation.

(9) If M engages in a high-frequency algorithmic trading technique (as defined by Article 4.1.40 (definitions) of the markets in financial instruments directive) M must store accurate and time sequenced records of all its placed orders, cancelled orders, executed orders, and quotations on trading venues, in an approved form.

(10) If M engages in algorithmic trading to pursue a market making strategy M must, taking into account the liquidity, scale, and nature of the specific market and the characteristics of any financial instrument traded—

- (a) carry out market making continuously during a specified proportion of the market or facility's trading hours, except under exceptional circumstances, with the result that liquidity is provided on a regular and predictable basis to that market or facility;
- (b) if the specified circumstances arise, enter into a binding written agreement with the market or facility which—
  - (i) specifies the obligations of M under the agreement;
  - (ii) imposes obligations on M that are in accordance with sub-paragraph (a); and
  - (iii) includes the specified content; and
- (c) have in place effective systems and controls to ensure that M meets the obligations under the agreement mentioned in sub-paragraph (b).

(11) In paragraph (10) M pursues a market making strategy if—

- (a) M is a member of, or participant in, one or more regulated markets or multilateral trading facilities;
- (b) M's strategy, when dealing on M's own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single regulated market or multilateral trading facility, or across different regulated markets or multilateral trading facilities; and
- (c) as a result the result liquidity is provided on a regular and frequent basis to the overall market.

(12) In this regulation—

“approved form” means a form specified as an approved form by regulatory technical standards referred to in sub-paragraph (d) of Article 17.7 of the markets in financial instruments directive and adopted under the last sub-paragraph of that Article;

“exceptional circumstances” means circumstances specified in regulatory technical standards referred to in sub-paragraph (c) of Article 17.7 of the markets in financial instruments directive and adopted by the Commission under the last sub-paragraph of that Article;

“the specified circumstances” means the circumstances specified in regulatory technical standards referred to in sub-paragraph (b) of Article 17.7 of the markets in financial instruments directive and adopted by the Commission under the last sub-paragraph of Article 17.7 of the directive; and

“the specified content” means the content specified by regulatory technical standards referred to in sub-paragraph (b) of Article 17.7 of the markets in financial instruments directive and adopted by the Commission under the last sub-paragraph of Article 17.7 of the directive.

### **Provision of information to the FCA concerning algorithmic trading**

**31.**—(1) If a member of, or participant in, a regulated market or multilateral trading facility (“M”)—

- (a) engages in algorithmic trading;
- (b) is subject to the requirements set out in regulation 30; and
- (c) M’s home Member State is the United Kingdom;

the FCA may require (“M”) to provide the information specified in paragraph (2) on a regular or ad hoc basis.

(2) The specified information for the purposes of paragraph (1) is—

- (a) a description of the nature of M’s algorithmic trading strategies;
- (b) details of the trading parameters or limits to which M’s trading systems are subject;
- (c) information concerning the systems and controls M has in place to ensure M meets any requirements imposed on M by regulation 30(2) to (4) (“M’s systems and controls”);
- (d) details of M’s testing of M’s systems and controls for the purposes of regulation 30(5);
- (e) any records M keeps for the purposes of regulation 30(8) and (9); and
- (f) any further information about M’s algorithmic trading and systems used for that trading.

(3) If M is engaged in algorithmic trading on a trading venue in an EEA State other than the United Kingdom the FCA must, on request, provide the competent authority for that trading venue with any information it receives from M under paragraph (1).

### **Direct electronic access**

**32.**—(1) A member of, or participant in, a regulated market or multilateral trading facility that provides direct electronic access to the market or facility (“M”) must comply with the requirements set out in paragraphs (4) to (9) if condition A or B is met.

(2) Condition A is that—

- (a) M’s home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(3) Condition B is that M provides direct electronic access in accordance with the relevant United Kingdom national regime for the purposes of Article 54.1 (transitional provisions) of the markets in financial instruments regulation.

(4) M must have in place effective systems and controls which ensure—

- (a) M conducts an assessment and review of the suitability of clients using the service;
- (b) clients using the service are prevented from exceeding appropriate pre-set trading and credit thresholds;
- (c) trading by clients using the service is properly monitored; and
- (d) risk controls prevent trading by clients which—
  - (i) may create risks to M itself;
  - (ii) could create, or contribute to, a disorderly market;
  - (iii) could be contrary to the market abuse regulation; or
  - (iv) could be contrary to the rules of the regulated market or multilateral facility to which M provides direct electronic access.

(5) M must monitor the transactions made by clients to which it provides direct electronic access to a regulated market or multilateral trading facility to identify—

- (a) infringements of the rules of the regulated market or multilateral trading facility;
- (b) disorderly trading conditions; or
- (c) conduct which may involve market abuse.

(6) If M's monitoring under paragraph (5) identifies an infringement of the rules of a regulated market or multilateral trading facility, disorderly trading conditions, or conduct which may involve market abuse M must notify the FCA.

(7) M must have a binding written agreement with each client which—

- (a) details the rights and obligations of both parties arising from the provision of the service; and
- (b) states that M is responsible for ensuring the client complies with the requirements of the markets in financial instruments directive and the rules of the regulated market or a multilateral trading facility; and

(8) M must notify—

- (a) the FCA that M is providing direct electronic access services; and
- (b) the competent authority of any regulated market or a multilateral trading facility in the EEA to which M provides direct electronic access services that M is doing so.

(9) M must arrange for—

- (a) records to be kept on the matters referred to in paragraph (4)(a) to (c); and
- (b) records to be kept to enable M to meet any requirement imposed on them under regulation 36.

(10) In this regulation the provision of direct electronic access is in accordance with the relevant United Kingdom national regime for the purposes of Article 54.1 (transitional provisions) of the markets in financial instruments regulation if it is an activity subject to the exclusion in Article 72 (overseas persons) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2000(78).

### **Provision of information to the FCA concerning direct electronic access**

**33.**—(1) The FCA may require a member of, or participant in, a regulated market or multilateral trading facility subject to the requirements set out in regulation 32 (“M”) to provide on a regular or ad hoc basis—

- (a) a description of the systems mentioned in regulation 32(3);
- (b) evidence that those systems have been applied; and
- (c) the information stored in accordance with regulation 32(9) .

(2) If Condition A in regulation 32(2) applies to M and M provides direct electronic access to a regulated market or multilateral trading facility in an EEA State other than the United Kingdom the FCA must, on request, provide the competent authority for that market or facility any information it receives from M under paragraph (1).

### **Acting as a general clearing member**

**34.**—(1) A member of, or participant in, a regulated market or multilateral trading facility that acts as a general clearing member for other persons (“M”) must comply with the requirements set out in paragraph (2) if—

- (a) M’s home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(2) M must have in place effective systems and controls to ensure—

- (a) M’s clearing services are only provided to persons who —
  - (i) are suitable recipients of those services; and
  - (ii) meet clear criteria applied by those systems and controls regarding which persons are suitable to receive clearing services; and
- (b) requirements are imposed on the persons to whom clearing services are being provided to reduce risks to M and to the market.

(3) M must have a binding written agreement with any person to whom they are providing clearing services detailing the rights and obligations of both parties arising from the provision of the service.

(4) In this regulation “clearing services” means the services provided by M in the course of acting as a general clearing member for other persons.

### **Synchronisation of business clocks**

**35.**—(1) A member of, or participant in, a trading venue (“M”) must comply with the requirement set out in paragraph (2) if—

- (a) M’s home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(2) M must synchronise the business clock M uses to record the date and time of any reportable event with the business clock the trading venue uses for that purpose to the level of accuracy specified in regulatory technical standards adopted by the Commission under Article 50.2 (synchronisation of business clocks) of the markets in financial instruments directive.

**FCA power to impose requirements**

**36.**—(1) The FCA may impose a requirement mentioned in paragraph (2) on a person to whom any of regulations 30 to 35 applies if it appears to the FCA that—

- (a) the person has contravened, or is likely to contravene, a requirement imposed on it by or under these Regulations or the markets in financial instruments regulation;
- (b) the person has, in purported compliance with any requirement imposed on it by or under these Regulations or the markets in financial instruments regulation, knowingly or recklessly given the FCA information which is false or misleading in a material particular; or
- (c) it is desirable to exercise the power in order to advance one or more of the FCA's operational objectives (as defined by section 1B(3)(79) (the FCA's general duties)) of the Act.

(2) For the purposes of paragraph (2) the FCA may impose a requirement that the person—

- (a) take specified action; or
- (b) refrain from taking specified action.

(3) A requirement imposed under paragraph (2) may—

- (a) be imposed by reference to the person's relationship with another person;
- (b) be expressed to expire at the end of such period as the FCA may specify, but the imposition of a requirement that expires at the end of a specified period does not affect the FCA's power to impose a new requirement in accordance with paragraph (2); and
- (c) refer to the past conduct of the person (for example, by requiring the person to review or take remedial action in respect of past conduct).

(4) If the FCA imposes a requirement under this regulation it must issue a notice to the person.

(5) A person on whom a requirement has been imposed under this regulation may refer that matter to the Tribunal.

**Interpretation of Part 4**

**37.**—(1) In this Part a person has a Part 4A permission for the purposes of the markets in financial instruments directive if;

- (a) the directive applies to the person; and
- (b) the permission relates to the provision of investment services or the performance of investment activities.

(2) In this Part "home Member State" has the meaning given by Article 4.1.55 (definitions) of the markets in financial instruments directive.

## PART 5

### Removal of persons from the management board of an investment firm, credit institution, or recognised investment exchange

#### **FCA and PRA power to remove a person from a management board**

**38.**—(1) The appropriate regulator may require an investment firm, credit institution, or recognised investment exchange to remove a person from the management board if the regulator considers it necessary for the purpose of the exercise by it of functions under the markets in financial instruments directive or the markets in financial instruments regulation.

(2) For the purposes of this Part “the appropriate regulator” means—

- (a) in a case where an investment firm or credit institution is a PRA-authorised person, the FCA or PRA;
- (b) in any other case, the FCA.

(3) The FCA must consult the PRA before requiring an investment firm or credit institution which is a PRA-authorised person to remove a person from the management board under paragraph (1).

(4) In this regulation “PRA-authorised person” has the same meaning as in section 2B(5) (the PRA’s general objective) of the Act.

#### **Right to refer matters to the Tribunal**

**39.** If the appropriate regulator requires an investment firm, credit institution, or recognised investment exchange to remove a person from the management board under regulation 38—

- (a) the firm, credit institution, or exchange may refer the matter to the Tribunal; and
- (b) the person to whom the requirement relates may refer the matter to the Tribunal.

#### **Removal of persons from management boards: procedure**

**40.**—(1) A requirement under regulation 38 may be expressed to come into effect—

- (a) immediately; or
- (b) on a specified date.

(2) The time or date on which a requirement under regulation 38 is expressed to come into effect under paragraph (1) must be a time or date that the appropriate regulator considers it necessary for the requirement to come into effect, having regard to the grounds for imposing the requirement.

(3) If the appropriate regulator proposes to impose a requirement on an investment firm, credit institution, or recognised investment exchange, or imposes such a requirement with immediate effect, it must give written notice—

- (a) to that investment firm, credit institution, or recognised investment exchange, and
- (b) to each person on the management board of the investment firm, credit institution, or recognised investment exchange to whom the requirement relates (“interested party”).

(4) A notice given under paragraph (3) must—

- (a) give details of the requirement;
- (b) identify each interested party;
- (c) give the regulator’s reasons for imposing the requirement—
  - (i) in the case of a notice given to the investment firm, credit institution, or recognised investment exchange, in relation to the interested party;

- (ii) in the case of a notice given to the interested party, in relation to that interested party;
  - (d) inform the investment firm, credit institution, or recognised investment exchange and the interested party that each of them may make representations to the regulator within such period as may be specified in the notice (whether or not the matter has been referred the matter to the Tribunal);
  - (e) state when the requirement takes effect; and
  - (f) inform the investment firm, credit institution, or recognised investment exchange and the interested party of their right to refer the matter to the Tribunal.
- (5) The regulator may extend the period allowed by the notice given under paragraph (3) for making representations.
- (6) If, having considered any representations made by a person to whom notice has been given under paragraph (3) (the “original notice”), the regulator decides—
- (a) not to impose the requirement;
  - (b) to impose the requirement; or
  - (c) not to rescind the imposition of any such requirement which has already taken effect,
- the regulator must give written notice to the person to whom the original notice was given.
- (7) A notice under paragraph (6)(b) or (c) must inform the person to whom it is given of that person’s right to refer the matter to the Tribunal and give an indication of the procedure on such a reference.

## PART 6

### Miscellaneous FCA functions in relation to the markets in financial instruments directive and markets in financial instruments regulation

#### **Provision of FCA record of recognised investment exchanges to ESMA and other competent authorities**

**41.** The FCA must—

- (a) provide ESMA and all the competent authorities of the other EEA States with a copy of the part of the record maintained by the FCA under section 347(80) (the record of authorised persons etc) which contains entries relating to recognised investment exchanges made for the purposes of subsection (1)(e) of that section; and
- (b) inform ESMA and those competent authorities of any change to that part of the record.

#### **Provision of information to ESMA about multilateral trading facilities etc**

**42.—(1)** The FCA must notify ESMA when a recognised investment exchange is permitted to operate a multilateral trading facility or an organised trading facility (as defined by Article 4.1.23 (definitions) of the markets in financial instruments directive) under the Part 18 of the Act.

(2) If an investment firm, credit institution, or recognised investment exchange provides the FCA with any of the information specified in paragraph (3) about a multilateral trading facility operated by the firm, institution, or exchange the FCA must, on request, give the information to ESMA.

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(80) Section 347 was amended by [S.I. 2007/126](#) paragraph 16(2), (3), (4)(a) and (b) and (5) of the Financial Services Act 2012, section 34(2)(a) and (b), (3) and (4) of, and paragraph 11 of Schedule 5 to, the Financial Services (Banking Reform) Act (c.33) 2013, [S.I. 2013/1388](#), and [S.I. 2015/910](#).

- (3) The specified information for the purposes of paragraph (2) is—
  - (a) a detailed description of the functioning of the facility;
  - (b) any links to another trading venue owned by the same exchange or to a systematic internaliser owned by the same exchange; and
  - (c) a list of the facility’s members, participants and users.
- (4) The FCA must as soon as reasonably practicable notify ESMA if the FCA—
  - (a) registers a multilateral trading facility operated by a recognised investment exchange, credit institution, or recognised investment exchange as an SME growth market for the purposes of Article 33 (SME growth markets) of the markets in financial instruments directive; or
  - (b) deregisters such a facility as an SME growth market.
- (5) In this regulation “SME growth market” has the same meaning as in Article 4.1.12 (definitions) of the markets in financial instruments directive.

**Provision to ESMA of reports by recognised investment exchanges of infringements of the exchange’s rules, disorderly trading, suspected market abuse, and systems disruptions**

**43.**—(1) If the FCA receives a report from a recognised investment exchange informing the FCA of—

- (a) significant infringements of the exchange’s rules;
- (b) disorderly trading conditions;
- (c) conduct that may indicate behaviour which is prohibited under the market abuse regulation; or
- (d) system disruptions in relation to a financial instrument;

on, or related to, a trading venue operated by the exchange, the FCA must communicate that information to ESMA and the competent authorities of all the other EEA States.

(2) But where the report informs the FCA of conduct that may indicate behaviour which is prohibited under the market abuse regulation the FCA must be satisfied such behaviour is being, or has been, carried out before it communicates the information to ESMA and the competent authorities of all the other EEA States.

**Authorisation of members of management bodies to hold additional non-executive directorship**

**44.**—(1) Where a relevant recognition requirement limits the number of non-executive directorships a member of the management body of an exchange may hold at the same time, the FCA may authorise that member to hold one additional directorship.

(2) In paragraph (1)—

“management body” has the meaning given by regulation 3 (interpretation) of Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001<sup>(81)</sup>; and

“relevant recognition requirement” means a requirement set out in paragraph 2B(1)(a)(i) or (ii) of the Schedule to those Regulations.

(3) The FCA must regularly inform ESMA of—

- (a) any authorisation given by the FCA under paragraph (1); and

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<sup>(81)</sup> S.I. 2001/995; there are amendments to regulation 3 but none is relevant.

- (b) any direction given by the FCA under section 138A(82) (modification or waiver of rules) of the Act for the purposes of Article 9.2 (management body) of the markets in financial instruments directive.

**Provision of information to ESMA regarding sanctions and measures imposed for the purposes of the markets in financial instruments directive**

45.—(1) The FCA must annually provide ESMA with aggregated information in respect of sanctions and measures imposed by the competent authorities designated under regulation 3.

(2) In paragraph (1) “aggregated information in respect of sanctions and measures” means the aggregated information mentioned in Article 71.4 (publication of decisions) of the markets in financial instruments directive.

**Provision of information to other competent authorities regarding persons engaged in algorithmic trading or providing direct electronic access**

46.—(1) If the FCA is the competent authority of a person (“P”)—

- (a) engaging in algorithmic trading on a trading venue; or
- (b) providing direct electronic access to a trading venue;

the FCA must, on request, provide any competent authority of an EEA State which is the competent authority of the trading venue concerned any specified information it has received from P.

(2) The specified information for the purposes of paragraph (1) is—

- (a) if P is engaging in algorithmic trading on a trading venue, any information referred to in the second sub-paragraph of Article 17.5 concerning the person’s algorithmic trading on the trading venue mentioned in paragraph (1)(a) and the systems used for that trading; or
- (b) if P is providing direct electronic access to a trading venue—
  - (i) any information referred to in the first sub-paragraph of Article 17.5 of the markets in financial instruments directive on the systems and controls that the person has put in place in respect of the provision of direct electronic access to the trading venue mentioned in paragraph (1)(b); and
  - (ii) any evidence that those systems and controls have been applied.

**Notifications, reports, and applications relating to the markets in financial instruments directive or the markets in financial instruments regulation**

47.—(1) The FCA may direct the manner in which a person must—

- (a) notify the FCA, for the purposes of Article 2.1(j)(exemptions) of the markets in financial instruments directive, that the person is making use of the exemption under Article 2.1(j) of that directive;
- (b) report to the FCA, for the purposes of the final point of Article 2.1(j) (exemptions) of the markets in financial instruments directive, the basis on which a person considers an activity under that Article to be ancillary to that person’s main business;
- (c) make an application for—
  - (i) a waiver under Article 4 (waivers for equity instruments) of the markets in financial instruments regulation;

(82) Section 138A was inserted by section 24(1) of the Financial Services Act 2012 and amended by paragraph 8 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 and [S.I. 2013/1388](#).

- (ii) an authorisation under Article 7 (authorisation of deferred publication) of the markets in financial instruments regulation;
- (iii) a waiver under Article 9 (waivers for non-equity instruments) of the markets in financial instruments regulation; and
- (iv) an authorisation under Article 11 (authorisation of deferred publication) of the markets in financial instruments regulation.

(2) An application mentioned in paragraph (1)(c) must contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application mentioned in paragraph (1)(c) and before determining it the FCA may require the applicant to provide the FCA with such further information as the FCA reasonably considers necessary to enable the FCA to determine the application.

(4) The FCA may give different directions, and may impose different requirements, in relation to different applications.

## PART 7

### Miscellaneous

#### **Refund of fees by the Gambling Commission**

**48.**—(1) The Gambling Commission may refund the whole or part of any fee paid for an operating licence if immediately before 3rd January 2018 the licence authorised a person to carry on an activity which became a regulated activity on 3rd January 2018 by virtue of Article 85(4A) and (4B)(**83**) (contracts for differences etc.) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(2) In paragraph (1) “operating licence” means an operating licence issued by the Gambling Commission under Part 5 of the Gambling Act 2005(**84**).

#### **Administration and enforcement of the Regulations**

**49.** Schedule 1 on the administration and enforcement of these Regulations has effect.

#### **Amendments to legislation**

**50.**—(1) Schedule 2, which contains amendments to the Act, has effect.

(2) Schedule 3, which contains amendments to secondary legislation made under the Act, has effect.

(3) Schedule 4, which contains amendments to primary legislation other than the Act, has effect.

(4) Schedule 5, which contains amendments to secondary legislation which was not made under the Act, has effect.

#### **Review**

**51.**—(1) The Treasury must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and

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(83) *S.I. 2001/544*; article 85(4A) and (4B) were inserted by *S.I. 2017/488*.

(84) *2005 c.19*.

