STATUTORY INSTRUMENTS

# 2017 No. XXXX

# FINANCIAL SERVICES AND MARKETS

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

*Made - - - -* *2017*

*Laid before Parliament* *2017*

*Coming into force in accordance with regulation 2*

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

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by sections 1A(6)(d), 1L(2)(b), 2A(6)(d), 39(4)(b), 66A(4)(b), 66B(4)(b), 168(4)(k), 204A(2)(b) and (4), 286(1) and (4F), 293A, 296(1A), 297(2A)(c), 312E(2)(c) and (3)(c), 380(6)(a)(i) and (9), 382(9)(a)(i) and (12), 384(7)(a) and (10), 426, and 428 of, and paragraph 23(2)(b) of Schedule 1ZA and paragraph 31(2)(b) of Schedule 1ZB to, the Financial Services and Markets Act 2000(**c**) make the following Regulations.

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(**a**) S.I. 2012/1759.

(**b**) 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).

(**c**) 2000 c.8. Sections 1A(6)(d), 1L(2)(b) and 2A(6)(d) were inserted by section 6 of the Financial Services Act 2012 (c.21). Section 2A(6)(d) is prospectively repealed by section 12 of the Bank of England and Financial Services Act 2016 (c.14). [*We will need to keep a watch on the plans for commencement of this repeal and that the QEPO consequential amendment is picked up. The latest I heard on proposed timing for commencement of the PRA amendments was around March 2017. The replacement provision to include in the preamble will be section 2AB(3)(d).*] Section 39(4)(b) was substituted by paragraph 5 of Schedule 18 to that Act. Sections 66A and 66B were inserted by section 32 of the Financial Services (Banking Reform) Act 2013 (c.33). Section 168(4)(k) was substituted by paragraph 8 of Schedule 12 to the Financial Services Act 2012. Section 204A was inserted by paragraph 10 of Schedule 9 to that Act. Section 286(4F) was inserted by section 30 of the Financial Services Act 2012 (c.21). Section 293A was substituted by paragraph 11 of Schedule 8 to that Act. Sections 296(1A) and 297(2A) were inserted by S.I. 2007/126 and amended by paragraphs 14 and 15 of Schedule 8 to that Act. Section 312E was inserted by section 33 of that Act. Section 380(6)(a)(i) was substituted, and section 380(9) was inserted, by paragraph 19 of Schedule 9 to that Act, and section 380(6)(a)(i) was amended by S.I. 2013/1773. Section 384(7)(a) was amended and section 384(10) was inserted by paragraph 23 of Schedule 9 to that Act and section 384(7)(a) was also amended by S.I. 2007/126 and 2013/1773. Schedules 1ZA and 1ZB were inserted by Schedule 3 to that Act. There are other amendments to these provisions, but none is relevant.

# PART 1

## Introductory provisions

**Citation and commencement**

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

**2.**—(1) These Regulations comes into force on [DATE].

(2) But regulation 49(1) comes into forces on [DATE] for the purpose of—

(a) enabling a home state regulator to give the FCA notice of an EEA market operator's intention to make arrangements in the United Kingdom to facilitate access to, or use of, a regulated market under section 312A(1)(b) of the Act (exercise of passport rights by EEA market operator)

(b) enabling—

(i) a recognised investment exchange to give notice of its intention to make arrangements in an EEA state (other than the United Kingdom) to facilitate access to, or use of, a regulated market or multilateral trading facility; under section 312C(2) of the Act (exercise of passport rights by recognised investment exchange);and

(ii) the FCA to send a copy of the notice to the host state regulator under section 312C(3) of the Act;

(c) enabling the appropriate UK regulator to—

(i) receive a consent notice under paragraph 13(a) (establishment) of Schedule 3 (EEA passport rights) to the Act in relation to a EEA firm seeking to exercise a right deriving from Article 35 (establishment of a branch) of the markets in financial instruments directive;

(ii) give notice to the firm under paragraph 13(1)(ba) of that schedule; and

(iii) prepare for the firm's supervision under paragraph 13(1E) or (1F) of that schedule.