- (c) publish the report.
- (2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the markets in financial instruments directive and markets in financial instruments regulation are implemented in other member States.
- (3) The report must in particular—
  - (a) set out the objectives intended to be achieved by the regulatory provision made by these Regulations,
  - (b) assess the extent to which those objectives are achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations are made.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

21st June 2017

*David Evennett*  
*Andrew Griffiths*  
Two Lords Commissioners of Her Majesty's  
Treasury

## SCHEDULE 1

Regulation 49

### Administration and enforcement of Parts 3, 4, and 5

## PART 1

### Interpretation

#### Interpretation of Schedule 1

**1.** In this Schedule—

“the EMIR regulation” means Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories<sup>(85)</sup>;

“management body” in relation to a person (“P”) means—

- (a) the board of directors, or if there is no such board, the equivalent body responsible for the management of P; and
- (b) any other person who effectively directs the business of P;

“non-authorised counterparty” means—

- (a) a financial counterparty (within the meaning of Article 2.8 of the EMIR regulation) who is neither an authorised person nor a recognised body; or
- (b) a non-financial counterparty (within the meaning of Article 2.9 of the EMIR regulation) who meets the conditions in Article 10.1.b of that regulation;

“PRA-authorised person” has the meaning given in section 2B(5) of the Act<sup>(86)</sup>;

“recognised body” has the meaning given in section 313(1) of the Act;

“senior management” has the meaning given by Article 4.1.37 of the markets in financial instruments directive.

#### Directly applicable EU regulations

**2.—**(1) In this Schedule, any reference to a requirement imposed by or under Part 3 or 4 of these Regulations includes a reference to a requirement imposed on a person to whom Part 3 or 4 of these Regulations applies under—

- (a) a directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation; and
- (b) the markets in financial instruments regulation.

(2) In this Schedule, any reference to Article 28 of the markets in financial instruments regulation includes a reference to any directly applicable EU regulation made under that Article.

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<sup>(85)</sup> OJ No L173, 12/6/2014, p84.

<sup>(86)</sup> Section 2B was inserted by section 6 of the Financial Services Act 2012 (c.21).

## PART 2

### The FCA and the PRA

#### *Functions of the FCA and the PRA*

##### **Functions of the FCA**

3.—(1) The FCA has the functions conferred on it by these Regulations.

(2) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, and in giving general guidance under these Regulations, the FCA must, so far as is reasonably possible, act in a way which—

- (a) is compatible with its strategic objective as defined in section 1B(2) of the Act<sup>(87)</sup> (the FCA's general duties); and
- (b) advances one or more of its operational objectives as defined in section 1B(3) of the Act.

##### **Functions of the PRA**

4.—(1) The PRA has the functions conferred on it by these Regulations.

(2) In determining the general policy and principles by reference to which it performs particular functions under these Regulations, the PRA must, so far as is reasonably possible, act in a way which is compatible with its general objective as defined in section 2B(2) of the Act<sup>(88)</sup> (the PRA's general duties).

(3) Section 2H(1) of the Act<sup>(89)</sup> (secondary competition objective) applies to the exercise by the PRA of its functions under these Regulations.

#### *Supervision*

##### **Monitoring and enforcement**

5.—(1) The FCA must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under Part 3, 4 or 5 of these Regulations or non-authorised counterparties on whom requirements are imposed by Article 28 of the markets in financial instruments regulation are complying with them.

(2) The PRA must maintain arrangements designed to enable it to determine whether PRA-authorised persons on whom requirements are imposed by or under Part 5 of these Regulations are complying with them.

(3) The FCA must maintain arrangements for enforcing the provisions of—

- (a) Parts 3, 4 and 5 of these Regulations, and
- (b) Article 28 of the markets in financial instruments regulation as respects non-authorised counterparties.

(4) The PRA must maintain arrangements for enforcing the provisions of Part 5 of these Regulations as respects PRA-authorised persons.

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<sup>(87)</sup> Sections 1B and 1F were inserted by section 6 of the Financial Services Act 2012.

<sup>(88)</sup> Section 2B was inserted by section 6 of the Financial Services Act 2012 and amended by section 1 of the Financial Services (Banking Reform) Act 2013 (c.33).

<sup>(89)</sup> Section 2H was substituted by section 130 of the Financial Services (Banking Reform) Act 2013.

## Co-operation

6.—(1) In exercising its functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation, the FCA must take such steps as it considers appropriate to co-operate with—

- (a) persons who have functions similar to the functions of the FCA under these Regulations;
- (b) persons who have functions similar to the functions of the FCA with respect to Article 28 of the markets in financial instruments regulation; and
- (c) other persons mentioned in Article 79 of the markets in financial instruments directive.

(2) In exercising its functions under Part 5 of these Regulations, the PRA must take such steps as it considers appropriate to co-operate with—

- (a) persons who have functions similar to the functions of the PRA under these Regulations; and
- (b) other persons mentioned in Article 79 of the markets in financial instruments directive.

(3) The duty under section 3D of the Act<sup>(90)</sup> (duty of FCA and PRA to ensure co-ordinated exercise of functions) applies to the exercise of the functions of the FCA and PRA under these Regulations, and in the case of the FCA its functions with respect to Article 28 of the markets in financial instruments regulation, as it applies to the exercise of their functions under the Act.

## Guidance

7.—(1) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of Parts 3, 4, and 5 of these Regulations;
- (b) any matters relating to the functions of the FCA under these Regulations or with respect to Article 28 of the markets in financial instruments regulation; or
- (c) any other matters about which it appears to the FCA to be desirable to give information or advice in connection with these Regulations.

(2) The FCA may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price; and
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(3) Section 139B of the Act<sup>(91)</sup> (notification of FCA guidance to the Treasury) applies with respect to guidance given by the FCA under this paragraph as it applies with respect to guidance given by the FCA under section 139A of the Act (power of the FCA to give guidance) as if—

(a) for subsection (5) there were substituted—

“(5) “General guidance” means guidance given by the FCA under paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 which is—

- (a) given to persons generally, to persons to whom those Regulations apply generally or to a class of persons to whom those Regulations apply,
- (b) intended to have continuing effect, and

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<sup>(90)</sup> Section 3D was inserted by section 6 of the Financial Services Act 2012.

<sup>(91)</sup> Sections 139A and 139B were inserted by section 24 of the Financial Services Act 2012. There are amendments to section 139A but none is relevant.

*Status: This is the original version (as it was originally made).*

- (c) given in writing or other legible form.”;
- (b) subsection (6) were omitted.

### **Reporting requirements**

**8.—(1)** A person (“P”) must provide the appropriate regulator with such information in respect of P’s compliance or non-compliance with any requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation applicable to P as the appropriate regulator may direct.

(2) The information required to be given under this paragraph must be provided at such times, in such form, and verified in such manner, as the appropriate regulator may direct.

(3) If at any time P considers that it is unable to comply with a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation applicable to it, P must as soon as reasonably practicable notify the appropriate regulator of that fact, including the reasons why it is unable to comply.

(4) In this paragraph, “appropriate regulator” means—

- (a) in relation to a requirement imposed by the PRA on a PRA-authorised person under Part 5 of these Regulations, the PRA, and
- (b) in any other case, the FCA.

## **PART 3**

### **Administrative sanctions and offences**

#### *Administrative sanctions*

### **Interpretation of Part 3**

**9.—(1)** In this Part, “regulator” means the FCA or the PRA.

(2) In paragraphs 10 and 11, “appropriate regulator” means—

- (a) in relation to a contravention of a requirement imposed by the PRA on a PRA-authorised person under Part 5 of these Regulations, the PRA; and
- (b) in relation to any other contravention of these Regulations or of Article 28 of the markets in financial instruments regulation, the FCA.

### **Public censure**

**10.** If the appropriate regulator considers that—

- (a) a person (“P”) has contravened a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation,
- (b) a member of the management body of P is responsible for the contravention by P of a requirement imposed by or under these Regulations or by Article 28 of that regulation, or
- (c) another member of the senior management of P is responsible for the contravention by P of a requirement imposed by or under these Regulations or by Article 28 of that regulation,

the appropriate regulator may publish a statement to that effect.

### **Financial penalties**

**11.**—(1) If the appropriate regulator considers that a person (“P”) has contravened a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation, it may impose a penalty of such amount as it considers appropriate on—

- (a) P;
- (b) a member of the management body of P if the appropriate regulator considers the person is responsible for the contravention;
- (c) another member of the senior management of P if the appropriate regulator considers the person is responsible for the contravention.

(2) A penalty imposed under this paragraph is payable to the regulator that imposed the penalty and may be recovered as a debt owed to that regulator.

### **Warning notice**

**12.**—(1) If a regulator proposes to—

- (a) publish a statement in respect of a person under paragraph 10; or
- (b) impose a penalty on a person under paragraph 11,

it must give the person a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

### **Decision notice**

**13.**—(1) If, having considered any representations made in response to the warning notice, a regulator decides to—

- (a) publish a statement under paragraph 10 (whether or not in the terms proposed); or
- (b) impose a penalty under paragraph 11 (whether or not of the amount proposed),

it must without delay give the person concerned a decision notice.

(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

(4) If a regulator decides to—

- (a) publish a statement in respect of a person under paragraph 10; or
- (b) impose a penalty on a person under paragraph 11,

the person may refer the matter to the Tribunal.

(5) After a statement under paragraph 10 is published, the regulator concerned must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the Act(92) (third party rights) (as applied by paragraph 22).

### **Statements of policy**

**14.**—(1) Each regulator must prepare and issue a statement of policy with respect to—

- (a) the imposition of penalties under paragraph 11; and
- (b) the amount of penalties under that paragraph.

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(92) Section 393(4) was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.

*Status: This is the original version (as it was originally made).*

- (2) A regulator's policy in determining what the amount of a penalty should be must include having regard to—
- (a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;
  - (b) the extent to which that contravention was deliberate or reckless; and
  - (c) whether the person against whom action is to be taken is an individual.
- (3) A regulator may at any time alter or replace a statement issued by it under this paragraph.
- (4) If a statement issued under this paragraph is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.
- (5) A regulator must, without delay, give the Treasury a copy of any statement which it issues under this paragraph.
- (6) A statement issued under this paragraph by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (7) The regulator may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, its power under paragraph 11 in the case of any particular contravention, a regulator must have regard to any statement of policy published by it under this paragraph and in force at the time when the contravention in question occurred.

#### **Statements of policy: procedure**

- 15.**—(1) Before a regulator issues a statement under paragraph 14, the regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by a notice that representations about the proposal may be made to the regulator within a specified time.
- (3) Before issuing the proposed statement the regulator must have regard to any representations made to it in accordance with sub-paragraph (2).
- (4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
- (a) the representations made to in accordance with sub-paragraph (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under sub-paragraph (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with sub-paragraph (4)) publish details of the difference.
- (6) A regulator may charge a reasonable fee for providing a person with a copy of a draft published by it under sub-paragraph (1).
- (7) This paragraph also applies to a proposal to alter or replace a statement.

#### *Offences*

#### **Misleading the FCA or PRA**

- 16.**—(1) A person must not, for the purposes of compliance or purported compliance with a requirement imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation knowingly or recklessly give a regulator information which is false or misleading in a material particular.
- (2) A person must not provide information to another person—

- (a) knowing; or
- (b) being reckless as to whether,

the information is false or misleading in a material particular and knowing that the information is to be provided to, or to be used for the purposes of providing information to, a regulator in connection with the discharge of its functions under these Regulations or with respect to Article 28 of the markets in financial instruments regulation.

- (3) A person who contravenes sub-paragraph (1) or (2) is guilty of an offence.
- (4) A person guilty of an offence under this paragraph is liable—
  - (a) on summary conviction—
    - (i) in England and Wales, to a fine;
    - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.

### **Restriction on penalties**

17.—(1) A person who is convicted of an offence under these Regulations or under the Act as applied by these Regulations is not subsequently liable to a penalty under paragraph 11 in respect of the same acts or omissions that constituted the offence.

(2) A person who is liable to a penalty under paragraph 11 is not subsequently liable for an offence under these Regulations in respect of the same acts or omissions that constituted the contravention of a requirement imposed by or under these Regulations for the purposes of that penalty.

## **PART 4**

### **Application of the Act for the purposes of the Regulations**

#### **Application of Part 9 of the Act (hearings and appeals)**

18.—(1) Part 9 of the Act<sup>(93)</sup> (hearings and appeals) applies with respect to proceedings pursuant to references to the Tribunal under these Regulations and under the Act as applied by these Regulations (“relevant proceedings”) as it applies with respect to proceedings pursuant to references to the Tribunal under that Act, with the following modifications.

- (2) Section 133 of the Act (proceedings before the Tribunal: general provision) applies as if—
  - (a) in subsection (1)—
    - (i) “(whether made under this or any other Act)” were omitted;
    - (ii) paragraphs (b) and (c) were omitted;
  - (b) in subsection (2), “, (b) or (c)” were omitted;
  - (c) in subsection (5) the reference to section 393(11) were a reference to section 393(11) as applied by these Regulations;
  - (d) for subsection (7A) there were substituted—

“(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of either of the following decisions—

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<sup>(93)</sup> Part 9 was amended by section 23 of the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013, paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c.22), S.I. 2010/22, 2013/1388, 2014/3329 and 2016/680.

*Status: This is the original version (as it was originally made).*

- (a) a decision to publish a statement under paragraph 10 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
- (b) a decision to impose a penalty under paragraph 11 of Schedule 1 to those Regulations.”.

(3) Section 133A of the Act (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if for subsection (1) there were substituted—

“(1) In determining in accordance with section 133(5) (as applied by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017) a reference made as a result of a decision notice given by the FCA or the PRA, the Tribunal may not direct the FCA or the PRA (as the case may be) to take action which it would not, under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, have had power to take when giving the notice.”.

(4) Section 133B of the Act (offences) applies as if subsection (1)(b) and (c) were omitted.

#### **Application of Part 11 of the Act (information gathering and investigations)**

**19.**—(1) Part 11 of the Act<sup>(94)</sup> (information gathering and investigations) applies with respect to the discharge by the regulators of their functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation as it applies with respect to the discharge by the regulators of their functions under the Act, with the following modifications.

(2) In this paragraph, “regulator” means the FCA or the PRA.

(3) Part 11 of the Act applies as if—

- (a) each reference to the Act included a reference to these Regulations and Article 28 of the markets in financial instruments regulation;
- (b) each reference to a section or Part of, or Schedule to, the Act were a reference to that section, Part or Schedule as applied by these Regulations;
- (c) each reference to an authorised person were a reference to a person in respect of whom a requirement is imposed by or under these Regulations or to a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation.

(4) Sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc. in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d)) of the Act do not apply.

(5) Section 166A of the Act (appointment of skilled person to collect and update information) applies as if—

(a) for subsection (1) there were substituted—

“(1) This section applies if either regulator considers that a person has contravened a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 to collect, and keep up to date, information of a description specified in those Regulations.”;

(b) subsection (10) were omitted.

<sup>(94)</sup> Part 11 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44), paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c.28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c.28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012, paragraphs 36 and 37 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c.14), paragraph 9 of Schedule 2 to the Investigatory Powers Act 2016 (c.25), S.I. 2001/1090, 2005/1433, 2007/126, 2011/1043, 2012/2554, 2013/1773, 2015/575 and 2016/680. There are other amendments but none is relevant.

(6) Section 167 of the Act (appointment of persons to carry out general investigations) applies as if—

(a) for subsection (1) there were substituted—

“(1) If it appears to an investigating authority that there is good reason for doing so, the investigating authority may appoint one or more competent persons to conduct an investigation on its behalf into—

(a) the nature, conduct or state of the business of a person in respect of whom a requirement is imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (“a person subject to the 2017 Regulations”) or a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation (“a non-authorised counterparty”);

(b) a particular aspect of that business; or

(c) the ownership or control of a person subject to the 2017 Regulations or a non-authorised counterparty.”;

(b) for subsection (4) there were substituted—

“(4) The power conferred by this section may be exercised in relation to a person who was formerly a person subject to the 2017 Regulations or a non-authorised counterparty but only in relation to—

(a) business carried on when the person was a person subject to the 2017 Regulations or a non-authorised counterparty; or

(b) the ownership or control of a person who was formerly a person subject to the 2017 Regulations or a non-authorised counterparty at any time when the person was a person subject to the 2017 Regulations or a non-authorised counterparty.”;

(c) in subsection (5A) for paragraphs (b) and (c) there were substituted—

“(b) in relation to any other person subject to the 2017 Regulations, the FCA or the PRA;

(c) in relation to a non-authorised counterparty, the FCA.”;

(d) subsection (6) were omitted.

(7) Section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if—

(a) for subsection (1) there were substituted—

“(1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—

(a) a person may have contravened a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or by Article 28 of the markets in financial instruments regulation;

(b) a member of the management body of a person referred to in paragraph (a) or another member of the senior management of such a person may be responsible for the contravention of a requirement imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or by Article 28 of the markets in financial instruments regulation; or

(c) a person may be guilty of an offence under those Regulations or under this Act as applied by those Regulations.”;

(b) subsections (2), (4) and (5) were omitted;

(c) for subsection (6) there were substituted—

*Status: This is the original version (as it was originally made).*

“(6) “Investigating authority” means the FCA or the PRA.”

(8) Section 169 of the Act (investigations etc. in support of overseas regulator) applies as if—

- (a) subsection (2A) were omitted;
- (b) for subsection (13) there were substituted—

“(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA or the PRA under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or with respect to Article 28 of the markets in financial instruments regulation.”

(9) Section 169A of the Act (support of overseas regulator with respect to financial stability) does not apply.

(10) Section 170 of the Act (investigations: general) applies as if—

- (a) in subsection (1) “or (5)” were omitted;
- (b) for subsection (3) there were substituted—

“(3) Subsections (2) and (9) do not apply if the investigator is appointed as a result of section 168(1) and the investigating authority believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated.”;

- (c) subsection (10)(b) were omitted.

(11) Section 172 of the Act (additional power of persons appointed as a result of section 168(1) or (4)) applies as if in the heading and in subsection (4) “or (4)” were omitted.

(12) Section 173 of the Act (powers of persons appointed as a result of section 168(2)) applies as if—

- (a) in the heading for “as a result of section 168(2)” there were substituted “in relation to a recognised investment exchange”;
- (b) in subsection (5) for “subsection (3) of section 168 (as a result of subsection (2) of that section)” there were substituted “section 167 in relation to a recognised investment exchange”.

(13) Section 174 of the Act (admissibility of statements made to investigators) applies as if—

- (a) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123 to which this section applies” were omitted;
- (b) in subsection (3)(a) for “398” substitute “paragraph 16 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;
- (c) subsection (3A) were omitted;
- (d) in subsection (4) the words from “or (5),” to the end were omitted.

(14) Section 175 of the Act (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted.

(15) Section 176 of the Act (entry of premises under warrant) applies as if—

- (a) in subsection (1) “the Secretary of State,” were omitted;
- (b) in subsection (3)(a) for “an authorised person or an appointed representative” there were substituted “a person in respect of whom a requirement is imposed by or under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or a non-authorised counterparty in respect of whom a requirement is imposed by Article 28 of the markets in financial instruments regulation”;
- (c) in subsection (10) “or (5)” were omitted;

- (d) in subsection (11)(a) “87C, 87J,” and “,165A, 169A” were omitted.

### **Restrictions on disclosure of information**

**20.** Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.), 349 (exceptions from section 348) and 352 (offences) of the Act<sup>(95)</sup> apply with respect to information received under these Regulations as they apply with respect to information received under the Act as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of the Act were a reference to that section or Part as applied by these Regulations;
- (c) in section 348(2), for “In this Part” there were substituted “In sections 348, 349 and 352 as applied by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;
- (d) in section 352—
  - (i) in subsection (1) “or 350(5)” were omitted;
  - (ii) subsection (4) were omitted;
  - (iii) in subsection (5) “or (4)” were omitted;
  - (iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

### **Application of Part 25 of the Act (injunctions and restitution)**

**21.—**(1) Part 25 of the Act<sup>(96)</sup> (injunctions and restitution) applies for the purposes of these Regulations, Article 28 of the markets in financial instruments regulation, and the Act as applied by these Regulations, with the following modifications.

- (2) Part 25 of the Act applies as if—
- (a) each reference to the Act included a reference to these Regulations and to Article 28 of the markets in financial instruments regulation;
  - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
  - (c) references to the Secretary of State were omitted;
  - (d) each reference to a relevant requirement were a reference to a requirement which is imposed by or under these Regulations, Article 28 of the markets in financial instruments regulation or the Act as applied by these Regulations.
- (3) Section 380 of the Act (injunctions) applies as if—
- (a) subsections (6) and (7) were omitted;
  - (b) in subsection (8) paragraphs (b) and (c) were omitted;
  - (c) subsection (9) were omitted.

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<sup>(95)</sup> Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013, paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016 and S.I. 2016/1239. Section 349 was amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012, S.I. 2006/1183, 2007/1093 and 2011/1043. Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

<sup>(96)</sup> Part 25 was amended by paragraphs 19, 21, 23, 24 and 25 of Schedule 9 to the Financial Services Act 2012, paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2007/126, 2013/1773, 2015/1755, 2016/225 and 680. There are other amendments but none is relevant.

*Status: This is the original version (as it was originally made).*

- (4) Section 381 of the Act (injunctions in cases of market abuse) does not apply.
- (5) Section 382 of the Act (restitution orders) applies as if—
  - (a) subsections (9) and (10) were omitted;
  - (b) in subsection (11) paragraphs (b) and (c) were omitted;
  - (c) subsection (12) were omitted.
- (6) Section 383 of the Act (restitution orders in cases of market abuse) does not apply.
- (7) Section 384 of the Act (power of FCA or PRA to require restitution) applies as if—
  - (a) subsections (2) and (3) and references to those subsections were omitted;
  - (b) subsection (7) were omitted;
  - (c) in subsection (9) paragraphs (b) and (c) were omitted;
  - (d) subsection (10) were omitted.

#### **Application of Part 26 of the Act (notices)**

**22.**—(1) Part 26 of the Act<sup>(97)</sup> (notices) applies with respect to the giving of notices under regulations 28(4) (FCA power to intervene), 36(4) (FCA power to impose requirements) and 40(3) and (6) (removal of persons from management boards: procedure), paragraphs 12 and 13 of this Schedule and the Act as applied by these Regulations as it applies with respect to the giving of notices under the Act, with the following modifications.

- (2) Part 26 of the Act applies as if—
  - (a) each reference to the Act included a reference to these Regulations;
  - (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
  - (c) each reference to a regulator or to the regulator concerned were a reference to the regulator giving the notice.
- (3) In this paragraph, “regulator” means the FCA or the PRA.
- (4) Section 387 of the Act (warning notices) applies as if subsections (1A) and (3A) were omitted.
- (5) Section 388 of the Act (decision notices) applies as if subsections (1A) and (2) were omitted.
- (6) Section 391 of the Act (publication) applies as if—
  - (a) in subsection (1) the reference to a warning notice falling within subsection (1ZB) were to a warning notice given under paragraph 12;
  - (b) in subsection (1ZA) the reference to a warning notice not falling within subsection (1ZB) were to a warning notice given under the Act as applied by these Regulations;
  - (c) subsection (1ZB) were omitted;
  - (d) in subsection (4A) the reference to sections 391A, 391B and 391C were omitted;
  - (e) subsections (5A), (8A), (8B) and (8C) were omitted;
  - (f) for subsection (11) there were substituted—

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(97) Part 26 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), sections 13 and 24 of and paragraphs 28 and 29 of Schedule 2 to the Financial Services Act 2010, sections 17, 18, 19 and 24 of and paragraph 37 of Schedule 8, Schedule 9 and paragraph 8 of Schedule 13 to the Financial Services Act 2012, section 4 of and Schedule 3 to the Financial Services (Banking Reform) Act 2013, paragraph 43 of Schedule 10 to the Investigatory Powers Act 2016, S.I. 2005/381, 2005/1433, 2007/126, 2007/1973, 2009/534, 2010/22, 2010/747, 2012/916, 2013/1388, 2013/3115, 2014/2879, 2015/1755, 2016/225, 2016/680, 2016/715 and 2016/1239. There are other amendments but none is relevant.

“(11) Section 425A(98) (meaning of “consumers”) applies for the purposes of this section as if subsection (2)(c) were omitted.”.

(7) Sections 391A (publication: special provisions relating to the capital requirements directive), 391B (publication: special provisions relating to the transparency obligations directive) and 391C (publication: special provisions relating to the UCITS directive) of the Act do not apply.

(8) Section 392 of the Act (application of sections 393 and 394) applies as if for paragraphs (a) and (b) there were substituted—

- “(a) a warning notice given in accordance with paragraph 12 of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 or section 385 as applied by those Regulations;
- (b) a decision notice given in accordance with paragraph 13 of Schedule 1 to those Regulations or section 386 as applied by those Regulations.”.

(9) Section 395 of the Act (the FCA’s and PRA’s procedures) applies as if—

- (a) in subsection (1) paragraph (b)(ii) were omitted;
- (b) in subsection (9) “other than a warning notice or decision notice relating to a decision of the PRA that is required by a decision of the FCA of the kind mentioned in subsection (1) (b)(ii)” were omitted;
- (c) subsection (9A) were omitted;
- (d) for subsection (13) there were substituted—

“(13) “Supervisory notice” means a notice given in accordance with regulation 28(4) (FCA power to intervene), 36(4) (FCA power to impose requirements) or 40(3) or (6) (removal of persons from management boards: procedure) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.”.

### **Application of Part 27 of the Act (offences)**

**23.**—(1) Part 27 of the Act (offences)(99) applies with respect to offences under these Regulations and the Act as applied by these Regulations as it applies with respect to offences under the Act, with the following modifications.

(2) Part 27 of the Act applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
- (c) references to the Secretary of State were omitted.

(3) Sections 398 (misleading the FCA or PRA: residual cases) and 399 (misleading the CMA) of the Act do not apply.

(4) Section 400 of the Act (offences by bodies corporate) applies as if subsection (6A) were omitted.

(5) Section 401 of the Act (proceedings for offences) applies as if—

- (a) subsection (1)(c) were omitted;
- (b) in subsection (3A)—
  - (i) paragraphs (a), (f), (g) and (h) were omitted;

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(98) Section 425A was inserted by paragraph 32 of Schedule 2 to the Financial Services Act 2010 and amended by [S.I. 2013/655](#) and [2013/3115](#).

(99) Part 27 was amended by section 95 of and paragraphs 37, 38 and 40 of Schedule 9 to the Financial Services Act 2012 and [S.I. 2013/1881](#) and [2016/1239](#). There are other amendments but none is relevant.

*Status: This is the original version (as it was originally made).*

(ii) in paragraph (i) for “section 398(1)” there were substituted “paragraph 16(1) of Schedule 1 to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017”;

(c) subsection (3AB) were omitted.

(6) Section 402 of the Act (power of FCA to institute proceedings for certain other offences) does not apply.

(7) Section 403(7) of the Act (jurisdiction and procedure in respect of offences) applies as if the words from “or an offence” to the end were omitted.

### **Application of section 413 of the Act (protected items)**

**24.** Section 413 of the Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of the Act.

### **FCA: penalties, fees and exemption from liability in damages**

**25.**—(1) Paragraphs 19 to 23 (penalties and fees) and 25 (exemption from liability in damages) of Schedule 1ZA to the Act<sup>(100)</sup> apply with respect to the discharge by the FCA of its functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation as they apply with respect to the discharge by it of its functions under the Act, with the following modifications.

(2) Those paragraphs apply as if—

- (a) each reference to penalties imposed under the Act included a reference to penalties imposed under these Regulations;
- (b) each reference to a section or Part of the Act included a reference to that section or Part as applied by these Regulations;
- (c) each reference to the functions of the FCA included a reference to its functions under these Regulations and with respect to Article 28 of the markets in financial instruments regulation.

(3) Paragraph 20 applies as if references to the FCA’s enforcement powers included—

- (a) its powers under these Regulations and under Part 25 of the Act as applied by these Regulations;
- (b) its powers in relation to the investigation of offences under these Regulations or under the Act as applied by these Regulations;
- (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under these Regulations or under the Act as applied by these Regulations.

(4) Paragraph 21 applies as if regulated persons included persons on whom requirements are imposed under these Regulations and non-authorised counterparties on whom requirements are imposed by Article 28 of the markets in financial instruments regulation.

(5) Paragraph 23 applies as if references to qualifying functions included references to the functions of the FCA under these Regulations, with respect to Article 28 of the markets in financial instruments regulation and under the Act as applied by these Regulations.

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<sup>(100)</sup>Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, section 29 of the Bank of England and Financial Services Act 2016 and [S.I. 2013/1773](#). There are other amendments but none is relevant.

### **PRA: penalties, fees and exemption from liability in damages**

**26.**—(1) Paragraphs 27 to 31 (penalties and fees) and 33 (exemption from liability in damages) of Schedule 1ZB to the Act(101) apply with respect to the discharge by the PRA of its functions under these Regulations as they apply with respect to the discharge by it of its functions under the Act, with the following modifications.

(2) Those paragraphs apply as if—

- (a) each reference to penalties imposed under the Act or under FSMA 2000 included a reference to penalties imposed under these Regulations;
- (b) each reference to a section or Part of the Act included a reference to that section or Part as applied by these Regulations;
- (c) each reference to the functions of the PRA included a reference to its functions under these Regulations.

(3) Paragraph 28 applies as if references to the PRA’s enforcement powers included—

- (a) its powers under Part 5 of these Regulations and under Part 25 of the Act as applied by these Regulations;
- (b) its powers in relation to the investigation of offences under these Regulations or under the Act as applied by these Regulations;
- (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under those Regulations or under the Act as applied by those Regulations.

(4) Paragraph 31 applies as if references to qualifying functions included references to the functions of the PRA under Part 5 of these Regulations and under the Act as applied by these Regulations.

## **PART 5**

### **Application of secondary legislation for the purposes of the Regulations**

#### **Service of notices**

**27.** The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(102) (“Notice Regulations”) apply with respect to any notice or document to be given by the FCA or PRA under regulation 12(3)(b) (FCA power to intervene in relation to third country firms registered with ESMA), 28(4) (FCA power to intervene), 36(4) (FCA power to impose requirements) or 40(3) or (6) (removal of persons from management boards: procedure), paragraph 12 or 13 of this Schedule or the Act as applied by these Regulations, as if—

- (a) that notice or document were “a relevant document” under the Notice Regulations;
- (b) each reference to the Act included a reference to these Regulations and to the Act as applied by these Regulations;
- (c) each reference to a section of the Act were a reference to that section as applied by these Regulations.

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(101) Schedule 1ZB was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, paragraph 50 of Schedule 2 to the Bank of England and Financial Services Act 2016 and [S.I. 2013/1773](#). There are other amendments but none is relevant.

(102) [S.I. 2001/1420](#).

**Disclosure of confidential information**

**28.** The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**103**) apply for the purposes of section 349 of the Act (exceptions from section 348) as applied by paragraph 20.

**Communications by auditors**

**29.** The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001(**104**) apply for the purposes of sections 342 (information given by auditor or actuary to a regulator), 343 (information given by auditor or actuary to a regulator: person with close links) and 344 (duty of auditor or actuary resigning etc. to give notice) of the Act as if—

- (a) in regulation 1(2) (citation, commencement and interpretation) “relevant requirement” included a requirement which is imposed by or under these Regulations or by Article 28 of the markets in financial instruments regulation;
- (b) in regulation 2(2)(a)(ii) (circumstances in which an auditor is to communicate) the reference to functions included a reference to the FCA’s and PRA’s functions under these Regulations and under the Act as applied by these Regulations.

## SCHEDULE 2

Regulation 50(1)

## Amendments to the Financial Services and Markets Act 2000

1. The Act is amended as follows.

**Amendments to Part 3 (authorisation and exemption)**

2.—(1) Section 39 (exemption of appointed representatives) is amended as follows.

(2) In subsection (1ZA)(**105**) after “(1A)” insert “, (1AA)”.

(3) In the opening words of subsection (1A)(a)(**106**) for “or a credit institution” substitute “, a credit institution, or a person mentioned in Article 3.1 (optional exemptions) of the markets in financial instruments directive”.

(4) After subsection (1A) insert—

“(1AA) This subsection applies to a person—

- (a) if the person’s principal is an investment firm or a credit institution, and
- (b) so far as the business for which the person’s principal has accepted responsibility is selling, or advising clients on, structured deposits as defined by Article 4.1.43 (definitions) of the markets in financial instruments directive,

unless the person is entered on the applicable register.”.

(5) In subsection (1B)(**107**)—

- (a) in the opening words at the beginning insert “In subsections (1A) and (1AA)”;
- (b) in paragraph (a)—

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(103) S.I. 2001/2188.

(104) S.I. 2001/2587.

(105) Subsection (1ZA) was inserted by S.I. 2015/910.

(106) Subsection (1A) was inserted by S.I. 2007/126 and amended by S.I. 2015/910.

(107) Subsection (1B) was inserted by S.I. 2007/126 and amended by paragraph 5(2) of Schedule 18 to the Financial Services Act 2012 (c.21).

- (i) omit the words from “which” to “appoint tied agents”;
  - (ii) for “Article 23” substitute “Article 29”; and
  - (iii) at the end insert “and”; and
- (c) omit paragraph (b) (with the “and” following it).
- (6) In subsection (7)(a)(**108**) for “4.1.25” substitute “4.1.29”.
- (7) In subsection (8)(**109**), in the definition of “competent authority” for “4.1.22” substitute “4.1.26”.

**3.—(1)** Section 39A(**110**) (certain tied agents operating outside the United Kingdom) is amended as follows.

- (2) In subsection (6)—
- (a) for paragraph (c)(**111**) substitute—
    - “(c) enters into a relevant contract with an agent who is not entered on—
      - (i) the record maintained by the FCA by virtue of section 347(1)(ha), or
      - (ii) the register of tied agents of another EEA State maintained pursuant to Article 29 of the markets in financial instruments directive,”; and
    - (b) in paragraph (d) after “record” insert “or register,”.
  - (3) In subsection (8)(a) for “Article 4.1.25” substitute “Article 4.1.29”.
  - (4) In subsection (9) in the definition of “competent authority” for “Article 4.1.22” substitute “Article 4.1.26”.

#### **Amendments to Part 4A (permission to carry on regulated activities)**

**4.** After section 55K(1)(d)(**112**) (investment firms: particular conditions that enable cancellation) insert—

- “;
- (e) that the firm has seriously or systematically infringed the markets in financial instruments regulation.”.

**5.—(1)** Section 55R(**113**) (persons connected with an applicant) is amended as follows.

- (2) In subsection (2)—
- (a) in paragraph (a) after “intermediaries))” insert “or “an EEA market operator””; and
  - (b) in the closing words after “the firm’s” insert “ or the market operator’s”.
- (3) After subsection (3) insert—
- “(3A) A person (“P”) is connected with an EEA market operator if—
    - (a) P is an investment firm and is a subsidiary undertaking of the market operator, or
    - (b) P is an investment firm and is a subsidiary undertaking of a parent undertaking of the market operator.
  - (3B) In subsection (2)—

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(**108**) Subsection (7) was inserted by [S.I. 2007/126](#).

(**109**) Subsection (8) was inserted by [S.I. 2007/126](#).

(**110**) Section 39A was inserted by [S.I. 2007/126](#).

(**111**) Paragraph (c) was amended by paragraph 6 of Schedule 18 to the Financial Services Act 2012.

(**112**) Section 55K was inserted by section 11(2) of the Financial Services Act 2012.

(**113**) Section 55R was inserted by section 11(2) of the Financial Services Act 2012.

*Status: This is the original version (as it was originally made).*

“EEA market operator” has the meaning given in section 312D (interpretation of Chapter 3A); and

“home state regulator”, in relation to an EEA market operator, has the meaning given in section 312D.”.

(4) After subsection (6)(**114**) insert—

“(7) Subsection (8) applies where—

- (a) an investment firm (“C”) makes an application for permission under section 55A to carry on a regulated activity which is any of the investment services and activities;
- (b) the requirement for C to obtain permission under section 55A to carry on that activity derives from Chapter 1 of Title II of the markets in financial instruments directive; and
- (c) C is controlled by a person who also controls—
  - (i) an EEA credit institution,
  - (ii) an EEA investment firm, or
  - (iii) an EEA insurance undertaking.

(8) Before granting C’s application for permission, the regulator concerned must—

- (a) in a case falling within subsection (7)(c)(i) consult the competent authorities of the other EEA State responsible for the authorisation or supervision of the credit institution;
- (b) in case falling within subsection (7)(c)(ii) consult the competent authority of the other EEA State responsible for the authorisation of the investment firm;
- (c) in a case falling within subsection (7)(c)(iii), consult the competent authorities of the other EEA State responsible for the authorisation or supervision of the insurance undertaking.

(9) In subsections (7)—

“controls” has the same meaning as in Article 4.1.35(b)(definitions) of the markets in financial instruments directive;

“EEA credit institution” means a credit institution, as defined by Article 4.1.27 of the markets in financial instruments directive, authorised in another EEA State pursuant to Title III of the capital requirements directive;

“EEA insurance undertaking” means an insurance undertaking, as defined by Article 13.1 of the Solvency 2 Directive, authorised in another EEA State;

“EEA investment firm” means an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive, authorised in another EEA State pursuant to Chapter 1 of Title II of that directive.”.

### **Amendments to Part 6 (official listing)**

**6.** In section 86(7)(**115**) (exempt offers to the public) for subsection (d) substitute—

“(d) a person whom—

- (i) any relevant firm was authorised to continue to treat as a professional client immediately before 3 January 2018 by virtue of Article 71.6 (transitional

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(114) Subsection (6) was inserted by [S.I. 2013/3115](#).

(115) Section 86(7) was inserted [S.I. 2005/1433](#) and amended by [S.I. 2012/1538](#).

provisions) of [Directive 2004/39/EC](#) on markets in financial instruments<sup>(116)</sup>; and

- (ii) the firm may continue to treat as a professional client from 3 January 2018 by virtue of Section II.2 of Annex II to the markets in financial instruments directive.”.

7.—(1) Section 102A<sup>(117)</sup> (meaning of “securities” etc) is amended as follows.

(2) In subsection (3)<sup>(118)</sup> for the words “[Directive 2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments” substitute “the markets in financial instruments directive”.

(3) In subsection (4)<sup>(119)</sup> for “4.1.17” substitute “4.1.15”.

8. In section 103(1)<sup>(120)</sup> (interpretation of Part 6) in the definition of “regulated market” for the words “Article 4.1(14) of Directive 2004” to the end substitute “Article 4.1.21 of the markets in financial instruments directive”.

#### **Amendments to Part 8 (provisions relating to market abuse)**

9.—(1) Section 122G<sup>(121)</sup> (publication of information and corrective statements by issuers) is amended as follows.

(2) In the opening words of subsection (1) after “issuer” insert “or emission allowance market participant”.

(3) For subsection (7) substitute—

“(7) In this section—

“emission allowance market participant” has the same meaning as in Article 3.1.19 (definitions) of the market abuse regulation; and

“specified” means specified by the FCA.”.

10.—(1) Section 122I<sup>(122)</sup> (power to suspend trading in financial instruments) is amended as follows.

(2) After subsection (2) insert—

“(2A) But subsection (2) does not apply if the financial instrument is an emission allowance.”.

(3) In the opening words of subsection (4) after “instrument” insert “other than an emission allowance”.

(4) After subsection (4) insert—

“(4A) A suspension of trading in a financial instrument that is an emission allowance takes effect—

(a) immediately, if the FCA states that is the case; or

(b) on such later date as the FCA specify.”.

11. After section 122I insert—

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<sup>(116)</sup> OJ L145 30.4.2004 p.1.

<sup>(117)</sup> Section 102A was inserted by [S.I. 2005/1433](#).

<sup>(118)</sup> Subsection (3) was amended by paragraph 10(3) of Schedule 15 to the Companies Act 2006 (c.46).

<sup>(119)</sup> Subsection (4) was inserted by [S.I. 2016/680](#).

<sup>(120)</sup> Section 103(1) was amended by paragraph 11(2) of Schedule to the Companies Act 2006; there are other amendments but none is relevant.

<sup>(121)</sup> Section 122G was inserted by [S.I. 2016/680](#).

<sup>(122)</sup> Section 122I was inserted by [S.I. 2016/680](#).

*Status: This is the original version (as it was originally made).*

**“Power to suspend auctioning of auctioned products on a recognised auction platform**

**122IA.**—(1) The FCA may suspend the auctioning of a relevant auctioned product at an auction conducted by a recognised auction platform where it considers it necessary for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation.

(2) If the FCA does so the recognised auction platform may refer the matter to the Tribunal.

(3) A suspension by the FCA takes place—

- (a) immediately, if the FCA specify this is the case, or
- (b) on such later date as the FCA specify.

(4) The FCA may—

- (a) cancel a suspension under subsection (1), and
- (b) impose such conditions for the cancellation to take effect as it considers appropriate.

(5) The provisions relating to the suspension and removal of financial instruments from trading set out in—

- (a) section 313B(2) to (4)(**123**) (suspension or removal of financial instruments from trading: procedure), and
- (b) sections 313BA (procedure following consideration of representations) to 313BC(**124**) (decisions on applications for revocation by institutions),

apply, with the modifications set out in subsection (6), to a suspension of the auctioning of a relevant auctioned product at an auction conducted by a recognised auction platform.