(d) enabling the appropriate UK regulator to—

(i) receive a regulator's notice from an EEA firm's home state regulator under paragraph 14(1)(ba) (services) of Schedule 3 to the Act;

(ii) give a copy of the notice to the PRA under paragraph 14(IB) of that schedule if the appropriate UK regulator is the FCA;

(iii) give a copy of the notice to the FCA under paragraph 14(1C) of that schedule if the appropriate UK regulator is the PRA; and

(iv) prepare for the firm's supervision under paragraph 14(1D) or (1E) of that schedule;

(e) enabling—

(i) a UK firm to give a notice of its intention deriving from to the appropriate UK regulator under paragraph 19 (establishment) of Schedule 3 to the Act if the right to establish the branch exercise of an EEA right deriving from Article 35 of the markets in financial instruments directive;

(ii) the appropriate regulator to give a consent notice referred to in paragraph 19(4) of that Schedule to the host state regulator or a notice referred to in paragraph 19(8), (11) or (12) of that Schedule in relation to the exercise of that EEA right;

(iii) the firm to make a reference to the Tribunal in accordance with paragraph 19(12)(b) of that Schedule in relation to the exercise of that EEA right;

(f) enabling—

(i) a UK firm to give a notice of intention under paragraph 20 of Schedule 3 to the Act (amended by these Regulations) in exercise of an EEA right deriving from Article 34

(freedom to provide investment services and activities) of the markets in financial instruments directive;

(ii) the appropriate regulator to send a copy of such a notice to the host state regulator under paragraph 20(3) (services) of that Schedule and notify the UK firm under paragraph 20(4) of that Schedule that it has done so.

(3) In this regulation—

"appropriate UK regulator" means whichever of the FCA and the PRA is the competent authority for the purposes of the markets in financial instruments directive; and

"consent notice" has the same meaning as in paragraph 13(1)(a) of Schedule 3 to the Act;

"regulator's notice" has the same meaning as in paragraph 14(1)(ba) of Schedule 3 to the Act.

**Interpretation**

**3.** In these Regulations—

the Act" means the Financial Services and Markets Act 2000;

"ancillary services has the same meaning as in 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;

"client" has the same meaning as in Article 4.1.10 of the markets in financial instruments directive;

"the Commission" means the Commission of the European Union;

"commodity derivative" has the same meaning as in Article 4.1.50 of the markets in financial instruments directive;

"competent authority" has the same meaning as in Article 4.1.26 of the markets in financial instruments directive;

"credit institution" has the same meaning as in Article 4.1.27 of the markets in financial instruments directive;

"dealing on own account" has the same meaning as in Article 4.1.6 of the markets in financial instruments directive;

"derivative" means a financial instrument listed in Section C(4) to (10) of Annex 1 of the markets in financial instruments directive:"

"the FCA" means the Financial Conduct Authority;

"financial instrument" has the same meaning as in Article 4.1.15 of the markets in financial instruments directive;

"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 same meaning as in Article 4.1.1 of the markets in financial instruments directive;

"investment service" means a service listed in Section A of Annex 1 of the markets in financial instruments directive relating to a financial instrument;

"investment services and activities" has the same meaning as in Article 4.1.2 of the markets in financial instruments directive;

"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 on market abuse (market abuse regulation) and repealing Directive

2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC(**a**);

"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 and amending Directive 2002/92/EC and Directive 2011/61/EC (recast)(**b**);

"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 and amending Regulation (EU) No 648/21012(**c**);

"the PRA" means the Prudential Regulation Authority

"Part 4A permission" has the meaning given in section 55A(5) (application for permission) of the Act.

"recognised investment exchange" has the same meaning as in section 285(1)(a) (exemption for recognised investment exchanges and clearing houses) of the Act;

"trading venue" has the same meaning as in Article 4.1.24 of the markets in financial instruments directive;

"the Tribunal" means the Upper Tribunal.

**Designation of the competent authorities**

**4.** The FCA, the PRA and the Bank of England are designated as competent authorities for the purposes of Article 67 (designation of competent authorities) of the markets in financial instruments directive.

# PART 2

## Exempt and third-country investment firms

### CHAPTER 1

### Exempt investment firms

**Applications to be an exempt investment firm**

**5.**—(1) A person may apply in accordance with section 55A (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 (variation by FCA)(**d**) or 55I (variation by PRA)(**e**) 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 paragraph (3) "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.