(6) The modifications referred to in subsection (5) are—

- (a) references to a requirement imposed on an institution under section 313A are to be read as references to the suspension of the auctioning of the relevant auctioned product;
- (b) references to an institution are to be read as references to the recognised auction platform;
- (c) in section 313B, the omission of—
  - (i) subsection (2)(a)(ii);
  - (ii) in subsection (3A)(d), the words “or the issuer of the financial instrument in question” and “or the issuer”;
  - (iii) in subsection (3A)(f), the words “or the issuer of the financial instrument in question”;
- (d) the omission of section 313BA(5)(b) and (8);
- (e) the omission of section 313BB(6)(b); and
- (f) the omission of section 313BC(3)(b) and (6)(b).

(7) In this section “relevant auctioned product” means an auctioned product (as defined by Article 4 (auctioned products) of the emission allowance auctioning regulation) which is an emission allowance or based on an emission allowance.”.

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(**123**) Sections 313B(2) to (4) were inserted by [S.I. 2007/126](#) and amended by [S.I. 2010/1193](#) and section 36 of the Financial Services Act 2012.

(**124**) Section 313BA to 313BC were inserted by [S.I. 2010/1193](#) and amended by section 36 of the Financial Services Act 2012.

**12.** In section 123(1)(c)(i)(**125**) (power to impose penalties or issue censure) after “122I,” insert “122IA.”

**13.—**(1) Section 123A(**126**) (power to prohibit individuals from managing or dealing) is amended as follows.

(2) In subsection (1)(c) after “122I” insert “, 122IA”.

(3) In subsection (2)—

(a) in the opening words for “either or both” substitute “one or more”; and

(b) after paragraph (b) insert—

“(c) a temporary prohibition on the individual making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform.”

(4) After subsection (7) insert—

“(8) For the meaning of “recognised auction platform” in this Part, see section 131AB.”

**14.** In section 123B(1)(c)(**127**) (suspending permission to carry on regulated activities etc) after “122I” insert “, 122IA”.

**15.** In section 124(10)(**128**) (statement of policy) in paragraph (c)(i) of the definition of “relevant person” after “122I,” insert “122IA.”

**16.—**(1) Section 129(**129**) (power of the court to impose administrative sanctions in cases of market abuse) is amended as follows.

(2) In subsection (7), in the definition of “temporary prohibition”—

(a) at the end of paragraph (a) omit “or”;

(b) after paragraph (b) insert—

“; or

(c) making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform.”

(3) After subsection (7) insert—

“(8) For the meaning of “recognised auction platform” in this Part, see section 131AB.”

**17.** In section 131AB (**130**) (interpretation)—

(a) in the definition of “financial instrument” for “4.1(17)” substitute “4.1.15”; and

(b) at the appropriate places insert—

““emission allowance” has the meaning given in Article 3.1.19 (definitions) of the market abuse regulation;”;

““recognised auction platform” has the meaning given in regulation 1(3) of the Recognised Auction Platform Regulations 2011 (S.I. 2011/2699);”.

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(125) Section 123 was inserted by S.I. 2016/680.

(126) Section 123A was inserted S.I. 2016/680.

(127) Section 123B was inserted by S.I. 2016/680.

(128) Section 124(10) was inserted by S.I. 2016/680.

(129) Section 129 was inserted by S.I. 2016/680.

(130) Section 131AB was inserted by S.I. 2016/680.

**Amendments to Part 9A (rules and guidance)**

- 18.** In section 137R(5)(b)(**131**) (financial promotion rules)—
- (a) in sub-paragraph (i) for “paragraphs 1 to 8 of Article 19” substitute “Articles 24 (general principles and information to clients) and 25 (assessment of suitability and appropriateness and reporting to clients)”; and
  - (b) for sub-paragraph (ii)(**132**) substitute—
    - “(ii) any delegated act adopted under Article 24.13 or 25.8 of that directive.”

**Amendments to Part 12 (control over authorised persons)**

- 19.** In section 184(4)(a)(**133**) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.

**Amendments to Part 13 (incoming firms: intervention by FCA or PRA)**

**20.**—(1) Section 194A(**134**) (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: appropriate regulator primarily responsible for securing compliance) is amended as follows.

- (2) In subsection (1)(b)(**135**) for “62.2” substitute “86.2”.
- (3) In subsection (3)—
  - (a) at the end of paragraph (a) omit “or”;
  - (b) after paragraph (a) insert—
    - “(aa) by or under any provision of the markets in financial instruments regulation; or”; and
  - (c) in paragraph (b)—
    - (i) for “Community” substitute “EU”; and
    - (ii) after “directive” insert “or the markets in financial instruments regulation”.

**21.**—(1) Section 195A(**136**) (contravention by relevant EEA firm etc of directive requirements: home state regulator primarily responsible for securing compliance) is amended as follows.

- (2) In subsection (1)(a)(**137**) for “62.1 or 62.3” substitute “86.1 or 86.3”.
- (3) In subsection (2), insert—
  - (a) at the end of paragraph (a) omit “or”;
  - (b) after paragraph (a) insert—
    - “(aa) by or under any provision of the markets in financial instruments regulation; or”; and
  - (c) in paragraph (b)—
    - (i) for “Community” substitute “EU”; and
    - (ii) after “directive” insert “or the markets in financial instruments regulation”.

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(131) Section 137R was inserted by section 24(1) of the Financial Services Act 2012.

(132) Sub-paragraph (ii) was amended by [S.I. 2015/910](#).

(133) Section 184 was inserted by [S.I. 2009/534](#).

(134) Section 194A was inserted by [S.I. 2007/126](#).

(135) Subsection (1)(b) was amended by paragraph 33(2) of Schedule 4 to the Financial Services Act 2012.

(136) Section 195A was inserted by [S.I. 2007/126](#) and amended by [S.I. 2011/1613](#).

(137) Subsection (1) was amended by paragraph 35(2) of Schedule 4 to the Financial Services Act 2012; there are other amendments but none is relevant.

### **Amendments to Part 14 (disciplinary measures)**

**22.** In section 206A(1B)(**138**) (suspending permission to carry on regulated activities etc) after “122I,” insert “122IA,”.

### **Amendments to Part 15 (the financial services compensation scheme)**

**23.**—(1) Section 213 (the compensation scheme) is amended as follows.

(2) In subsection (1)(**139**)—

(a) at the end of paragraph (a) omit “or”;

(b) after paragraph (a) insert—

“(aa) relevant exchanges are unable, or likely to be unable, to satisfy claims made against them in connection with a regulated activity relating to a trading facility carried on by the exchange, or”; and

(c) in paragraph (b) after “relevant persons” insert “or relevant exchanges”.

(3) In subsection (3)—

(a) for paragraphs (a) and (b) substitute—

“(a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with—

(i) a regulated activity carried on (whether or not with permission) by relevant persons; and

(ii) a regulated activity relating to a trading facility carried on (whether or not in accordance with any requirements relating to that activity resulting from section 286) by relevant exchanges; and

(b) to have power to impose levies for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks)—

(i) on authorised persons, or any class of authorised person;

(ii) on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or any class of such exchanges; or

(iii) on authorised persons and on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or on any class of such persons and exchanges.”.

(4) For subsection (4) substitute—

“(4) The compensation scheme may provide for the scheme manager to have power to impose levies—

(a) on authorised persons, or any class of authorised person;

(b) on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or any class of such exchanges; or

(c) on authorised persons and on recognised investment exchanges carrying on a regulated activity relating to a trading facility, or on any class of such persons and exchanges,

for the purpose of recovering the cost (whenever incurred) of establishing the scheme.”.

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(**138**) Section 206A was inserted by section 9 of the Financial Services Act 2010 (c.28) and subsection (1B) was inserted by S.I. 2016/680.

(**139**) Subsection (1) was amended by paragraph 3(2) and (3)(a) and (b) of Schedule 10 to the Financial Services Act 2012.

*Status: This is the original version (as it was originally made).*

(5) For subsection (5)(**140**) substitute—

“(5) In making any provision of the scheme by virtue of subsection (3)(b), the regulators must take account of the desirability of ensuring that the amount of the levies imposed on a particular —

- (a) class of authorised person;
- (b) class of recognised investment exchange carrying on a regulated activity relating to a trading facility; or
- (c) class of authorised person and of recognised investment exchanges carrying on a regulated activity relating to a trading facility;

reflects, so far as is practicable, the amount of claims made, or likely to be made in respect of that class of person, exchange, or persons and exchanges.”.

(6) After subsection (11)(**141**) insert—

“(12) In this Part (except in sections 220 and 224) “relevant exchange” means a body corporate or unincorporated association which was a recognised investment exchange carrying on a regulated activity relating to a trading facility at the time the act or omission giving rise to the claim against it, or against a successor falling within subsection (1)(b), took place.

(13) In this Part “regulated activity relating to a trading facility” means—

- (a) the regulated activity of operating a multilateral trading facility; or
- (b) the regulated activity of operating an organised trading facility.”.

**24.** In section 214(1)(**142**)(general)—

(a) in paragraph (a)—

- (i) after “person” insert “or relevant exchange”; and
- (ii) after “him” insert “or it”;

(b) in paragraph (aa)(**143**) after “person” insert “or relevant exchange”.

**25.—**(1) Section 215(**144**) (rights of the scheme in insolvency) is amended as follows.

(2) In subsection (3) for the words from “a company” to the end substitute—

“—

(a) a company or partnership which is a relevant person; or

(b) a body corporate or unincorporated association which is a relevant exchange;

the scheme manager has the same rights as are conferred on the regulators by section 362.”.

(3) In subsection (4) after “relevant person” insert “or relevant exchange”.

**26.—**(1) Section 218A(**145**) (regulators power to require information) is amended as follows.

(2) In subsection (1)(**146**) after “authorised persons” insert “or recognised investment exchanges carrying on a regulated activity relating to a trading facility”.

(**140**) Subsection (5) was amended by paragraph 3(2) of Schedule 10 to the Financial Services Act 2012.

(**141**) Subsection (11) was inserted by [S.I. 2011/16/13](#).

(**142**) Section 214 was amended by paragraph 4 of Schedule 10 to the Financial Services Act 2012; there are other amendments but none is relevant.

(**143**) Paragraph (aa) was inserted by paragraph 4 of Schedule 10 to the Financial Services Act 2012.

(**144**) Section 215 was amended by paragraph 54(2) of the Enterprise Act 2002 ([c.40](#)), [S.I. 2005/1455](#), and paragraph 5 of Schedule 10 to the Financial Services Act 2012; there are other amendments but none is relevant.

(**145**) Section 218A was inserted by section 176(1) of the Banking Act 2009.

(**146**) Subsection (1) was inserted by [S.I. 2015/486](#).

(3) In subsection (3) after paragraph (a) insert—

“(aa) to recognised investment exchanges mentioned in subsection (1) generally or only to specified exchanges or classes of exchange;”.

**27.**—(1) Section 220(**147**) (scheme manager’s power to inspect information held by liquidator etc.) is amended as follows.

(2) In subsection (1) after “relevant person” insert “or insolvent relevant exchange”.

(3) In subsection (3)—

(a) in paragraph (a) after “relevant person” insert “or insolvent relevant exchange”; and

(b) in paragraph (b) after “relevant person” insert “or insolvent relevant exchange”.

(4) In subsection (5)—

(a) after ““relevant person”” insert “and “relevant exchange””; and

(b) for “has” substitute “have”.

**28.**—(1) Section 224 (scheme manager’s power to inspect documents held by Official Receiver etc) is amended as follows.

(2) In subsection (1)(**148**) in the opening words after “relevant person” insert “or relevant exchange”.

(3) After subsection (4) insert—

“(4A) In this section “relevant exchange” means a body corporate or unincorporated association carrying on a regulated activity relating to a trading facility at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place.”.

### **Amendments to Part 18 (recognised investment exchanges and clearing houses)**

**29.** Omit section 286(4A) to (4E)(**149**) (qualification for recognition).

**30.** After section 287(**150**) (application by an investment exchange) insert—

#### **“Application by an investment exchange: persons connected with an applicant**

**287A.**—(1) Subsection (2) applies where—

(a) a body corporate or unincorporated association (“A”) makes an application under section 287 for an order declaring it to be a recognised investment exchange; and

(b) A is—

(i) connected with an EEA credit institution or EEA insurance undertaking; or

(ii) controlled by a person who also controls an EEA credit institution or EEA insurance undertaking.

(2) Before making a recognition order declaring A to be a recognised investment exchange under section 290, the FCA must consult the competent authority responsible for the supervision of the EEA credit institution or EEA insurance undertaking.

(3) A is connected with an EEA credit institution or EEA insurance undertaking if—

(**147**) Section 220 was amended by section 123(3) of the Banking Act 2009, [S.I. 2009/805](#), and [S.I. 2016/1034](#).

(**148**) Subsection (1) was amended by paragraph 15 of Schedule 10 to the Financial Services Act 2012.

(**149**) Subsections (4A) to (4E) were inserted by [S.I. 2006/2975](#) and amended by paragraph 2(3) of Schedule 8 to the Financial Services Act 2012.

(**150**) There are amendments to section 287 but none is relevant.

*Status: This is the original version (as it was originally made).*

- (a) A is a subsidiary undertaking of the EEA credit institution or EEA insurance undertaking; or
- (b) A is a subsidiary undertaking of a parent undertaking of the EEA credit institution or EEA insurance undertaking.

(4) In this section—

“control” has the same meaning as in Article 4.1.35(b) (definitions) of the markets in financial instruments directive;

“EEA credit institution” means a credit institution (as defined by Article 4.1.27 of the markets in financial instruments directive) authorised in another EEA State under the capital requirements directive;

“EEA insurance undertaking” means an insurance undertaking (as defined by Article 13.1 of the Solvency 2 Directive) authorised in another EEA State.”.

**31.** In section 290(1A)(**151**) (recognition orders)—

- (a) for “Community” substitute “EU”; and
- (b) at the end insert “or the markets in financial instruments regulation”.

**32.** In section 292(3)(**152**) (overseas investment exchanges and overseas clearing houses), for paragraph (a) substitute—

- “(a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with—
  - (i) recognition requirements, other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph, and
  - (ii) requirements contained in any directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation;”.

**33.** In section 301E(4)(a)(**153**) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.

**34.**—(1) Section 312A(**154**) (exercise of passport rights by EEA market operator) is amended as follows.

(2) In subsection (1)(**155**) for “regulated market or specified multilateral trading facility” substitute “trading venue”.

(3) In subsection (2) for “market or facility” substitute “venue”.

**35.**—(1) Section 312B(**156**) (removal of passport rights from EEA market operator) is amended as follows.

(2) In subsection (1)(**157**) for “regulated market or multilateral trading facility” substitute “trading venue”.

(3) In subsection (2)(**158**)—

- (a) at the end of paragraph (b) omit “or”;

(151) Subsection (1A) was inserted by [S.I. 2007/126](#).

(152) Section 292(3)(a) was amended by [S.I. 2006/2975](#).

(153) Section 301E(4)(a) was inserted by [S.I. 2007/126](#) and amended by [S.I. 2009/534](#).

(154) Section 312A was inserted by [S.I. 2007/126](#).

(155) Subsection (1) was amended by paragraph 33 of Schedule 8 to the Financial Services Act 2012.

(156) Section 312B was inserted by [S.I. 2007/126](#).

(157) Subsection (1) was amended by paragraph 34 of Schedule 8 to the Financial Services Act 2012.

(158) Subsection (2) was amended by [S.I. 2011/1043](#).

(b) for paragraph (c) substitute—

“(c) by the markets in financial instruments regulation; or

(d) by any directly applicable EU regulation made under that directive or that regulation”.

**36.**—(1) Section 312C(**159**) (exercise of passport rights by recognised investment exchange) is amended as follows.

(2) In subsection (1) for “regulated market or multilateral trading facility” substitute “trading venue”.

(3) In subsection (5)(**160**)—

(a) in paragraph (a)—

(i) for “31.6” substitute “34.7”; and

(ii) after “multilateral trading facility”, insert “or an organised trading facility”; and

(b) in paragraph (b) for “42.6” substitute “53.6”.

(4) In subsection (7) for “4.1.22” substitute “4.1.26”.

**37.** In section 312D(**161**) (interpretation of Chapter 3A of Part 18)—

(a) in the definition of “the applicable provision”—

(i) in paragraph (a) for “Article 31.5” substitute “or an organised trading facility, Article 34.6”; and

(ii) in paragraph (b) for “42.6” substitute “53.6”;

(b) in the definition of “EEA market operator” for “4.1.13” substitute “4.1.18”; and

(c) in the definition of “home state regulator” for “4.1.22” substitute “4.1.26”.

**38.** In section 313(1)(**162**) (interpretation of Part 18)—

(a) in the definition of “multilateral trading facility” for “4.1.15” substitute “4.1.22”;

(b) after the definition of “multilateral trading facility” insert—

““organised trading facility” has the meaning given in Article 4.1.23 of the markets in financial instruments directive;”;

(c) in the definition of “regulated market” for “4.1.14” substitute “4.1.21”;

(d) after the definition of “revocation order” insert—

““trading venue” means a multilateral trading facility, a regulated market or an organised trading facility.”.

### **Amendments to Part 18A (suspension and removal of financial instruments from trading)**

**39.** In section 313A(3)(**163**) (FCA’s power to require suspension or removal of financial instruments from trading) for the words “regulated market” to the end substitute “trading venue”.

**40.** Omit section 313C(**164**) (notification in relation to suspension or removal of a financial instrument from trading).

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(**159**) Section 312C was inserted by [S.I. 2007/126](#).

(**160**) Subsection (5) was amended by paragraph 35 of Schedule 8 to the Financial Services Act 2012.

(**161**) Section 312D was inserted by [S.I. 2007/126](#).

(**162**) Section 313(1) was amended by [S.I. 2007/126](#); there are other amendments but none is relevant.

(**163**) Section 313A(3) was inserted by [S.I. 2007/126](#).

(**164**) Section 313C was inserted by [S.I. 2007/126](#) and amended by section 36(a) Financial Services Act 2012 and by [S.I. 2010/1193](#) and [2012/916](#).

**41. After section 313C insert—****“Suspension or removal of financial instruments from trading: notification and trading on other venues**

**313CA.**—(1) The FCA must take the steps in subsection (2) to (4) if it imposes a requirement on an institution under section 313A to—

- (a) suspend or remove a financial instrument from trading; or
- (b) suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading to support the objectives of a suspension or removal mentioned in paragraph (a).

(2) The FCA must require any trading venue or systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the instrument or derivative from trading if a suspension or removal mentioned in subsection (1) was due to—

- (a) suspected market abuse;
- (b) a take-over bid; or
- (c) the non-disclosure of inside information about the issuer or the instrument.

(3) But the FCA is not obliged to impose a requirement under subsection (2) if it could cause significant damage to the interests of investors or the orderly functioning of the market.

(4) The FCA must—

- (a) inform ESMA and the competent authorities of every other EEA State of—
  - (i) a decision to impose a requirement under section 313A;
  - (ii) a decision to revoke a requirement imposed under section 313A;
  - (iii) a decision to impose, not to impose, or to revoke a requirement under subsection (2); and
- (b) publish a decision mentioned in paragraph (a)(i) to (iii) in such a manner as it considers appropriate unless the decision has already been published under section 313B(2)(b) or 313BE(5).

**Suspension or removal of a financial instrument from a trading by a trading venue: FCA duties**

**313CB.**—(1) The FCA must take the steps in subsections (2), (4), and (5) if a person specified in subsection (6) operating a trading venue in the United Kingdom informs the FCA it has made a decision—

- (a) to suspend or remove a financial instrument from trading on the trading venue because the instrument no longer complies with the venue’s rules, or
- (b) to suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading on the trading venue to support the objectives of a suspension or removal mentioned in paragraph (a).

(2) The FCA must require any other trading venue or any systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the instrument or derivative from trading if a suspension or removal mentioned in subsection (1) was due to—

- (a) suspected market abuse;

- (b) a take-over bid; or
- (c) the non-disclosure of inside information about the issuer or the instrument.

(3) But the FCA is not obliged to impose a requirement under subsection (2) if it could cause significant damage to the interests of investors or the orderly functioning of the market.

(4) The FCA must revoke a requirement imposed under subsection (2) if the person mentioned in subsection (1) informs the FCA it has lifted the suspension mentioned in that subsection.

(5) The FCA must—

- (a) inform ESMA and the competent authorities of every other EEA State of any decision to impose, not to impose, or to revoke a requirement under subsection (2),
- (b) provide ESMA and those competent authorities with an explanation if the decision is not to impose a requirement under subsection (2) because subsection (3) applies, and
- (c) publish any decision mentioned in paragraph (a) in such a manner as it considers appropriate.

(6) The specified persons for the purposes of subsection (6) are—

- (a) a recognised investment exchange,
- (b) an investment firm with a Part 4A permission to carry on a regulated activity which is any of the investment services and activities,
- (c) a credit institution authorised under the capital requirements directive.

#### **Suspension or removal of a financial instrument from trading in another EEA state: FCA duties**

**313CC.**—(1) The FCA must take the steps in subsections (2) and (3) if the FCA is informed that a competent authority of another EEA State has made a decision to—

- (a) suspend or remove a financial instrument from trading on a trading venue or systematic internaliser in that State for the purposes of—
  - (i) Article 32.2 (suspension and removal of financial instruments from trading on an MTF or OTF) of the markets in financial instruments directive;
  - (ii) Article 52.2 (suspension and removal of financial instruments from trading on a regulated market) of the directive, or
  - (iii) Article 69.2(m) or (n) (supervisory powers) of the directive, or
- (b) suspend or remove a derivative which relates, or is referenced, to the financial instrument from trading on a trading venue or systematic internaliser in that State for those purposes.

(2) The FCA must require any trading venue or systematic internaliser which falls under its jurisdiction and trades the same instrument or derivative to suspend or remove the instrument or derivative from trading if the suspension or removal was due to—

- (a) suspected market abuse;
- (b) a take-over bid; or
- (c) the non-disclosure of inside information about the issuer or the instrument.

(3) The FCA must revoke a requirement imposed under subsection (2) if the competent authority of the other EEA State informs the FCA it has lifted the suspension or removal mentioned in subsection (1).

*Status: This is the original version (as it was originally made).*

(4) For the purposes of subsection (1) the FCA is informed of a decision mentioned in subsection (1)(a) or (b) when the competent authority that made the decision, the competent authority of any other EEA State, or ESMA informs the FCA of the decision for the purposes of Article 32.2 or 52.2 of the markets in financial instrument directive.”.

**42.**—(1) Section 313D(**165**) (interpretation of Part 18A) is amended as follows.

(2) The existing text becomes subsection (1).

(3) In subsection (1)—

- (a) in the definition of “financial instrument” for “4.1.17” substitute “4.1.15”;
- (b) omit the definition of “multilateral trading facility”;
- (c) omit the definition of “regulated market”; and
- (d) in the appropriate places, insert—

““competent authority” has the meaning given in Article 4.1.26 (definitions) of the markets in financial instruments directive;”;

““derivative” means a derivative referred to in points (4) to (10) of Section C of Annex 1 to the markets in financial instruments directive;”;

““non-disclosure of inside information” means a failure to disclose inside information, as defined by Article 7 (inside information) of the market abuse regulation, in contravention of Article 17 (public disclosure of inside information) of that Regulation;”;

““market abuse” means a contravention of Article 14 (prohibition of insider dealing and of unlawful disclosure of inside information) or 15 (prohibition of market manipulation) of the market abuse regulation;”;

““systematic internaliser” has the meaning given in Article 4.1.20 of the markets in financial instruments directive;”;

““trading venue” has the meaning given in Article 4.1.24 of the markets in financial instruments directive.”.

(4) After subsection (1) insert—

“(2) In this Part a trading venue or systematic internaliser falls under the FCA’s jurisdiction if—

- (a) the United Kingdom is the home Member State (as defined by Article 4.1.55 of the markets in financial instruments directive) of—
  - (i) in the case of a trading venue which is a regulated market (as defined by Article 4.1.21 of the directive), the regulated market;
  - (ii) in the case of a trading venue which is a multilateral trading facility (as defined by Article 4.1.22 of the directive), the person operating the facility;
  - (iii) in the case of a trading venue which is an organised trading facility (as defined by Article 4.1.23 of the directive), the person operating the facility;

or

  - (iv) in the case of a systematic internaliser, the systematic internaliser; or
- (b) in the case of a systematic internaliser does not fall within the FCA’s jurisdiction by virtue of paragraph (a)—
  - (i) it has established a branch (as defined by Article 4.1.30 of the directive) in the United Kingdom; and

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(165) Section 313D was inserted by [S.I. 2007/126](#); there are amendments to this section but none is relevant.

- (ii) the FCA considers that it is necessary to impose a requirement on the systematic internaliser under section 313CA(2), 313CB(2), or 313CC(2) for the purposes of Article 32.2 or 52.2 of the markets in financial instruments directive.”.

### **Amendments to Part 20 (provision of financial services by members of the professions)**

**43.**—(1) Section 327 (exemption from general prohibition) is amended as follows.

(2) In subsection (1)—

(a) at the end of paragraph (a) omit “and”;

(b) after paragraph (a) insert—

“(aa) where the activity is the provision of a service listed in Section A of Annex 1 of the markets in financial instruments directive relating to a financial instrument, the condition set out in subsection (7A) is also satisfied; and”.

(3) After subsection (7) insert—

“(7A) The condition mentioned in subsection (1)(aa) is that—

(a) the service is provided in an incidental manner in the course of a professional activity for the purposes of the markets in financial instruments directive; and

(b) the professional activity concerned is the provision of professional services.

(7B) In subsection (7A) a service is provided in an incidental manner in the course of a professional activity for the purposes of the markets in financial instruments directive if the applicable conditions are satisfied.

(7C) The applicable conditions for the purposes of subsection (7B) are those set out in Article 4(a) to (c) 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(166).”.

### **Amendments to Part 23 (public record, disclosure of information and co-operation)**

**44.**—(1) Section 347 (the record of authorised persons etc) is amended as follows.

(2) In subsection (1)(a) for the “and” after paragraph (hb)(167) insert—

“(hc) appointed representative to whom subsection (2C) applies; and”.

(3) In subsection (2A)(168)—

(a) in paragraph (a) after “subsection (1A)” insert “or (1AA)”; and

(b) in paragraph (c)(169) for “23.3” substitute “29.3”.

(4) After subsection (2B)(170) insert—

“(2C) This subsection applies to an appointed representative of an authorised person who has a Part 4A permission by virtue of regulation 4 or 7 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX).”.

(5) After subsection (3) insert—

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(166) OJ L 87, 31.3.2017, p. 1.

(167) Paragraph (hb) was inserted by [S.I. 2015/910](#).

(168) Subsection (2A) was inserted by [S.I. 2007/126](#).

(169) Paragraph (c) was amended by paragraph 16(2) of Schedule 12 to the Financial Services Act 2012.

(170) Subsection (2B) was inserted by [S.I. 2015/910](#).

*Status: This is the original version (as it was originally made).*

“(3A) But if a person ceases to be a person to whom one of the paragraphs of subsection (1) applies as a result of—

- (a) a cancellation of that person’s Part 4A permission under section 55J(6)(171) because one or more of the conditions in 55K(1)(b) to (d) was met; or
- (b) a cancellation of that person’s Part 4A permission to carry on regulated activities as an exempt investment firm under section 55J(1) to (3) because—
  - (i) the person has contravened a requirement imposed on that person by or under the Act for the purposes of Article 3.2(a) of the markets in financial instruments directive; and
  - (ii) one or more of the conditions mentioned in Article 8(b) to (d) of the directive was met;

the power conferred by subsection (3) is not exercisable for a period of five years from the date on which the person ceased to be a person to whom subsection (1) applied.

(3B) Where the power conferred by subsection (3) is not exercisable in respect of an entry in the record as a result of subsection (3A) the FCA must—

- (a) make a note in the record that it considers the person to whom the entry relates has ceased to be person to whom one of the paragraphs of subsection (1) applies as a result of a cancellation of that person’s Part 4A permission for a reason mentioned in subsection (3A)(a) or (b); and
- (b) state why it considers that is the case.”.

(6) At the end of subsection (4)(b) insert “in any case where it has not already done so under subsection (3B)”.

(7) In subsection (8A)(172) at the appropriate place insert—

““exempt investment firm” means an authorised person who—

- (a) is an investment firm; and
- (b) has a Part 4A permission;

but to whom Title II of the markets in financial instruments directive does not apply by virtue of Article 3 of the directive..”.

### **Amendments to Part 26 (notices)**

**45.** In section 391 (publication) —

- (a) in subsection (4A)(173) for “and 391C” substitute “, 391C and 391D”; and
- (b) in subsection (7B)(174)—

- (i) at the end of paragraph (c) omit “or”;
- (ii) in paragraph (d) after “by” insert “or under”; and
- (iii) at the end of paragraph (d) insert—

“; or

- (e) by or under the markets in financial instruments regulation and any directly applicable EU regulation made under it.”.

(171) Section 55J(6) was inserted by section 11(2) of the Financial Services Act 2012.

(172) Subsection (8A) was inserted by section 34(3) of the Financial Services (Banking Reform) Act 2013.

(173) Subsection (4A) inserted by S.I. 2013/3115 and amended by S.I. 2015/1755 and 2016/225.

(174) Subsection (7B) was inserted by S.I. 2012/916.

46. After section 391C(175) (publication: special provisions relating to the UCITs directive), insert—

**“Publication: special provisions relating to the markets in financial instruments directive**

**391D.**—(1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure to which Article 71 of the markets in financial instruments directive applies.

(2) Where a regulator publishes information under section 391(4) or (5) about a matter to which a supervisory notice or decision notice relates and the person to whom the notice is given refers the matter to the Tribunal, the regulator must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(3) Subject to subsections (4), (5), and (8) where a regulator gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Subject to subsection (7) and (8), information about a matter to which a final notice relates must be published in accordance with subsection (5) where—

- (a) a regulator considers it to be disproportionate to publish the identity of a legal person on whom the sanction or measure is imposed following an assessment by the regulator of the proportionality of publishing the person’s identity;
- (b) a regulator considers it to be disproportionate to publish the personal data of an individual on whom the sanction or measure is imposed following an assessment by the regulator of the proportionality of publishing the personal data; or
- (c) the publication of information under subsection (3) would jeopardise the stability of the financial markets or an ongoing investigation.

(5) Where subsection (4) applies, a regulator must—

- (a) defer the publication of the information about a matter to which a final notice relates until such time as subsection (4) ceases to apply; or
- (b) publish the information on an anonymous basis if publication on that basis would ensure the effective protection of any anonymised personal data in the information.

(6) Where subsection (5)(b) applies, the regulator may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(7) The regulator may make arrangements for the postponed publication of any personal data that is anonymised in information it publishes under subsection (5)(b) if—

- (a) publication of the data is postponed for a reasonable period of time; and
- (b) the regulator considers that subsection (5)(b) will no longer apply in respect of that data at the time of the postponed publication.

(8) Information about a matter to which a final notice relates must not be published if publication in accordance with subsection (5) is considered by the regulator insufficient to ensure—

- (a) that the stability of the financial markets would not be put in jeopardy; or

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(175) Section 391C was inserted by [S.I. 2016/225](#).

*Status: This is the original version (as it was originally made).*

(b) that the publication of the information would be proportionate with regard to sanctions or measures which are considered by the regulator to be of a minor nature.

(9) Where a regulator publishes information in accordance with subsections (2) to (7), the regulator must—

(a) ensure the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998<sup>(176)</sup> requires the information to be retained for a different period; and

(b) promptly report the information to ESMA.”

47. After section 395(13)(bbza)<sup>(177)</sup> (the FCA’s and PRA’s procedures) insert—

“(bbzb) section 122IA;”.

#### **Amendments to Part 27 (offences)**

48. In section 398(1A)<sup>(178)</sup> (Misleading FCA or PRA: residual cases)—

(a) after paragraph (b) insert—

“(ba) the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX);”;

(b) at the end of paragraph (e)<sup>(179)</sup> omit “or”; and

(c) after paragraph (e) insert—

“(ea) any directly applicable EU regulation made under the markets in financial instruments directive;

(eb) the markets in financial instruments regulation and any directly applicable EU regulation made under it; or”.

#### **Amendments to Part 28 (miscellaneous)**

49. Omit sections 405<sup>(180)</sup> (directions) to 408 (EFTA firms).

50. Omit sections 412A<sup>(181)</sup> (approval and monitoring of trade-matching and reporting systems) and 412B<sup>(182)</sup> (procedure for approval, suspension and withdrawal).

#### **Amendments to Part 29 (interpretation)**

51.—(1) Section 417(1)<sup>(183)</sup> is amended as follows.

(2) For the definition of “investment services and activities” substitute—

““investment services and activities” has the meaning given by Article 4.1.2 (definitions) of the markets in financial instruments directive, read with Articles 5 to 8 of the Commission Delegated Regulation (EU) 2017/565 on [Directive 2014/65/EU](#) of the European Parliament and of the Council as regarding organisational requirements and operational conditions for investment firms and defined terms for the purposes of that Directive;”.

<sup>(176)</sup> 1998 c.29.

<sup>(177)</sup> Section 395(13)(bbza) was inserted by S.I. 2016/680.

<sup>(178)</sup> Section 398(1A) was inserted by S.I. 2013/1733.

<sup>(179)</sup> Paragraph (e) was amended by S.I. 2015/1882 and S.I. 2016/680.

<sup>(180)</sup> Section 405 was amended by S.I. 2007/126, paragraph 1 and 21(1) to (4) of Schedule 18 to the Financial Services Act 2012, 2015/575, and 2006/3221

<sup>(181)</sup> Section 412A was inserted by S.I. 2007/126 and amended by paragraph 38 of Schedule 8 to the Financial Services Act 2012.

<sup>(182)</sup> Section 412B was inserted by S.I. 2007/126 and amended by paragraph 38 of Schedule 8 to the Financial Services Act 2012.

<sup>(183)</sup> Section 417(1) was amended by S.I. 2007/126; there are other amendments but none is relevant.

- (3) Insert the following definition in the appropriate places—  
““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;”;
- 52.** In section 422A(4)(a)(**184**) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.
- 53.** In section 424A(5)(b)(**185**) (investment firm) for “4.1.20” substitute “4.1.55”.

### **Amendments to Schedule 3 (EEA passport rights)**

- 54.**—(1) Schedule 3 (EEA passport rights) is amended as follows.
- (2) For paragraph 4C(**186**) substitute—  
“(4C) “The markets in financial instruments directive” means [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.”.
- (3) In paragraph 11A(**187**) for “4.1.25” substitute “4.1.29”.
- (4) In paragraph 12(3)(**188**) after “5(a)”, insert “or (b)”.
- (5) In paragraph 14(1)(ba)(**189**) for “31.5” substitute “34.6”.
- (6) In paragraph 20(4BA)(**190**) for “31.6” substitute “34.7”.
- (7) In paragraph 20A(**191**)—  
(a) after “investment firm” in both places, insert “or UK credit institution”; and  
(b) after sub-paragraph (2) insert—  
“(3) In this paragraph “UK credit institution” means a UK firm—  
(a) which is a credit institution; and  
(b) whose EEA right derives from the markets in financial instruments directive.”.

### **Amendments to Schedule 10A (liability of issuers)**

- 55.** In paragraph 8(1) of Schedule 10A(**192**) (liability of issuers in connection with published information)—  
(a) in paragraph (a)—  
(i) for “4.1.18” substitute “4.1.44”; and  
(ii) for “4.1.19” substitute “4.1.17”; and  
(b) in paragraph (b)—  
(i) for “4.1.14” substitute “4.1.21”; and  
(ii) for “4.1.15” substitute “4.1.22”.

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(**184**) Section 422A(4)(a) was inserted by [S.I. 2009/534](#).

(**185**) Section 424A(5)(b) was inserted by [S.I. 2006/2975](#).

(**186**) Paragraph 4C was inserted by [S.I. 2006/2975](#).

(**187**) Paragraph 11A was inserted by [S.I. 2007/126](#).

(**188**) Paragraph 12(3) was inserted by [S.I. 2007/126](#).

(**189**) Paragraph 14(1)(ba) was inserted by [S.I. 2007/126](#) and amended by paragraph 3(2) of Schedule 4 to the Financial Services Act 2012.

(**190**) Paragraph 20(4BA) was inserted by [S.I. 2007/126](#) and amended by paragraph 11(2) of Schedule 4 to the Financial Services Act 2012.

(**191**) Paragraph 20A was inserted by [S.I. 2007/126](#).

(**192**) Schedule 10A was inserted by [S.I. 2010/1192](#).

## SCHEDULE 3

Regulation 50(2)

Amendments to secondary legislation made under the Financial Services and Markets Act 2000

**The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001**

1.—(1) The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(193) are amended as follows.

(2) In regulation 3(1)(194) (interpretation)—

- (a) in the definition of “branch” for “Article 4.1.26” substitute “Article 4.1.30”;
- (b) omit the definition of “the Commission Regulation”;
- (c) in the definition of “financial instrument” for “Article 4.1.17” substitute “Article 4.1.15”;
- (d) in the definition of “multilateral trading facility” for “Article 4.1.15” substitute “Article 4.1.22”;
- (e) in the definition of “regulated market” for “Article 4.1.14” substitute “Article 4.1.21”;
- (f) in the definition of “transferable securities” for “Article 4.1.18” substitute “Article 4.1.44”;
- (g) at the appropriate places insert—

““algorithmic trading” has the meaning given in Article 4.1.39 of the markets in financial instruments directive;”;

““certificates” has the meaning given in Article 2.1.27 of the markets in financial instruments regulation;”;

““commodity derivatives” has the meaning given in Article 4.1.50 of the markets in financial instruments directive;”;

““depository receipts” has the meaning given in Article 4.1.45 of the markets in financial instruments directive;”;

““derivative” means a financial instrument defined in Article 4.1.44(c) of the markets in financial instruments directive and listed in Section C(4) to (10) of Annex 1 to that directive;”;

““direct electronic access” has the meaning given in Article 4.1.41 of the markets in financial instruments directive;”;

““emission allowances” has the same meaning as in the markets in financial instruments directive;”;

““exchange-traded fund” has the meaning given in Article 4.1.46 of the markets in financial instruments directive;”;

““group” has the meaning given in Article 4.1.34 of the markets in financial instruments directive;”;

““high-frequency algorithmic trading technique” has the meaning given in Article 4.1.40 of the markets in financial instruments directive;”;

““liquid market” has the meaning given in Article 4.1.25 of the markets in financial instruments directive;”;

““management body” in relation to an exchange means—

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(193) S.I. 2001/995.

(194) Regulation 3 was amended by S.I. 2006/3386 and 2013/3115. There are other amendments but none is relevant.

- (a) the board of directors, or if there is no such board, the equivalent body responsible for the management of the exchange; and
- (b) any other person who effectively directs the business of the exchange;”;
- ““matched principal trading” has the meaning given in Article 4.1.38 of the markets in financial instruments directive;”;
- ““multilateral system” has the meaning given as in Article 4.1.19 of the markets in financial instruments directive;”;
- ““senior management” has the meaning given by Article 4.1.37 of the markets in financial instruments directive;”;
- ““SME growth market” has the meaning given by Article 4.1.12 of the markets in financial instruments directive;”;
- ““sovereign debt” has the meaning given by Article 4.1.61 of the markets in financial instruments directive;”;
- ““structured finance products” has the meaning given in Article 4.1.48 of the markets in financial instruments directive;”;
- ““systematic internaliser” has the meaning given in Article 4.1.20 of the markets in financial instruments directive;”;
- ““third country firm” has the meaning given in Article 4.1.57 of the markets in financial instruments directive;”.

(3) After regulation 10 (revocation of recognition) insert—

**“FCA rules**

**11.** The FCA may make rules for the purposes of these Regulations.”.

(4) For paragraph 2(3) of the Schedule(195) (suitability) substitute—

“(3) The members of the management body must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties.”.

(5) After paragraph 2 of the Schedule insert—

*“Management body*

**2A.—**(1) The composition of the management body of an exchange must reflect an adequately broad range of experience.

(2) The management body must possess adequate collective knowledge, skills and experience in order to understand the exchange’s activities and main risks.

(3) Members of the management body must—

- (a) commit sufficient time to perform their functions on the management body;
- (b) act with honesty, integrity and independence of mind; and
- (c) effectively—
  - (i) assess and challenge, where necessary, the decisions of the senior management; and
  - (ii) oversee and monitor decision-making.

(4) The management body must—

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(195) Paragraph 2(3) was inserted by [S.I. 2006/3386](#).