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(**a**) OJ No L 173, 12.06.2014, p.1.
(**b**) OJ No L 173, 12.06.2014, p.349.
(**c**) OJ No L 173, 12.06.2014, p.84.
(**d**) Section 55H was inserted by section 11(2) of the Financial Services Act 2012 and further amended by regulation 80 and paragraph 1 and 4 of Schedule 1 to S.I. 2013/1773.
(**e**) OJ No L 173, 14.04.2014, p.31.

(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.

(6) If the appropriate regulator—

(a) gives to a person who has applied under paragraph (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 paragraph (2) for a variation to permit them to carry on regulated activities as an exempt investment firm,

(7) The requirements specified in paragraph (9) ("the specified requirements") shall be treated as being imposed under section 55L (imposition of requirements by FCA) (where the FCA is the appropriate regulator) or 55M (imposition of requirements by PRA) (where the PRA is the appropriate regulator) of the Act.

(8) Notwithstanding paragraph (6)—

(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) (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) 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) (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.

(9) 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 debt 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) investment firms authorised in accordance with the markets in financial instruments directive;

(ii) credit institutions authorised in accordance with the capital requirements directive;

(iii) branches of investment firms or credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the appropriate regulator to be at least as stringent as those laid down in the markets in financial instruments directive, the capital requirements directive or Regulation (EU)

575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012(**a**);

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

(v) investment companies with fixed capital, as defined in Article 17.7 of Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012(**b**), the securities of which are listed or dealt in on a regulated market in a Member State.

(10) In paragraph (9)—

(a) terms and expressions defined in Article 4 of the markets in financial instruments directive and used in the paragraph have the meanings given in that Article;

(b) "the capital requirements directive" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 relating to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC(**c**); and

(c) other terms and expressions used both in the paragraph and in Article 3 ( of, or Annex 1 to, the markets in financial instruments directive have the same meanings in the paragraph as in that Article or Annex.

(11) For the purposes of this regulation and regulation 6 "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.

**Transitional provision: exempt investment firms**

**6.** An authorised person who immediately before [*date in regulation 1(2)*] was—

(a) an exempt investment firm by virtue of regulation 9A (transitional provision: exempt investment firms) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007(**d**); or

(b) permitted to carry on regulated activities as an exempt investment firm in accordance with permission granted in accordance with regulation 4C (requirements to be applied to exempt investment firms) of those Regulations(**e**),

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

CHAPTER 2

Third country investment firms

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

**7.**—(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.

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(**a**) OJ L176, 27/6/2013, p.1. A corrigendum to this Regulation was published in OJ L321, 30/11/2013, p.6.
(**b**) OJ L315, 14/11/2012, p.74.
(**c**) OJ L176, 27/6/2013, p.338.
(**d**) S.I. 2007/126. Regulation 9A was inserted by S.I. 2007/763. Other amendments not relevant here.
(**e**) Regulation 4C was inserted by S.I. 2007/263 and was amended by S.I. 2013/472 and S.I. 2013/3115.

(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 paragraph (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").

(5) In paragraph 14(1)(b) (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) of Schedule 3 to the Act which apply to an EEA firm as defined by paragraph 5(a) (EEA firm) of that Schedule.

**Third country firms with an EEA branch: intervention by the FCA**

**8.**—(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 (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 (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 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 (2) 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 it were a reference to a third country firm with an EEA branch;

(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**

**9.** 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.

**Third country firms registered with ESMA: intervention by FCA**

**10.**—(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 providing services to eligible counterparties or clients considered to be professionals**

**11.** 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**

**12.**—(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 of 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 of rights under Article 47.3 (equivalence decision) of the 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 (11)—

(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**

**13.** In this Chapter—

"branch" has the same meaning as in Article 4.1.30 (definitions) of the markets in financial instruments directive;

"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;

"the FCA's operational objectives" has the same meaning as in in section 1B(3) (the FCA's general duties) of the Act;

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

"regulated activity" has the same meaning as in section 22 (regulated activities) 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 in commodity derivatives

**Establishment and effect of position limits**

**14.**—(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 contracts.

(2) But 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 position limits under paragraph (1) in respect of that commodity derivative or any economically equivalent contract if the largest volume of trading occurs in the United Kingdom.