*Status: This is the original version (as it was originally made).*

- (a) define and oversee the implementation of governance arrangements that ensure the effective and prudent management of the exchange in a manner which promotes the integrity of the market, which at least must include—
    - (i) the segregation of duties in the organisation; and
    - (ii) the prevention of conflicts of interest;
  - (b) monitor and periodically assess the effectiveness of the exchange’s governance arrangements; and
  - (c) take appropriate steps to address any deficiencies found as a result of the monitoring under paragraph (b).
- (5) An exchange must—
- (a) devote adequate human and financial resources to the induction and training of members of the management body;
  - (b) ensure that the management body has access to the information and documents it requires to oversee and monitor management decision-making; and
  - (c) notify the FCA of the identity of all the members of its management body.
- (6) An exchange and, if it has a nomination committee, its nomination committee must engage a broad set of qualities and competences when recruiting persons to the management body, and for that purpose have a policy promoting diversity on the management body.
- (7) The number of directorships a member of the management body can hold at the same time must take into account individual circumstances and the nature, scale and complexity of the exchange’s activities.

*Management body: significant exchanges*

- 2B.**—(1) If an exchange is significant the following requirements apply to the management body—
- (a) members of the management body must not at the same time hold positions exceeding more than one of the following combinations—
    - (i) one executive directorship with two non-executive directorships (or where so authorised by the FCA under regulation 44(1), three non-executive directorships); or
    - (ii) four non-executive directorships (or where so authorised by the FCA under regulation 44(1), five non-executive directorships); and
  - (b) the management body must have a nomination committee unless it is prevented by law from selecting and appointing its own members.
- (2) For the purposes of sub-paragraph (1)(a)—
- (a) any directorship in which the person represents the United Kingdom is not counted;
  - (b) executive or non-executive directorships—
    - (i) held within the same group, or
    - (ii) held within the same undertaking where the exchange holds a qualifying holding within the meaning of Article 4.1.31 of the markets in financial instruments directive,
 shall be counted as a single directorship; and
  - (c) any directorship in an organisation which does not pursue predominantly commercial objectives is not counted.

- (3) The nomination committee referred to in sub-paragraph (1)(b) must—
- (a) be composed of members of the management body who do not perform an executive function in the exchange;
  - (b) identify and recommend to the exchange persons to fill management body vacancies;
  - (c) at least annually assess the structure, size, composition and performance of the management body and make recommendations to the management body;
  - (d) at least annually assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;
  - (e) periodically review the policy of the management body for the selection and appointment of senior management and make recommendations to the management body; and
  - (f) be able to use any forms of resource it deems appropriate, including external advice.

(4) In performing its functions under sub-paragraph (3) the nomination committee must take account of the need to ensure that the management body's decision-making is not dominated by—

- (a) any one individual; or
- (b) a small group of individuals,

in a manner that is detrimental to the interests of the exchange as a whole.

- (5) In performing its function under sub-paragraph (3)(b) the nomination committee must—
- (a) evaluate the balance of knowledge, skills, diversity and experience of the management body;
  - (b) prepare a description of the roles, capabilities and expected time commitment for any particular appointment;
  - (c) decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to meet that target;
  - (d) engage a broad set of qualities and competences, and for that purpose have a policy promoting diversity on the management body.

(6) In sub-paragraph (1), “significant” in relation to an exchange means significant in terms of the size and internal organisation of the exchange and the nature, scope and complexity of the exchange's activities.”.

(6) In paragraph 3 of the Schedule(196) (systems and controls)—

- (a) for sub-paragraph (1) substitute—

“(1) The exchange must ensure that the systems and controls, including procedures and arrangements, used in the performance of its functions and the functions of the trading venues it operates are adequate, effective and appropriate for the scale and nature of its business.”;

- (b) at the end of sub-paragraph (2)(d) omit “and”;

- (c) after sub-paragraph (2)(e) insert—

- “(f) the resilience of its trading systems;
- (g) the ability to have sufficient capacity to deal with peak order and message volumes;
- (h) the ability to ensure orderly trading under conditions of severe market stress;

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(196) Paragraph 3 was amended by [S.I. 2006/3386](#).

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- (i) the effectiveness of business continuity arrangements to ensure the continuity of the exchange's services if there is any failure of its trading systems including the testing of the exchange's systems and controls;
  - (j) the ability to reject orders that exceed predetermined volume or price thresholds or which are clearly erroneous;
  - (k) the ability to ensure algorithmic trading systems cannot create or contribute to disorderly trading conditions on trading venues operated by the exchange;
  - (l) the ability to ensure disorderly trading conditions which arise from the use of algorithmic trading systems, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the exchange's trading system by a member or participant, are capable of being managed;
  - (m) the ability to ensure the flow of orders is capable of being slowed down if there is a risk of system capacity being reached;
  - (n) the ability to limit and enforce the minimum tick size which may be executed on its trading venues; and
  - (o) the requirement for members and participants to carry out appropriate testing of algorithms.
- (3) For the purposes of sub-paragraph (2)(c), the exchange must—
- (a) establish and maintain effective arrangements and procedures including the necessary resource for the regular monitoring of the compliance by their members or participants with its rules; and
  - (b) monitor orders sent including cancellations and the transactions undertaken by its members or participants under its systems in order to identify infringements of those rules, disorderly trading conditions or conduct that may indicate behaviour that is prohibited under the market abuse regulation or system disruptions in relation to a financial instrument.
- (4) For the purposes of sub-paragraph (2)(o) the exchange must provide environments to facilitate such testing.
- (5) The exchange must be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks.

#### *Market making agreements*

- 3A.—**(1) The exchange must—
- (a) have written agreements with all investment firms pursuing a market making strategy on trading venues operated by it (“market making agreements”);
  - (b) have schemes, appropriate to the nature and scale of a trading venue, to ensure that a sufficient number of investment firms enter into such agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;
  - (c) monitor and enforce compliance with the market making agreements;
  - (d) inform the FCA of the content of its market making agreements; and
  - (e) provide the FCA with any information it requests which is necessary for the FCA to satisfy itself that the market making agreements comply with paragraphs (c) and (d) of this sub-paragraph and sub-paragraph (2).

- (2) A market making agreement must specify—
  - (a) the obligations of the investment firm in relation to the provision of liquidity;
  - (b) where applicable, any obligations arising from the participation in a scheme mentioned in sub-paragraph (1)(b);
  - (c) any incentives in terms of rebates or otherwise offered by the exchange to the investment firm in order for it to provide liquidity to the market on a regular and predictable basis; and
  - (d) where applicable, any other rights accruing to the investment firm as a result of participation in the scheme referred to in sub-paragraph (1)(b).
- (3) For the purposes of this paragraph, an investment firm pursues a market making strategy if—
  - (a) the firm is a member or participant of one or more trading venues;
  - (b) the firm's strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue, or across different trading venues; and
  - (c) the result is providing liquidity on a regular and frequent basis to the overall market.

#### *Halting trading*

- 3B.**—(1) The exchange must be able to—
- (a) temporarily halt or constrain trading on any trading venue operated by it if there is a significant price movement in a financial instrument on such a trading venue or a related trading venue during a short period; and
  - (b) in exceptional cases cancel, vary, or correct, any transaction.
- (2) For the purposes of sub-paragraph (1) the exchange must ensure that the parameters for halting trading are calibrated in a way which takes into account—
- (a) the liquidity of different asset classes and sub-classes;
  - (b) the nature of the trading venue market model; and
  - (c) the types of users,
- to ensure the parameters avoid significant disruptions to the orderliness of trading.
- (3) The exchange must report the parameters mentioned in sub-paragraph (2) and any material changes to those parameters to the FCA in a format to be specified by the FCA.
- (4) If a trading venue operated by the exchange is material in terms of liquidity of the trading of a financial instrument and it halts trading in an EEA State in that instrument, it must have systems and procedures in place to ensure that it notifies the FCA.

#### *Direct electronic access*

- 3C.** Where the exchange permits direct electronic access to a trading venue it operates it must—
- (a) ensure that a member of, or participant in, the trading venue is only permitted to provide direct electronic access to the venue if the member or participant—

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- (i) is an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive (definitions), authorised in accordance with the directive;
  - (ii) is a credit institution authorised in accordance with the capital requirements directive<sup>(197)</sup>;
  - (iii) comes within Article 2.1(a), (e), (i), or (j) of the markets in financial instruments directive (exemptions) and has a Part 4A permission relating to investment services and activities;
  - (iv) is a third country firm providing the direct electronic access in the course of exercising rights under Article 46.1 (general provisions) or 47.3 (equivalence decision) of the markets in financial instruments regulation;
  - (v) is a third country firm and the provision of the direct electronic access by that firm is subject to the exclusion in article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(198)</sup>; or
  - (vi) is a third country firm which does not come within paragraph (iv) or (v) and is otherwise permitted to provide the direct electronic access under the Act;
- (b) ensure that appropriate criteria are set and applied for the suitability of persons to whom direct electronic access services may be provided;
  - (c) ensure that a member of, or participant in, the trading venue retains responsibility for adherence to the requirements of the markets in financial instruments directive in respect of orders and trades executed using the direct electronic access service;
  - (d) set appropriate standards for risk controls and thresholds on trading through direct electronic access;
  - (e) be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately from—
    - (i) other orders; or
    - (ii) trading by the member or participant providing the direct electronic access; and
  - (f) have arrangements in place to suspend or terminate the provision to a client of direct electronic access to that trading venue by a member of, or participant in, the trading venue in the case of non-compliance with this paragraph.

#### *Co-location services*

**3D.** The exchange's rules on co-location services must be transparent, fair and non-discriminatory.

#### *Fee structures*

**3E.—(1)** The exchange's fee structure, for all fees it charges including execution fees and ancillary fees and rebates it grants, must—

- (a) be transparent, fair and non-discriminatory;

<sup>(197)</sup>OJ No L 176, 27.6.2013, p.338.

<sup>(198)</sup>S.I. 2001/544; article 72 was amended by S.I. 2003/1476, 2006/2383 and 3384, 2009/1342, 2013/504 and 2015/910.

- (b) not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading conditions or market abuse; and
  - (c) impose market making obligations in individual shares or suitable baskets of shares for any rebates that are granted.
- (2) Nothing in sub-paragraph (1) prevents the exchange from—
- (a) adjusting its fees for cancelled orders according to the length of time for which the order was maintained;
  - (b) calibrating its fees to each financial instrument to which they apply;
  - (c) imposing a higher fee—
    - (i) for placing an order which is cancelled than an order which is executed;
    - (ii) on participants placing a high ratio of cancelled orders to executed orders;
    - or
    - (iii) on a person operating a high-frequency algorithmic trading technique,
- in order to reflect the additional burden on system capacity.

#### *Algorithmic trading*

- 3F.** The exchange must require members of and participants in trading venues operated by it to flag orders generated by algorithmic trading in order for it to be able to identify—
- (a) the different algorithms used for the creation of orders; and
  - (b) the persons initiating those orders.

#### *Tick size regimes*

- 3G.—**(1) The exchange must adopt tick size regimes in respect of trading venues operated by it in—
- (a) shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments traded on each trading venue; and
  - (b) any financial instrument for which regulatory technical standards are adopted by the European Commission pursuant to Article 49.3 or 4 of the markets in financial instruments directive which is traded on that trading venue.
- (2) The tick size regime must—
- (a) be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and
  - (b) adapt the tick size for each financial instrument appropriately.
- (3) The tick size regime must comply with any regulatory technical standards adopted by the European Commission pursuant to Article 49.3 or 4 of the markets in financial instruments directive.

#### *Synchronisation of business clocks*

- 3H.** The exchange must synchronise the business clocks it uses to record the date and time of any reportable event in accordance with regulatory technical standards adopted by

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the European Commission pursuant to Article 50 of the markets in financial instruments directive.”.

- (7) In paragraph 4 of the Schedule(**199**) (safeguards for investors), in sub-paragraph (2)—
- (a) in paragraph (aa) omit “and non-discretionary”;
  - (b) in paragraph (ea) in both places for “financial markets” substitute “trading venues”;
  - (c) in paragraph (f) omit “(including the monitoring of transactions effected on the exchange)”;
  - (d) after paragraph (f) omit “and” and insert—
    - “(fa) it immediately reports to the FCA any significant breaches of its rules or disorderly trading conditions or conduct that may indicate behaviour which is prohibited under the market abuse regulation or system disruptions in relation to a financial instrument; and”.
- (8) Omit paragraphs 4A (provision of pre-trade information about share trading) and 4B (provision of post-trade information about share trading) of the Schedule(**200**).
- (9) Before paragraph 6 of the Schedule(**201**) insert—

*“Publication of data regarding execution of transactions*

- 4C.**—(1) The exchange must make available to the public, without any charges, data relating to the quality of execution of transactions on the trading venues operated by the exchange on at least an annual basis.
- (2) Reports must include details about price, costs, speed and likelihood of execution for individual financial instruments.”.
- (10) In paragraph 7A of the Schedule(**202**) (admission of financial instruments to trading)—
- (a) in sub-paragraph (1) for “financial market” substitute “trading venue”;
  - (b) omit sub-paragraphs (2) to (11).
- (11) In paragraph 7B of the Schedule(**203**) (access to the exchange’s facilities)—
- (a) in sub-paragraph (2)(b) for “the market” substitute “its trading venues”;
  - (b) in sub-paragraphs (2)(c), (d) and (e) and (4) for “financial market” substitute “trading venue”;
  - (c) omit sub-paragraph (3).
- (12) After paragraph 7B of the Schedule insert—

*“Position management*

- 7BA.**—(1) An exchange operating a trading venue which trades commodity derivatives must apply position management controls on that venue, which must at least enable the exchange to—
- (a) monitor the open interest positions of persons;
  - (b) access information, including all relevant documentation, from persons about—

(199) Paragraph 4 was amended by [S.I. 2006/3386](#).

(200) Paragraphs 4A and 4B were inserted by [S.I. 2006/3386](#) and amended by [S.I. 2013/472](#).

(201) Paragraph 5 was revoked by [S.I. 2005/381](#).

(202) Paragraph 7A was inserted by [S.I. 2006/3386](#) and amended by [S.I. 2011/1043](#) and [2016/680](#).

(203) Paragraph 7B was inserted by [S.I. 2006/3386](#) and amended by [S.I. 2013/472](#) and [3115](#).

- (i) the size and purpose of a position or exposure entered into;
    - (ii) any beneficial or underlying owners;
    - (iii) any concert arrangements; and
    - (iv) any related assets or liabilities in the underlying market;
  - (c) require a person to terminate or reduce a position on a temporary or permanent basis as the specific case may require and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply; and
  - (d) where appropriate, require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large or dominant position.
- (2) The position management controls must take account of the nature and composition of market participants and of the use they make of the contracts submitted to trading and must—
- (a) be transparent;
  - (b) be non-discriminatory; and
  - (c) specify how they apply to persons.
- (3) An exchange must inform the FCA of the details of the position management controls in relation to each trading venue it operates.

#### *Position reporting*

- 7BB.**—(1) This paragraph applies to an exchange operating a trading venue which trades commodity derivatives, emission allowances, or emission allowance derivatives.
- (2) The exchange must—
- (a) where it meets the minimum threshold, as specified in a delegated act adopted by the European Commission pursuant to Article 58.6 of the markets in financial instruments directive, make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives, emission allowances or emission allowance derivatives traded on the trading venue specifying—
    - (i) the number of long and short positions by such categories;
    - (ii) changes of those positions since the previous report;
    - (iii) the percentage of the total open interest represented by each category; and
    - (iv) the number of persons holding a position in each category; and
  - (b) provide the FCA with a complete breakdown of the positions held by all persons, including the members and participants and their clients, on the trading venue on a daily basis, or more frequently if that is required by the FCA.
- (3) For the weekly report mentioned in sub-paragraph (2)(a) the exchange must—
- (a) categorise persons in accordance with the classifications required under sub-paragraph (4); and
  - (b) differentiate between positions identified as—
    - (i) positions which in an objectively measurable way reduce risks directly relating to commercial activities; or
    - (ii) other positions.

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(4) The exchange must classify persons holding positions in commodity derivatives, emission allowances or emission allowance derivatives according to the nature of their main business, taking account of any applicable authorisation or registration, as—

- (a) an investment firm or credit institution;
- (b) an investment fund, either as an undertaking for collective investments in transferable securities as defined in the UCITS Directive(204), or an alternative investment fund or an alternative investment fund manager as defined in the alternative investment fund managers directive(205);
- (c) another financial institution, including an insurance undertaking, a reinsurance undertaking as defined in the Solvency 2 Directive(206) and an institution for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement(207);
- (d) a commercial undertaking; or
- (e) in the case of emission allowances or emission allowance derivatives, an operator with compliance obligations under Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community(208).

(5) The exchange must communicate the weekly report mentioned in sub-paragraph (2)(a) to the FCA and ESMA.”.

(13) In paragraph 7E of the Schedule(209) (suspension and removal of financial instruments from trading)—

- (a) the existing text becomes sub-paragraph (1);
- (b) in sub-paragraph (1), for “regulated market” substitute “trading venue”;
- (c) after sub-paragraph (1) insert—

“(2) Where the exchange suspends or removes any financial instrument from trading on a trading venue it operates it must also suspend or remove from trading on that venue any derivative that relates or is referenced to that financial instrument where that is required to support the objectives of the suspension or removal from trading of that financial instrument.

(3) Where the exchange suspends or removes any financial instrument from trading on a trading venue it operates, including any derivative in accordance with sub-paragraph (2), it must make that decision public and notify the FCA.

(4) Where following a decision made under sub-paragraph (2) the exchange lifts a suspension or readmits any financial instrument to trading on a trading venue it operates, including any derivative suspended or removed from trading in accordance with that sub-paragraph, it must make that decision public and notify the FCA.”.

(14) In paragraph 9 of the Schedule (complaints), after sub-paragraph (5) insert—

“(6) The exchange must have in place effective procedures for its employees to report potential or actual infringements of—

- (a) these Regulations,

(204) OJ No L 302, 17.11.2009, p.32.

(205) OJ No L 174, 1.7.2011, p.1.

(206) OJ No L 335, 17.12.2009, p.1.

(207) OJ No L 235, 23.9.2003, p.10.

(208) OJ No L 275, 25.10.2003, p.32.

(209) Paragraph 7E was inserted by S.I. 2006/3386.

- (b) provisions of the Act and subordinate legislation made under the Act (including rules) transposing the markets in financial instruments directive,
  - (c) the markets in financial instruments regulation, and
  - (d) directly applicable EU regulations made under the markets in financial instruments directive or the markets in financial instruments regulation, internally through a specific, independent and autonomous channel.”.
- (15) After paragraph 9 of the Schedule insert—

*“Specific requirements for regulated markets: execution of orders*

**9ZA.**—(1) An exchange must have non-discretionary rules for the execution of orders on a regulated market operated by it.

- (2) An exchange must not on a regulated market operated by it—
  - (a) execute any client orders against its proprietary capital; or
  - (b) engage in matched principal trading.

*Specific requirements for regulated markets: admission of financial instruments to trading*

**9ZB.**—(1) The rules of the exchange must ensure that all—

- (a) financial instruments admitted to trading on a regulated market operated by it are capable of being traded in a fair, orderly and efficient manner;
- (b) transferable securities admitted to trading on a regulated market operated by it are freely negotiable; and
- (c) contracts for derivatives admitted to trading on a regulated market operated by it are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.

(2) The rules of the exchange must provide that where it, without obtaining the consent of the issuer, admits to trading on a regulated market operated by it a transferable security which has been admitted to trading on another regulated market the exchange—

- (a) must inform the issuer of that security as soon as is reasonably practicable; and
- (b) may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(3) The exchange must maintain effective arrangements to verify that issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations.

(4) The exchange must maintain arrangements to assist members of or participants in a regulated market operated by it to obtain access to information made public under the disclosure obligations.

(5) The exchange must maintain arrangements to review regularly whether financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.

(6) In this paragraph—

“the disclosure obligations” are the initial, ongoing and ad hoc disclosure requirements contained in—

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- (a) Articles 17, 18 and 19 of the market abuse regulation<sup>(210)</sup>;
  - (b) Articles 3, 5, 7, 8, 14 and 16 of [Directive 2003/71/EC](#) of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading<sup>(211)</sup>;
  - (c) Articles 4 to 6, 14 and 16 to 19 of [Directive 2004/109/EC](#) of the European Parliament and of the Council of 15 December 2004 relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market<sup>(212)</sup>; and
  - (d) EU legislation made under the provisions mentioned in paragraphs (a) to (c);
- and the legislation referred to in paragraphs (b) and (c) is given effect—
- (a) in the United Kingdom by Part 6 of the Act<sup>(213)</sup> and Part 6 rules (within the meaning of section 73A of the Act); or
  - (b) in another EEA State by legislation transposing the relevant Articles in that State.