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

(4) A person must not hold a position which is in excess of a position limit established by a competent authority of an EEA state other than the United Kingdom in accordance with Article 57 (position limits and position management controls) of the markets in financial instruments directive.

(5) The calculation of the size of a position a person holds for the purposes of paragraph (3) and (4) 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 in accordance with Article 57.12(f) of the markets in financial instruments directive.

(6) The FCA must put in place the cooperation arrangements with the competent authorities specified in paragraph (7), including arrangements for the exchange of relevant data, to enable the monitoring and enforcement of a position limit established by—

(a) the FCA under paragraph (1) in respect of a commodity derivative traded in significant volumes in more than one jurisdiction in the EEA and any economically equivalent over the counter contract; or

(b) a competent authority of an EEA state other than the United Kingdom in accordance with Article 57.6 of the markets in financial instruments directive in respect of a commodity derivative traded in the United Kingdom and any economically equivalent over the counter contract.

(7) The competent authorities specified for the purposes of paragraph (6) are —

(a) the competent authority of a trading venue in any EEA state other than the United Kingdom where a commodity derivative subject to a position limit mentioned in paragraph 6(a) or (b) is traded; ; and

(b) the competent authority of any EEA state other than the United Kingdom of a person holding a position in a commodity derivative subject to a position limit mentioned in paragraph 6(a) or (b).

(8) When the circumstances in paragraph (9) arise the FCA may bring the matter 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) amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC(**a**).

(9) The circumstances for the purposes of paragraph (9) are that the FCA disagrees with—

(a) a position limit another competent authority has established for the purposes of Article 57 of the markets in financial instruments directive;

(b) a position limit another competent authority intends to establish for that purpose; or

(c) another competent authority's decision not to establish a position limit for that purpose.

**Procedure for establishing position limits**

**15.**—(1) The FCA must, unless paragraph (7) applies), establish position limits under regulation 14 in accordance with the methodology determined by ESMA under Article 57.3 (position limits and position management controls in commodity derivatives) of the markets in financial instruments directive.

(2) The FCA must establish position limits under regulation 14 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 price for the underlying commodity without prejudice to price discovery on the market for the underlying commodity; and

(3) Position limits established by the FCA under regulation 14 must—

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

(a) be published in a manner the FCA considers appropriate;

(b) specify clear quantitative thresholds;

(c) be transparent and non-discriminatory;

(d) specify how they apply to persons; and

(e) take account of the nature and composition of market participant and of the use those market participants make of the contracts admitted to trading.

(4) The FCA must review a position limit it has established under regulation 14 where there is—

(a) a significant change in deliverable supply or open interest; or

(b) any other significant change on the market based on its determination of deliverable supply or open interest.

(5) Where following a review the FCA believes that the position limit should be reset it may establish a new position limit in accordance with paragraph (1).

(6) Where FCA receives an ESMA opinion stating that the FCA has established a position limit incompatibly with the methodology determined by ESMA under Article 57.3 of the markets in financial instruments directive 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.

(7) The FCA may only establish position limits which are more restrictive than would be permitted using the ESMA methodology mentioned in paragraph (1) in exceptional cases where more restrictive position limits are objectively justified and proportionate, taking into account the liquidity of the specific market and the orderly functioning of that market.

(8) Where the FCA establishes a more restrictive limit under paragraph (7) it must—

(a) publish that position limit on its website;

(b) not apply that position limit for more than six months from the day the publication under sub-paragraph (a) is made unless further subsequent six month application periods for that limit are objectively justified; and

(c) notify ESMA of the position limit and the justification for establishing it.

(9) The FCA must publish a notice on its website explaining the reasons for its decision when it does not re-establish a position limit following an ESMA opinion recommending that it should.

**FCA to notify ESMA of position limits and position management controls**

**16.** The FCA must notify ESMA of the—

(a) position limits it establishes under regulation 14; and

(b) position management controls which investment firms, credit institutions and recognised investment exchanges established in the United Kingdom have imposed on the trading venues they operate which trade commodity derivatives.

**Power to require information**

**17.**—(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 contract to which an established position limit relates;

(b) trades the person has undertaken, or intends to undertake, in a contract to which an established position limit relates

(c) a position the person holds in a contract relating to emission allowances or derivatives of emission allowances.

(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 contract to which an established position limit relates.

**Applications from or on behalf of non-financial entities**

**18.**—(1) An application to the FCA for the purposes of Article 57.12(f) of the markets in financial instruments directive 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.

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

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

**Power to intervene**

**19.**—(1) The FCA may—

(a) limit the ability of a person to enter into a contract for a commodity derivative;

(b) restrict the size of position a person may hold in such a contract; or

(c) require a person to reduce the size of a position held.

notwithstanding that the restriction or reduction would be below a position limit established by the FCA or another competent authority in accordance with Article 57 of the markets in financial instruments directive to which the contract relates.

(2) The FCA may only exercise the power under paragraph (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.

(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 economically equivalent over the counter contracts.

(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 restriction or reduction has been imposed under this regulation may refer that matter to the Tribunal.

**Interpretation of Part 3**

**20.** In this Part—

"group" has the same meaning as in Article 4.1.34 (definitions) 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;

"position limit" means a limit on the maximum size of a position which a person may hold at any time.

# PART 4

## Algorithmic trading, provision of direct electronic access and clearing services and business clocks

### Algorithmic trading

**21.**—(1) A member of, or participant in, a regulated market or multilateral trading facility that engages in in algorithmic trading ("M") must comply with the requirements set out in paragraph (2) to (12) if M —

(a) is established in the United Kingdom;

(b) does not have a Part 4A permission for the purposes of the markets in financial instruments directive; and

(c) comes within Article 2.1(a), (e), (i) or (j) (exemptions) of the markets in financial instruments 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.

(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 under this regulation.

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

(10) Records are stored in an approved form for the purposes of paragraph (9) if they are stored in accordance with regulatory technical standards adopted by the Commission under Article 17.7(d) (algorithmic trading) of the markets in financial instruments directive.

(11) 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 of providing liquidity on a regular and predictable basis to that market or facility;

(b) enter into a binding written agreement with the market or facility which must specify the requirements arising from sub-paragraph (a); and

(c) have in place effective systems and controls to ensure that the person meets the obligations under the agreement mentioned in sub-paragraph (b); and

(12) M pursues a market making strategy for the purposes of paragraph (11) if—

(i) M is a member or participant of one or more regulated markets or multilateral trading facilities;

(ii) 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

(iii) the result is providing liquidity on a regular and frequent basis to the overall market.

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

**22.**—(1) The FCA may require a member of, or participant in, a regulated market or multilateral trading facility that engages in algorithmic trading and is subject to the requirements set out in regulation 21 ("M") to provide on a regular or ad hoc basis—

(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 21(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 21(5) ;

(e) any records M keeps for the purposes of regulation 21(8) and (9); and

(f) any further information about M's algorithmic trading and systems used for that trading.

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

**Direct electronic access**

**23.**—(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 M is—

(a) established in the United Kingdom;

(b) does not have a Part 4A permission for the purposes of the markets in financial instruments directive; and

(c) comes within Article 2.1(a), (e), (i) or (j) (exemptions) of the markets in financial instruments 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 venue 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 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 the person is doing so.

(9) M must arrange for records to be kept—

(a) on the matters referred to in paragraph (2)(a) to (c); and

(b) to enable them to meet any requirement imposed on them under regulation 24.

(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(**a**)

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

**24.**—(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 23 ("M") to provide on a regular or ad hoc basis—

(a) a description of the systems mentioned in regulation 23(3);

(b) evidence that those systems have been applied; and

(c) the information stored in accordance with regulation 23(9) .

(2) If Condition A in regulation 23(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 provide the competent authority for that market or facility any information it receives from M under paragraph (1) on the request of that competent authority.

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(**a**) S.I. 2001/544; article 72 was amended by S.I. 2003/1476, 2006/2383 and 3384, 2009/1342, 2013/504 and 2015/910.

**Acting as a general clearing member**

**25.**—(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 M—

(a) is established in the United Kingdom;

(b) does not have a Part 4A permission for the purposes of the markets in financial instruments directive; and

(c) comes within Article 2.1(a), (e), (i) or (j) (exemptions) of the markets in financial instruments directive.