*Specific requirements for regulated markets: access to a regulated market*

**9ZC.** The rules of the exchange about access to, or membership of, a regulated market operated by it must permit the exchange to give access to or admit to membership (as the case may be) only—

- (a) an investment firm authorised under Article 5 of the markets in financial instruments directive;
- (b) a credit institution authorised in accordance with the capital requirements directive; or
- (c) a person who—
  - (i) is of sufficient good repute;
  - (ii) has a sufficient level of trading ability, competence and experience;
  - (iii) where applicable, has adequate organisational arrangements; and
  - (iv) has sufficient resources for the role it is to perform, taking account of the exchange’s arrangements under paragraph 4(2)(d).

*Multilateral systems*

**9ZD.** An exchange must only operate a multilateral system as a regulated market, a multilateral trading facility or an organised trading facility.”.

- (16) In paragraph 9A of the Schedule<sup>(214)</sup> (operation of a multilateral trading facility)—
  - (a) in the heading insert at the end “or an organised trading facility”;
  - (b) in sub-paragraph (1), after “multilateral trading facility” insert “or an organised trading facility”;
  - (c) in sub-paragraph (2)—
    - (i) after “multilateral trading facility” insert “or an organised trading facility”;

<sup>(210)</sup>OJ No L 173, 12.6.2014, p.1.

<sup>(211)</sup>OJ No L 345, 31.12.2003, p.64.

<sup>(212)</sup>OJ No L 390, 31.12.2004, p.38.

<sup>(213)</sup>2000 c.8; section 73A was inserted by [S.I. 2005/381](#) and amended by section 16 of the Financial Services Act 2012, paragraph 3 of Schedule 15 to the Companies Act 2006 and [S.I. 2005/1433](#) and [2016/680](#).

<sup>(214)</sup>Paragraph 9A was inserted by [S.I. 2006/3386](#).

- (ii) for paragraph (b) substitute—
  - “(b) any directly applicable EU regulation made under Chapter I,”;
- (d) after sub-paragraph (3) insert—
  - “(4) An exchange operating a multilateral trading facility or an organised trading facility must provide the FCA with a detailed description of—
    - (a) the functioning of the multilateral trading facility or organised trading facility;
    - (b) any links to another trading venue owned by the same exchange or to a systematic internaliser owned by the same exchange; and
    - (c) a list of the facility’s members, participants and users.
  - (5) Any multilateral trading facility or an organised trading facility operated by the exchange must have at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation.”.
- (17) After paragraph 9A of the Schedule insert—

*“Specific requirements for multilateral trading facilities: execution of orders*

- 9B.**—(1) An exchange must have non-discretionary rules for the execution of orders on a multilateral trading facility operated by it.
- (2) An exchange must not on a multilateral trading facility operated by it—
  - (a) execute any client orders against its proprietary capital; or
  - (b) engage in matched principal trading.

*Specific requirements for multilateral trading facilities: access to a facility*

- 9C.** The rules of the exchange about access to, or membership of, a multilateral trading facility operated by it must permit the exchange to give access to or admit to membership (as the case may be) only to—
  - (a) an investment firm authorised under Article 5 of the markets in financial instruments directive;
  - (b) a credit institution authorised in accordance with the capital requirements directive; or
  - (c) a person who—
    - (i) is of sufficient good repute;
    - (ii) has a sufficient level of trading ability, competence and experience;
    - (iii) where applicable, has adequate organisational arrangements; and
    - (iv) has sufficient resources for the role it is to perform, taking account of the financial arrangements the exchange has established in order to guarantee the adequate settlement of transactions.

*Specific requirements for multilateral trading facilities: disclosure*

- 9D.**—(1) The rules of the exchange must provide that where it, without obtaining the consent of the issuer, admits to trading on a multilateral trading facility operated by it a transferable security which has been admitted to trading on a regulated market, the exchange

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may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(2) The exchange must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of a multilateral trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.

(3) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

#### *SME growth markets*

**9E.**—(1) An exchange operating a multilateral trading facility which has registered that facility as an SME growth market in accordance with Article 33 of the markets in financial instruments directive (an “exchange-operated SME growth market”) must comply with rules made by FCA for the purposes of this paragraph.

(2) An exchange-operated SME growth market must not admit to trading a financial instrument which is already admitted to trading on another SME growth market unless the issuer of the instrument has been informed of the proposed admission to trading and has not objected.

(3) Where an exchange-operated SME growth market exchange admits a financial instrument to trading in the circumstances of sub-paragraph (2), that exchange-operated SME growth market may not require the issuer of the financial instrument to demonstrate compliance with—

- (a) any obligation relating to corporate governance, or
- (b) the disclosure obligations.

(4) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

#### *Specific requirements for organised trading facilities: execution of orders*

**9F.**—(1) An exchange operating an organised trading facility must—

- (a) execute orders on that facility on a discretionary basis in accordance with sub-paragraph (4);
- (b) not execute any client orders on that facility against its proprietary capital or the proprietary capital of any entity that is part of the same group or legal person as the exchange unless in accordance with sub-paragraph (2);
- (c) not operate a systematic internaliser within the same legal entity;
- (d) ensure that the organised trading facility does not connect with a systematic internaliser in a way which enables orders in an organised trading facility and orders or quotes in a systematic internaliser to interact; and
- (e) ensure that the organised trading facility does not connect with another organised trading facility in a way which enables orders in different organised trading facilities to interact.

(2) An exchange may only engage in—

- (a) matched principal trading on an organised trading facility operated by it in respect of—
  - (i) bonds,

- (ii) structured finance products,
- (iii) emission allowances, and
- (iv) derivatives which have not been declared subject to the clearing obligation in accordance with Article 5 of the EMIR regulation(215),

where the client has consented to that; or

- (b) dealing on own account on an organised trading facility operated by it, otherwise than in accordance with paragraph (a), in respect of sovereign debt instruments for which there is not a liquid market.

(3) If the exchange engages in matched principal trading in accordance with sub-paragraph (2)(a) it must establish arrangements to ensure compliance with the definition of matched principal trading in Article 4.1.38 of the markets in financial instruments directive.

(4) The discretion which the exchange must exercise in executing a client order may only be the discretion mentioned in sub-paragraph (5) or in sub-paragraph (6) or both.

(5) The first discretion is whether to place or retract an order on the organised trading facility.

(6) The second discretion is whether to match a specific client order with other orders available on the organised trading facility at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the client and in accordance with the exchange's obligations under Article 27 of the markets in financial instruments directive.

(7) Where the organised trading facility crosses client orders the exchange may decide if, when and how much of two or more orders it wants to match within the system.

(8) Subject to the requirements of this paragraph, with regard to a system that arranges transactions in non-equities, the exchange may facilitate negotiation between clients so as to bring together two or more potentially comparable trading interests in a transaction.

(9) The exchange must comply with rules made by the FCA as to how Articles 24, 25, 27 and 28 of the markets in financial instruments directive apply to its operation of an organised trading facility.

(10) Nothing in this paragraph prevents an exchange from engaging an investment firm to carry out market making on an independent basis on an organised trading facility operated by the exchange provided the investment firm does not have close links with the exchange.

(11) In this paragraph—

“close links” has the meaning given in Article 4.1.35 of the markets in financial instruments directive;

“investment firm” has the meaning given in Article 4.1.1 of the markets in financial instruments directive;

“non-equities” means bonds, structured finance products, emission allowances and derivatives traded on a trading venue to which Article 8(1) of the markets in financial instrument regulation applies.

#### *Specific requirements for organised trading facilities: disclosure*

**9G.—**(1) The rules of the exchange must provide that where it, without obtaining the consent of the issuer, admits to trading on an organised trading facility operated by it a transferable security which has been admitted to trading on a regulated market, the exchange

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(215) OJ No L 201, 27.7.2012, p.1.

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may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(2) The exchange must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of an organised trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.

(3) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

*Specific requirements for organised trading facilities: FCA request for information*

**9H.**—(1) An exchange must, when requested to do so, provide the FCA with a detailed explanation in respect of an organised trading facility operated by it, or such a facility it proposes to operate, of—

- (a) why the organised trading facility does not correspond to and cannot operate as a multilateral trading facility, a regulated market or a systematic internaliser;
- (b) how discretion will be exercised in executing client orders, and in particular when an order to the organised trading facility may be retracted and when and how two or more client orders will be matched within the facility; and
- (c) its use of matched principal trading.

(2) Any information required under sub-paragraph (1) must be provided to the FCA in the manner which it considers appropriate.

*Provision of data reporting services*

**9I.** An exchange providing data reporting services must comply with Title V of the markets in financial instruments directive.”

(18) In paragraph 21A of the Schedule(**216**) (access to central counterparty, clearing and settlement facilities) omit sub-paragraph (3).

(19) In paragraph 31 of the Schedule(**217**) (access to central counterparty, clearing and settlement facilities) omit sub-paragraph (3).

**Financial Services and Markets Act 2000 (Regulated Activities) Order 2001**

**2.** In article 53(1C)(b)(i) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**218**) (advising on investments) after “security” insert “, structured deposit”.

**Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001**

**3.**—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(**219**) are amended as follows.

- (2) In regulation 2 (descriptions of business for which appointed representatives are exempt)—
  - (a) in paragraph (1)(a)(**220**) for “or relevant investments” substitute “, relevant investments or structured deposits”;

(**216**) Paragraph 21A was inserted by [S.I. 2006/3386](#) and amended by [S.I. 2013/504](#).

(**217**) Paragraph 31 was inserted by [S.I. 2013/504](#).

(**218**) [S.I. 2001/544](#); article 53(1C)(b)(i) was inserted by [S.I. 2017/500](#).

(**219**) [S.I. 2001/1217](#).

(**220**) Paragraph (1)(a) was amended by [S.I. 2003/1476](#).

- (b) in paragraph (1A)(**221**), for “an EEA investment firm or an EEA credit institution” substitute “a person who has a Part 4A permission for the purposes of the capital requirements directive or the markets in financial instruments directive, an EEA investment firm, or an EEA credit institution”; and
  - (c) in paragraph (1B)(**222**), for “1.10 and 1.17” substitute “1.9 and 1.15”.
- (3) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives)—
- (a) in the closing words of paragraph (2)(**223**) for “or a relevant investment” substitute “, a relevant investment or a structured deposit”.
  - (b) for paragraph (6)(**224**) substitute—
    - “(6) In the case of a representative to whom section 39(1A) or (1AA) of the Act applies (“R”), it is a prescribed requirement for the purposes of section 39(1)(a)(ii), except where paragraph (1A) applies, that the contract between the principal and R must—
    - (a) where section 39(1A) of the Act applies to R, contain a provision that R is only permitted to provide the services and carry on the activities referred to in Article 4.1.29 (definitions) of the markets in financial directive while R is entered on the applicable register; or
    - (b) where section 39(1AA) of the Act applies to R, contain a provision that R is only permitted to sell, or advise clients on, structured deposits as defined by Article 4.1.43 of that directive while R is entered on the applicable register.”.

#### **Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001**

4.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**225**) are amended as follows.

- (2) In regulation 2(**226**) (interpretation)—
  - (a) in the definition of “EEA competent authority”, after “the EMIR regulation” omit “, the market abuse regulation”;
  - (b) omit the definition of “market abuse regulation information”;
  - (c) in the definition of “markets in financial instruments directive information” after “markets in financial instruments directive” insert “and the markets in financial instruments regulation”;
  - (d) in the definition of “single market information” after “markets in financial instruments directive” insert “, the markets in financial instruments regulation”; and
  - (e) in the definition of “single market restrictions”—
    - (i) in paragraph (a) for “54 and 58” substitute “76 and 81”;
    - (ii) at the end of paragraph (m), after “;” insert “and”; and
    - (iii) omit paragraph (n).
- (3) In regulation 8 (disclosure of single market information)—

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(**221**) Paragraph (1A) was inserted by [S.I. 2006/3414](#) and further amended by [S.I. 2017/488](#).

(**222**) Paragraph (1B) was inserted by [S.I. 2006/3414](#).

(**223**) The closing words of paragraph (2) were amended by [S.I. 2003/1476](#); there are other amendments but none is relevant.

(**224**) Paragraph (6) was inserted by [S.I. 2006/3414](#).

(**225**) [S.I. 2001/2188](#).

(**226**) Regulation 2 was amended by [S.I. 2006/3413](#), [2010/2628](#), [2012/916](#), [2013/472](#), and [2013/3115](#); there are other amendments but none is relevant.

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- (a) in paragraph (b)—
    - (i) in sub-paragraph (i) for “article 63” substitute “article 88”; and
    - (ii) in sub-paragraph (ii)(**227**) for “article 58.1” substitute “article 81.1”;
  - (b) at the end of paragraph (d) insert “and”; and
  - (c) omit paragraph (e).
- (4) In regulation 9 (disclosure by regulators or regulator workers to certain other persons) —
- (a) in paragraph (1) after “(3F),” omit “(3G),”;
  - (b) in paragraph (2), for “, (2C) or (2D)” substitute “or (2C)”;
  - (c) in paragraph (2ZA)(**228**) for “article 63” substitute “article 88”;
  - (d) omit paragraph (2D)(**229**);
  - (e) in paragraph (3A)(a)(**230**) for “article 58.1” substitute “article 81.1”; and
  - (f) omit paragraph (3G)(**231**).
- (5) In regulation 11 (disclosure of confidential information not subject to single market restrictions)—
- (a) in paragraph (d)—
    - (i) in sub-paragraph (i)(**232**) for “article 63” substitute “article 88”;
    - (ii) in sub-paragraph (ii)(**233**) for “article 58.1” substitute “article 81.1”; and
  - (b) omit paragraph (h).
- (6) After regulation 12(4) (disclosure by and to a Schedule 1 or 2 person or disciplinary proceedings authority) insert—
- “(5) This regulation does not permit the disclosure of information if—
- (a) the information is confidential information received by the FCA in the course of discharging its functions as a competent authority under the market abuse regulation or any directly applicable EU regulation made under the market abuse regulation; and
  - (b) the disclosure of the information contravenes the market abuse regulation.”.

### **Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001**

5.—(1) The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(**234**) are amended as follows.

(2) In regulation 1(2)(**235**) (citation, commencement and interpretation), in the definition of “tied agent”, for “4.1.25” substitute “4.1.29”.

(3) In regulation 3(2ZA)(**236**) (contents of regulator’s notice), for “31.5” substitute “34.6”.

(**227**) Paragraph (b)(ii) was amended by S.I. 2013/504 and 2014/3348.

(**228**) Paragraph (2ZA)(a) was inserted by S.I. 2013/1773.

(**229**) Paragraph (2D) was inserted by S.I. 2016/680.

(**230**) Paragraph (3A)(a) was inserted by S.I. 2006/3413.

(**231**) Paragraph (3G) was inserted by S.I. 2016/680.

(**232**) Regulation 11(d)(i) was inserted by S.I. 2006/3413.

(**233**) Regulation 11(d)(ii) was inserted by S.I. 2006/3413 and amended by S.I. 2011/1613.

(**234**) S.I. 2001/2511, amended by S.I. 2006/3385 and 3414; there are other amendments but none is relevant.

(**235**) Regulation 1(2) was amended by S.I. 2006/3385; there are other amendments but none is relevant.

(**236**) Regulation 3(2ZA) was inserted by S.I. 2006/3385.

### **Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013**

6.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(**237**) is amended as follows.

(2) In article 2 (qualifying EU provisions: general)—

(a) after paragraph (2)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(b) in paragraph (5) for “2A(6)(d)”(**238**) substitute “2AB(3)(d)”(**239**).

(c) after paragraph (6)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(d) after paragraph (8)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”.

(3) In article 3 (qualifying EU provisions: disciplinary measures)—

(a) after paragraph (2)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(b) in paragraph (3)(a) after “directive” insert “or the markets in financial instruments regulation”.

(4) In article 4 (qualifying EU provisions etc: recognised investment exchanges and clearing houses)—

(a) after paragraph (3)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(b) after paragraph (5)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(c) after paragraph (7)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”.

(5) In article 5 (qualifying EU provisions: injunctions and restitution)—

(a) after paragraph (2)(a) insert—

“(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;

(b) in paragraph (5)(a) after “directive” insert “or the markets in financial instruments regulation”.

(6) In article 6 (qualifying EU provisions: fees)—

(a) after paragraph (2)(a) insert—

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**(237)** [S.I. 2013/419](#).

**(238)** Section 2A(6) was inserted by section 6(1) of the Financial Services Act 2012 and amended by section 12 of the Bank of England and Financial Services Act 2016.

**(239)** Section 2AB(3)(d) was inserted by section 12 Bank of England and Financial Services Act [2016 \(c. 14\)](#).

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- “(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”;
- (b) after paragraph (4)(a) insert—
- “(aa) the markets in financial instruments regulation and any directly applicable EU regulation made under that regulation;”.

### **Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013**

7. After regulation 55 of the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013(240) (transitional and saving provisions: designation orders under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999) insert—

#### **“Transitional provisions: markets in financial instruments provisions**

**55A.**—(1) The FCA may grant an exemption in accordance with Article 95(2) of the [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

(2) The FCA must notify ESMA whenever it grants an exemption under paragraph (1).”.

### **Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 2013**

8. In article 3(2)(c)(i) of the Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 2013(241) (dealing in investments as principal: designation by the PRA), for “31” substitute “34”.

### **Financial Services and Markets Act 2000 (Ring-Fenced Bodies and Core Activities) Order 2014**

9. In article 10(5)(b) of the Financial Services and Markets Act 2000 (Ring-Fenced Bodies and Core Activities) Order 2014(242) (declaration of eligibility: determining assets held by an individual) for “4.1(18)” substitute “4.1(44)”.

## SCHEDULE 4

Regulation 50(3)

### Amendments to other primary legislation

#### **Building Societies Act 1986**

1. In section 81B(1) of the Building Societies Act 1986(243) (interpretation of Part 8), in the definition of “regulated market”, for the words from “Article” to “2004” substitute “Article 4.1.21 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

(240) S.I. 2013/504.

(241) S.I. 2013/556.

(242) S.I. 2014/1960.

(243) 1986 c.53; section 81B(1) was inserted by S.I. 2004/3380 and amended by S.I. 2007/126.

### **Finance Act 1991**

2. In section 116(4)(aa) of the Finance Act 1991(244) (investment exchanges and clearing houses: stamp duty), for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Friendly Societies Act 1992**

3.—(1) The Friendly Societies Act 1992(245) is amended as follows.

(2) In section 69A(4)(246) (duty to prepare individual accounts), for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

(3) In section 69E(5)(247) (duty to prepare group accounts), for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Data Protection Act 1998**

4. In paragraph 6(3) of Schedule 7 (miscellaneous exemptions) to the Data Protection Act 1998(248), in the definition of “instrument”, for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Competition Act 1998**

5. In paragraph 3(5) of Schedule 3 (general exclusions) to the Competition Act 1998(249) in paragraph (a) of the definition of “EEA regulated market”, for the words from “Article” to “2004” substitute “Article 56 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Terrorism Act 2000**

6.—(1) Schedule 3A to the Terrorism Act 2000(250) (regulated sector and supervisory authorities) is amended as follows.

(2) In paragraph 1(5)(a)(251) for “point 14” substitute “point 21”.

(3) In paragraph 3(1)(252), in the definition of “the Markets in Financial Instruments Directive”, for the words from “2004/36/EC” to “2004” substitute “2014/65/EU of the European Parliament and of the Council of 15 May 2014”.

### **Proceeds of Crime Act 2002**

7.—(1) Schedule 9 to the Proceeds of Crime Act 2002(253) (regulated sector and supervisory authorities) is amended as follows.

(2) In paragraph 1(5)(a)(254) for “point 14” substitute “point 21”.

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(244) 1991 c.31; section 116(4)(aa) was inserted by paragraph 7(2) of Schedule 21 to the Finance Act 2007 (c.11).

(245) 1992 c.40.

(246) Section 69A(4) was inserted by S.I. 2005/2211 and amended by S.I. 2007/126.

(247) Section 69E(5) was inserted by S.I. 2005/2211 and amended by S.I. 2007/126.

(248) 1998 c.29; paragraph 6(3) was amended by S.I. 2002/1555 and S.I. 2007/126; there are other amendments but none is relevant.

(249) 1998 c.41; paragraph 3(5) was amended by S.I. 2007/126.

(250) 2000 c.11; Schedule 3A was inserted by the Anti-terrorism, Crime and Security Act 2001 (c.24).

(251) Paragraph 1(5)(a) was inserted by S.I. 2007/3288.

(252) Paragraph 3(1) was inserted by S.I. 2007/3288 and amended by S.I. 2015/575; there are other amendments but none is relevant.

(253) 2002 c.29.

(254) Paragraph 1(5)(a) was inserted by S.I. 2007/3287.

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(3) In paragraph 3(1)(255), in the definition of “the Markets in Financial Instruments Directive”, for the words from “2004/39/EC” to “2004” substitute “2014/65/EU of the European Parliament and of the Council of 15 May 2014”.