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

(a) M's clearing services are only provided to persons who are—

(i) suitable recipients of those services; and

(ii) meet clear criteria applied by those systems and controls regarding a person's suitability to receive clearing services; and

(b) requirements are imposed on the persons to whom clearing services are being provided to reduce risks to those persons 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**

**26.**—(1) A member of, or participant in, a trading venue ("M") must comply with the requirement set out in paragraph (3) if M—

(a) is established in the United Kingdom

(b) does not have a Part 4A permission for the purposes of the markets in financial instruments directive; and

(c) comes within Article 2.1(a), (e), (i) or (j) (exemptions) of the markets in financial instruments directive.

(2) M must synchronise M's business clock with the business clock of the trading venue 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.

**Imposition of requirements**

**27.**—(1) The FCA may impose a requirement mentioned in paragraph (2) on a person to whom regulation 21, 23, or 25 applies if it appears to the FCA that—

(a) the person has contravened, or is likely to contravene, a requirement imposed on it under these Regulations or the markets in financial instruments regulation;

(b) the person has, in purported compliance with any requirement imposed on it 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.

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

(a) take specified action;

(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**

**28.**—(1) In this Part—

"algorithmic trading" has the same meaning as in Article 4.1.39 (definitions) of the markets in financial instruments directive;

"direct electronic access" has the same meaning as in Article 4.1.41 of the markets in financial instruments directive.

(2) A person has a Part 4A permission for the purposes of the markets in financial instruments directive if —

(a) the permission relates to the provision of investment services or the performance of investment activities by that person; and

(b) the markets in financial instruments directive applies to that person.

# PART 5

## Removal of persons from management boards

**Removal of persons from management boards**

**29.**—(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**

**30.** If the appropriate regulator requires an investment firm, credit institution, or recognised investment exchange to remove a person from the management board under regulation 29—

(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**

**31.**—(1) A requirement under regulation 29 may be expressed to come into effect—

(a) immediately; or

(b) on a specified date.

(2) A requirement under regulation 29 may only be expressed to come into effect immediately or on a specified date if the appropriate regulator, having regard to the grounds for imposing the requirement, considers it necessary for the requirement to take effect immediately or on that date.

(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 to whom the requirement relates ("the interested party").

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

(a) give details of the requirement;

(b) identify each person to whom the requirement relates;

(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 (2) 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 the right of each such person to refer the matter to the Tribunal and give an indication of the procedure on such a reference.

# PART 6

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

### CHAPTER 1

### The FCA

*Functions of the FCA*

**Functions of the FCA**

**32.**—(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 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) (the FCA's general duties) of the Act(**a**) ; and

(b) advances one or more of its operational objectives as defined in section 1B(3) of the Act.

*Supervision*

**Monitoring and enforcement**

**33.**—(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 are complying with them.

(2) The FCA must also maintain arrangements for enforcing the provisions of Parts 3, 4, or 5 .

**Co-operation**

**34.** The FCA must take such steps as it considers appropriate to co-operate with—

(a) persons who have functions similar to the FCA under these Regulations; and

(b) other persons mentioned in Article 79(5) to (7) (obligation to cooperate) of the markets in financial instruments directive.

**Guidance**

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

(a) the operation of Part 3, 4, and 5;

(b) any matters relating to the functions of the FCA under these Regulations; 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.

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(**a**) Sections 1B and 1F were inserted by section 6 of the Financial Services Act 2012 (c.21).

**Reporting requirements**

**36.**—(1) A person (P) must provide the FCA with such information in respect of P's compliance or non-compliance with any requirement under Part 3, 4 or 5 applicable to P as the FCA may direct.

(2) P must provide the FCA with information required to be given under this regulation at such times, in such form, and verified in such manner, as the FCA may direct.

(3) If at any time P considers that it is unable to comply with a requirement under these Regulations applicable to it, P must as soon as reasonably practicable notify the FCA of that fact, including the reasons why it is unable to comply.

*Administrative sanctions*

**Public censure**

**37.** If the FCA considers that a person has contravened a requirement imposed by or under these Regulations, the FCA may publish a statement to that effect.

**Financial penalties**

**38.**—(1) If the FCA considers that a person has contravened a requirement imposed by or under these Regulations, it may impose on the person a penalty of such amount as it considers appropriate.

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

**Warning notice**

**39.**—(1) The FCA must give a person a warning notice if it proposes to—

(a) publish a statement in respect of the person under regulation 37; or

(b) impose a penalty on the person under regulation 38.

(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**

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

(a) publish a statement under regulation 37 (whether or not in the terms proposed); or

(b) impose a penalty under regulation 38 (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 the FCA decides to—

(a) publish a statement in respect of a person under regulation 37; or

(b) impose a penalty on a person under regulation 38;

the person may refer the matter to the Tribunal.

**Statements of policy**

**41.**—(1) The FCA must prepare and issue a statement of policy with respect to—

(a) the imposition of penalties under regulation 38 ; and

(b) the amount of penalties under that regulation.

(2) The FCA's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the misconduct in question in relation to the nature of the principle or requirement concerned;

(b) the extent to which that misconduct was deliberate or reckless; and

(c) whether the person against whom action is to be taken is an individual.

(3) The FCA may at any time alter or replace a statement issued by it under this regulation.

(4) If a statement issued under this section is altered or replaced by the FCA, the FCA must issue the altered or replacement statement.

(5) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this regulation.

(6) A statement issued under this regulation by the FCA must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA 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 regulation 38 in the case of any particular misconduct, the FCA must have regard to any statement of policy published by it under this regulation and in force at the time when the misconduct in question occurred.

**Statements of policy: procedure**

**42.**—(1) Before the FCA issues a statement under regulation 41, the FCA must publish a draft of the proposed statement in the way appearing to the FCA 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 FCA within a specified time.

(3) Before issuing the proposed statement the FCA must have regard to any representations made to it in accordance with paragraph (2).

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to in accordance with paragraph (2); and

(b) its response to them.

(5) If the statement differs from the draft published under paragraph (1) in a way which, in the opinion of the FCA, is significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (1).

(7) The regulation also applies to a proposal to alter or replace a statement.

*Offences*

**Misleading the FCA**

**43.**—(1) A person must not, for the purposes of compliance or purported compliance with a requirement imposed by or under these Regulations knowingly or recklessly give the FCA 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, the FCA in connection with the discharge of its functions under these Regulations.

(3) A person who contravenes paragraph (1) or (2) is guilty of an offence.

(4) A person guilty of an offence under this regulation is liable—

(a) on summary conviction in England and Wales, to a fine;

(b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; or

(c) on conviction on indictment, to a fine.

(5) The FCA may not both—

(a) exercise its powers under regulation 35; and

(b) institute proceedings for an offence under paragraph (3);

in relation to any contravention by a person of paragraph (3).

**Restriction on penalties**

**44.**—(1) A person who is convicted of an offence under these Regulations is not subsequently liable to a penalty under regulation 38 in respect of the same acts or omissions that constituted the offence.

(2) A person who is liable to a penalty under regulation 38 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 under these Regulations for the purposes of that penalty.

**Directly applicable EU regulations**

**45.** In this Part any reference to a requirement imposed under Part 3 or 4 of these Regulations includes a reference to a requirement imposed on a person to whom Part 3 or 4 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.

## CHAPTER 2

## Application and modification of the Act for the purposes of the Regulations

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

**46.**—(1) Part 9 of the Act(**a**) applies with respect to proceedings pursuant to references to the Tribunal under these Regulations ("relevant proceedings") as it applies to proceedings pursuant to references to the Tribunal under that Act, with the modifications set out in paragraphs (2) to (4).

(2) Section 133 (proceedings before the Tribunal: general provision) of the Act has effect as if—

(a) in subsection (1) the reference to a reference or appeal to the Tribunal (whether made under the Act or any other Act) in respect of a decision mentioned in paragraph (a), (b), or (c) were a reference to a reference or appeal made under these Regulations in respect of a decision of the FCA.;

(b) in the definition of "relevant decision" in subsection (2) the reference to subsection (1)(a), (b) or (c) were a reference to subsection (1);

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(**a**) 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 and S.I. 2013/1388.

(c) in subsection (5) the reference to section 393(11) were a reference to section 393(11) as it applies under regulation 50; and

(d) for subsection (7A) there were substituted—

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

(a) a decision to publish a statement under regulation 37 (public censure); or

(b) a decision to impose a penalty under regulation 38 (financial penalties).".