### **Income Tax (Trading and Other Income) Act 2005**

8. In section 381E(3) of the Income Tax (Trading and Other Income) Act 2005(256) (exception for returns from certain shares) for the words from “Directive” to “4.1(14)” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments (see Article 4.1.21)”.

### **Companies Act 2006**

9.—(1) The Companies Act 2006(257) is amended as follows.

(2) In section 474(1)(258) (minor definitions for Part 15), in the definition of “MiFID investment firm”—

- (a) for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”;
- (b) at the end of paragraph (a) insert “and”; and
- (c) for paragraphs (b) and (c) substitute—

“(b) a company which is an exempt investment firm as defined by regulation 8 (meaning of “exempt investment firm” in Chapter 1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX);”.

(3) In section 494A(259) (interpretation), in the definition of “transferable securities”, for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”.

(4) In section 519A(2)(260) (meaning of “public interest company”, “non-public interest company” and “exempt reasons”), for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”.

(5) In section 539(261) (minor definitions), in the definition of “MiFID investment firm”—

- (a) for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”;
- (b) at the end of paragraph (a) insert “and”; and
- (c) for paragraphs (b) and (c) substitute—

“(b) a company which is an exempt investment firm as defined by regulation 8 (Meaning of “exempt investment firm” in Chapter 1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX);”.

(6) In section 853E(6)(262) (duty to notify trading status of shares) for the definition of “relevant market” substitute—

““relevant market” means—

(255) Paragraph 3(1) was inserted by [S.I. 2007/3287](#) and amended by [S.I. 2015/575](#); there are other amendments but none is relevant.

(256) [2005 c.5](#); section 381E(3) was inserted by paragraph 3 of Schedule 12 to the Finance Act 2013 ([c.29](#)).

(257) [2006 c.46](#).

(258) Section 474(1) was amended by [S.I. 2007/2932](#); there are other amendments but none is relevant.

(259) Section 494A was inserted by [S.I. 2016/649](#); there are amendments to this section but none is relevant.

(260) Section 519A(2) was inserted by section 18(3) of the Deregulation Act 2015 ([c.20](#)) and amended by [S.I. 2016/649](#).

(261) Section 539 was amended by [S.I. 2007/2932](#); there are other amendments but none is relevant.

(262) Section 853E(6) was inserted by section 92 of the Small Business, Enterprise and Employment Act 2015 ([c.26](#)).

- (a) a recognised investment exchange, as defined in section 285(1)(a) (exemption for recognised exemption exchanges and clearance houses) of the Financial Services and Markets Act 2000 (“the Act”); and
  - (b) any other market which is a regulated market, but not an overseas investment exchange, as defined by section 313 (interpretation of Part 18) of the Act..”.
- (7) In section 1173 (minor definitions: general)—
- (a) in subsection (1)(**263**)—
    - (i) in the definition of “regulated market” for the words from “Directive” to “4.1(14))” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments (see Article 4.1.21))”;
    - (ii) in the definition of “transferable securities”, for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”; and
  - (b) in subsection (2), in the definition of “regulated market”, for the words from “Council” to “field” substitute “[Directive 2004/39/EC](#) of the European Parliament and of the Council on markets in financial instruments”.
- (8) In section 1241(3) (meaning of “registered third country auditor” and “UK-traded non-EEA company”)—
- (a) in the definition of “regulated market”, for “Article 4.1(14) of [Directive 2004/39/EC](#)” substitute “Article 4.1.21 of [Directive 2014/65/EU](#)”; and
  - (b) in the definition of “transferable securities”, for “Article 4.1(18)” substitute “Article 4.1.44”.
- (9) In paragraph 20A of Schedule 10 (recognised supervisory bodies)(**264**) in the definition of “transferable securities” for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”.

### **Income Tax Act 2007**

- 10.** In section 274(4) of the Income Tax Act 2007(**265**) (requirements for the giving of approval) —
- (a) for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”; and
  - (b) for “Article 4.1(14)” substitute “Article 4.1.21”.

### **Counter-Terrorism Act 2008**

- 11.** In paragraph 7 of Schedule 7 (terrorist financing and money laundering) to the Counter-Terrorism Act 2008(**266**), in the definition of “the markets in financial instruments directive”, for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Corporation Tax Act 2010**

- 12.** In section 1158(4) (meaning of “investment trust”) of the Corporation Tax Act 2010(**267**) —
- (a) for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”; and

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(**263**) Subsection (1) was amended by [S.I. 2015/980](#); there are other amendments but none is relevant.

(**264**) Paragraph 20A was inserted by [S.I. 2016/649](#).

(**265**) [2007 c.3](#); section 274(4) was inserted by paragraph 2(2)(d) of Schedule 2 to the Finance (No. 3) Act 2010 ([c.33](#)).

(**266**) [2008 c.28](#); there are amendments to paragraph 7 but none is relevant.

(**267**) [2010 c.4](#); section 1158 was inserted by section 49(2) of the Finance Act 2011 ([c.11](#)).

(b) for “Article 4.1(14)” substitute “Article 4.1.21”.

### **Finance Act 2010**

13. In paragraph 45(15) of Schedule 1 (bank payroll tax) to the Finance Act 2010(268), for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Finance Act 2011**

14. In paragraph 13(4) of Schedule 19 to the Finance Act 2011(269) (the bank levy) in the definition of “dealing on own account”, for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Financial Services (Banking Reform) Act 2013**

15. In section 11(3)(b) of the Financial Services (Banking Reform) Act 2013(270) (review of proprietary trading: interpretation), for the words from “Directive” to “2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

## SCHEDULE 5

Regulation 50(4)

### Amendments to other secondary legislation

### **Income Tax (Manufactured Overseas Dividends) Regulations 1993**

1. In regulation 5B(6) of the Income Tax (Manufactured Overseas Dividends) Regulations 1993(271) (chains of payments involving central counterparties), in paragraph (b) of the definition of “recognised investment exchange”, for the words from “2004/39/EC” to “April 2004” substitute “2014/65/EU of the European Parliament and of the Council of 15 May 2014”.

### **Financial Markets and Insolvency (Settlement Finality) Regulations 1999**

2. In regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(272) (interpretation)—

- (a) in paragraph (b) of the definition of “institution”, for the words from “2004/39/EC” to “April 2004” substitute “2014/65/EU of the European Parliament and of the Council of 15 May 2014”;
- (b) in the definition of “securities”, for the words from “2004/39/EC” to “April 2004” substitute “2014/65/EU of the European Parliament and of the Council of 15 May 2014”.

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(268)2010 c.13.

(269)2011 c.11.

(270)2013 c.33.

(271)S.I. 1993/2004; regulation 5B(6) was inserted by S.I. 2011/2503, there are other amendments to this regulation but none is relevant.

(272)S.I. 1999/2979; regulation 2(1) was amended by S.I. 2007/126 and 2010/2993, there are other amendments to this regulation but none is relevant.

### **Uncertificated Securities Regulations 2001**

3. In paragraph 28 of Schedule 1 to the Uncertificated Securities Regulations 2001(273) (requirements for approval of a person as operator)—

- (a) omit sub-paragraph (3)(274); and
- (b) in sub-paragraph (4)(275)—
  - (i) in the definition of “branch”, for “4.1.26” substitute “4.1.30”;
  - (ii) in the definition of “financial instrument”, for “4.1.17” substitute “4.1.15”;
  - (iii) in the definition of “markets in financial instruments directive” for “2004/39/EC” substitute “2014/65/EU”; and
  - (iv) in the definition of “markets in financial instruments directive” for “21st April 2004” substitute “15 May 2014”.

### **Insurers (Reorganisation and Winding Up) Regulations 2004**

4. In regulation 44(3) of the Insurers (Reorganisation and Winding Up) Regulations 2004(276) (regulated markets)—

- (a) for “4.1.14” substitute “4.1.21”;
- (b) for “2004/39/EC” substitute “2014/65/EU”;
- (c) for “21 April 2004” substitute “15 May 2014”.

### **Credit Institutions (Reorganisation and Winding Up) Regulations 2004**

5. In regulation 31(3) of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004(277) (protection of third party purchasers)—

- (a) for “2004/39/EC” substitute “2014/65/EU”;
- (b) for “21 April 2004” substitute “15 May 2014”.

### **Occupational Pension Schemes (Investment) Regulations 2005**

6. In regulation 4(11) of the Occupational Pension Schemes (Investment) Regulations 2005(278) (investment by trustees)—

- (a) in the definition of “derivative instrument”, for “Directive 2004/39/EC” substitute “Directive 2014/65/EU”;
- (b) in paragraph (b) of the definition of “regulated market”, for “Directive 2004/39/EC” substitute “Directive 2014/65/EU”.

### **Authorised Investment Funds (Tax) Regulations 2006**

7. In regulation 14ZD(6)(b) of the Authorised Investment Funds (Tax) Regulations 2006(279) (index tracking funds), for the definition of “regulated market” substitute—

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(273) S.I. 2001/3755; paragraph 28 was inserted by S.I. 2007/124.

(274) Paragraph 28(3) was inserted by S.I. 2007/124.

(275) Paragraph 28(4) was inserted by S.I. 2007/124 and amended by S.I. 2013/3115, there are other amendments to this paragraph but none is relevant.

(276) S.I. 2004/353; regulation 44(3) was amended by S.I. 2007/126.

(277) S.I. 2004/1045; regulation 31(3) was amended by S.I. 2007/126.

(278) S.I. 2005/3378.

(279) S.I. 2006/964; regulation 14ZD(6)(b) was inserted by S.I. 2011/2192.

““regulated market” has the same meaning as in [Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments (see article 4.1.21).”.

### **Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007**

**8.** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007(**280**) are revoked.

### **Payment Services Regulations 2009**

**9.** In regulation 19(15) of the Payment Services Regulations 2009(**281**) (safeguarding requirements), in the definition of “authorised custodian”—

- (a) for “[Directive 2004/39/EC](#) of 12th April 2004” substitute “[Directive 2014/65/EU](#) of 15th May 2014”;
- (b) for “Article 13” substitute “Article 16”.

### **Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009**

**10.** In article 1(3) of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009(**282**) (citation, commencement and interpretation)—

- (a) in the definition of “financial instrument”, in paragraph (a), for “Chapter VI of the Commission Regulation 1287/2006/EC” substitute “Articles 5 to 8, 10 and 11 of the Commission Delegated Regulation (EU) C(2016) 2398 of 25 April 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council”;
- (b) in the definition of “Markets in Financial Instruments Directive”, for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”;
- (c) in the definition of “transferable securities”, for “4(18)” substitute “4.44”.

### **Offshore Funds (Tax) Regulations 2009**

**11.** In regulation 12 of the Offshore Funds (Tax) Regulations 2009(**283**) (general interpretation), in the definition of “regulated market”—

- (a) for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”;
- (b) for “4.1(14)” substitute “4.1.21”.

### **Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010**

**12.** In regulation 35(2) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(**284**) (further conditions applicable to automatic enrolment schemes), in paragraph (b) of the definition of “competent authority”, for “paragraph 22 of Article 4 of [Directive 2004/39/EC](#)” substitute “paragraph 26 of Article 4 of [Directive 2014/65/EU](#)”.

(**280**) [S.I. 2007/126](#); these Regulations were amended by [S.I. 2007/763](#), [2007/2160](#), [2009/534](#), [2010/2628](#), [2011/1043](#), [2013/472](#), and [2013/3115](#).

(**281**) [S.I. 2009/209](#); there are amendments to regulation 19(15) but none is relevant to these Regulations.

(**282**) [S.I. 2009/322](#); article 1(3) was amended by [S.I. 2009/1826](#), there are other amendments but none is relevant.

(**283**) [S.I. 2009/3001](#); regulation 12 was amended by [S.I. 2011/1211](#), there are other amendments but none is relevant.

(**284**) [S.I. 2010/772](#); regulation 35(2) was inserted by [S.I. 2012/1257](#) and amended by [S.I. 2013/3115](#), there are other amendments but none is relevant.

### **Electronic Money Regulations 2011**

13. In regulation 21(7) of the Electronic Money Regulations 2011(285) (safeguarding option 1), in the definition of “authorised custodian”—

- (a) for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”;
- (b) for “Article 13” substitute “Article 16”.

### **Recognised Auction Platforms Regulations 2011**

14.—(1) Schedule 3 (modifications of Chapter 3A of Part 18 of the Financial Services and Markets Act 2000 in relation to recognised auction platforms and EEA market operators of auction platforms) of the Recognised Auction Platforms Regulations 2011(286) is amended as follows.

- (2) In paragraph 1(a), for “regulated market” substitute “trading venue”.
- (3) In paragraph 2(a), for “regulated market” substitute “trading venue”.
- (4) In paragraph 3—
  - (a) in sub-paragraph (a), for “regulated market” substitute “trading venue”;
  - (b) in sub-paragraph (b), for “42.6” substitute “53.6”;
- (5) In paragraph 4, for “42.6” substitute “53.6”.

### **Investment Trust (Approved Company) (Tax) Regulations 2011**

15. In regulation 45(6)(b) of the Investment Trust (Approved Company) (Tax) Regulations 2011(287) (index tracking funds), for the words from “Directive” to “(see article 4.1(14))” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council on markets in financial instruments (see article 4.1.21)”.

### **Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors’ Reports) (Authorised Person) Order 2012**

16. In article 1(3) of the Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors’ Reports) (Authorised Person) Order 2012(288) (citation, coming into force and interpretation), in the definition of “regulated market” for the words from “Article” to “April 2004” substitute “Article 4.1.21 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

### **Unauthorised Unit Trusts (Tax) Regulations 2013**

17. In regulation 23(3) (no tax charge for disposal of interests in offshore non-reporting funds: qualifying index) of the Unauthorised Unit Trusts (Tax) Regulations 2013(289) for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”.

### **Capital Requirements Regulations 2013**

18. In regulation 33 of the Capital Requirements Regulations 2013(290) (colleges of supervisors)

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(285) S.I. 2011/99; there are amendments to regulation 21(7) but none is relevant.

(286) S.I. 2011/2699.

(287) S.I. 2011/2999.

(288) S.I. 2012/1439; there are amendments to article 1(3) but none is relevant.

(289) S.I. 2013/2819.

(290) S.I. 2013/3115.

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- (a) in paragraph (4)(d), for “Articles 54 and 58 of [Directive 2004/39/EC](#)” substitute “Articles 76 and 81 of [Directive 2014/65/EU](#)”;
- (b) in paragraph (8), for “Articles 54 and 58 of [Directive 2004/39/EC](#)” substitute “Articles 76 and 81 of [Directive 2014/65/EU](#)”.

#### **Stamp Duty and Stamp Duty Reserve Tax (Exchange Traded Funds) (Exemption) Regulations 2014**

**19.** In regulation 2 of the Stamp Duty and Stamp Duty Reserve Tax (Exchange Traded Funds) (Exemption) Regulations 2014(**291**) (interpretation), in the definition of “multilateral trading facility” and “regulated market”, for the words from “Directive” to “April 2004” substitute “[Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

#### **Financial Services Act 2012 (Relevant Functions in Relation to Complaints Scheme) Order 2014**

**20.**—(1) The Financial Services Act 2012 (Relevant Functions in Relation to Complaints Scheme) Order 2014(**292**) is amended as follows.

(2) After article 2(d) (relevant functions of the FCA) insert—

- “(e) its functions under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, other than its functions under regulation 32 (guidance) of those Regulations.
- (f) its functions under the Data Reporting Services Regulations 2017(**293**), other than its functions under regulation 21 (guidance) of those Regulations.”.

(3) After article 2 (relevant functions of the FCA) insert—

##### **“Relevant functions of the PRA**

**3.** The functions of the PRA under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 are relevant functions for the purposes of section 85(2) of the Financial Services Act 2012.”.

#### **Public Interest Disclosure (Prescribed Persons) Order 2014**

**21.** In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014(**294**), in the entry in the second column relating to the entry in the first column for the Financial Conduct Authority—

(a) at the end of paragraph (k) omit “and”; and

(b) after paragraph (l) insert—

“(m) the conduct of persons who are subject to—

- (i) Part 3 and 4 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
- (ii) the Data Reporting Services Regulations 2017; or
- (iii) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.”.

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(291) [S.I. 2014/911](#).  
 (292) [S.I. 2014/1195](#).  
 (293) [S.I. 2017/699](#).  
 (294) [S.I. 2014/2418](#).

## Reports on Payments to Governments Regulations 2014

22. In regulation 2(1) of the Reports on Payments to Governments Regulations 2014(295) (interpretation), in paragraph (a) of the definition of “public interest entity” for the words from “point (14)” to “April 2004” substitute “point (21) of Article 4.1 of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014”.

## Public Contracts Regulations 2015

23. In regulation 10(1)(e)(i) of the Public Contracts Regulations 2015(296) (specific exclusions for service contracts), for “[Directive 2004/39/EC](#)” substitute “[Directive 2014/65/EU](#)”.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement parts of [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast) (OJ L173, 12/6/2014 p.349) (“MiFID II”) and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (OJ L173, 12/06/2014 p.84) (“MiFIR”). MiFID II and MiFIR together replace [Directive 2004/39/EC](#) on markets in financial instruments (OJ L145, 30/04/2004 p.1) (“MiFID I”).

Part 1 of these Regulations designates the Financial Conduct Authority (“FCA”), the Prudential Regulation Authority (“PRA”), and the Bank of England as the competent authorities in the United Kingdom responsible for carrying out the duties of competent authorities under Titles I to IV, VI and VII of MiFID and under MiFIR.

Chapter 1 of Part 2 of the Regulations permits investment firms authorised in the United Kingdom to apply to be treated as being exempt from the requirements of MiFID II (subject to certain conditions). This Chapter implements Article 3 of MiFID II, which allows Member States to choose not to apply the Directive to certain types of firm for which they are the home Member State.

Chapter 2 of Part 2 of these Regulations contains provisions concerning the status and supervision of third country (non-EU) firms providing investment services to the United Kingdom. These provisions give effect to Title VIII of MiFIR, which regulates how such firms may access the EU.

Part 3 of these Regulations gives the FCA powers to put in place limits on the size of a position a person can hold in commodity derivatives, sets out the procedure for doing so (including ESMA’s role), and gives the FCA powers to supervise the position limits regime. Part 3 also requires persons in the United Kingdom to obey limits set by the competent authorities of other EEA States acting for the purposes of MiFID II. Part 3 implements Article 57 of MiFID II which creates an EU wide regime on position limits.

Part 4 of these Regulations imposes controls relating to algorithmic trading etc. on certain firms and individuals, such as insurance undertakings, that are otherwise exempt from MiFID II. Part 4 implements Article 1.5 MiFID II, which applies Article 17 and 50 MiFID II to individuals and firms that are otherwise exempt from the directive.

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(295) S.I. 2014/3209; there are amendments to regulation 2(1) but none is relevant.

(296) S.I. 2015/102.

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Part 5 gives the FCA and the PRA powers to remove a person from the management board of an investment firm, credit institution, or recognised investment exchange, for the purposes of MiFID II in order to implement Article 69.2(u) of MiFID II.

Part 6 confers miscellaneous functions on the FCA for the purposes of MiFID II and MiFIR. These include duties to provide information to ESMA and the competent authorities of other EEA States and to authorise members of the management bodies of recognised investment exchanges to hold additional non-executive directorships (where there is a limitation on the number that can be held). The FCA are also given powers to direct the form in which various applications, reports, and notifications under MiFID II and MiFIR are to be made to the FCA.

Part 7 deals with refunds of Gambling Commission fees due to changes resulting from the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (S.I. 2017/488) (this Order also implements parts of MiFID II), introduces the Schedule to the Regulations, and imposes a requirement on the Treasury to review these Regulations within five years.

Schedule 1 to these Regulations contains provisions on the administration and enforcement of these Regulations.

Schedules 2 to 5 contain amendments to the Act, secondary legislation made under the Act, other primary legislation, and other secondary legislation. These amendments firstly implement various provisions of MiFID II via changes to existing legislation. The amendments also make consequential changes to primary and secondary legislation resulting from the replacement of MiFID I by MiFID II and MiFIR. There are also minor amendments to section 853E(6) of the Companies Act 2006 (c.46) and the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) relating to the implementation of Regulation (EU) No 596/2014 of the European Council and of the Parliament of 16 April 2014 on market abuse (OJ No L 173 12/06/2014 p.1).

A transposition note setting out how MiFID II is transposed into UK law and a full impact assessment of the effect this Order will have on the costs of business and the voluntary sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or [www.gov.uk](http://www.gov.uk) and is published alongside this Order on [www.legislation.gov.uk](http://www.legislation.gov.uk).