(3) Section 133A (proceedings before Tribunal: decision and supervisory notices, etc.) of the Act has effect as if—

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

"(1) In determining in accordance with section 133(5) a reference made as a result of a decision notice given by the FCA, the Tribunal may not direct the FCA to take action which it would not, under the Financial Services and Markets 2000 (Markets in Financial Services) Regulations 2016, have had power to take when giving the notice."; and

(b) in subsection (5) the words "or the PRA" were omitted.

(4) Section 133B (offences) of the Act has effect as if for subsection (1) there were substituted—

"(1) This section applies in the case of proceedings before the Tribunal to determine a reference or appeal to the Tribunal made under the Financial Services and Markets 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX) in respect of a decision by the FCA.".

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

**47.**—(1) Part 11 of the Act(**a**) applies with respect to the discharge by the FCA of its functions under these Regulations as it does to the discharge by the FCA of its functions under the Act with the modifications set out in paragraph (2) to (18).

(2) A reference in Part 11 of the Act to an authorised person applies as if it were a reference to a person in respect of whom a requirement is imposed by or under Part 3, 4 or 5 of these Regulations.

(3) A reference in Part 11 of the Act to a regulator, other than an overseas regulator, applies as if it were a reference to the FCA.

(4) Section 165 (Regulators' power to require information: authorised persons etc) of the Act has effect as if—

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

"(4) This section applies only to information and documents reasonably required in connection with the exercise by the FCA of functions conferred on it under the Financial Services and Markets 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX)"; and

(b) subsection 7(b) were omitted.

(5) Section 165A (PRA's power to require information: financial stability) to 165C (orders under section 165A(2)(d)) of the Act do not have effect.

(6) Section 166A (appointment of skilled person to collect and update information) of the Act has effect as if—

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

"(1) This section applies if the FCA considers that a person has contravened a requirement imposed on them by or under Part 3 or 4 of the Financial Services and Markets

(**a**) Part 11 was amended by 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, S.I. 2001/1090, S.I. 2007/126, S.I. 2011/1043, S.I. 2012/2554 and S.I. 2013/1773. Other amendments are not relevant here.

2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX) to collect, and keep up to date, information of a description specified in Part 3 or 4 of those Regulations."; and

(b) subsection (10) were omitted.

(7) Section 167 of the Act has effect as if—

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

"(1) If it appears to the FCA that there is good reason for doing so, the FCA 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 Part 3, 4 or 5 of the Financial Services and Markets 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX) ("a person subject to the 2017 Regulations");

(b) a particular aspect of that business; or

(c) the ownership or control of a person subject to the 2017 Regulations.";

(b) subsection (2)(c) were omitted;

(c) 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 but only in relation to—

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

(b) the ownership or control of a former authorised person at any time when the person was a person subject to the 2017 Regulations."; and

(d) subsection (5A) and (6) were omitted.

(8) Section 168 (appointment of persons to carry out investigations in particular cases) of the Act has effect as if—

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

"(1) Subsection (3) applies if it appears to the FCA that there are circumstances suggesting a person may have contravened a requirement imposed by or under Part 3 or 4 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX).";

(b) subsection (2) were omitted;

(c) in subsection (3) the reference to an investigating authority were to the FCA;

(d) subsections (4) to (6) were omitted;

(9) section 169 (investigations etc in support of overseas regulator) of the Act applies as if for subsection (13) the following 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 under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017//XX).";

(10) Section 169A (support of overseas regulator with respect to financial stability) of the Act does not have effect.

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

(a) the references to an investigating authority were in each place a reference to the FCA;

(b) in subsection (1) "or (5)" were omitted;

(c) 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 FCA believes that the notice required by subsection (2) or (9) would be likely to result in the investigation being frustrated."; and

(d) subsection (10) were omitted.

(12) Section 171 (powers of persons appointed under section 167) has effect as if—

(a) subsection (3A) were omitted; and

(b) subsection (7) were omitted.

(13) Section 172 (additional power of persons appointed as a result of section 168(1) or (4) has effect as if the reference in subsection (4) to subsection (1) and (4) of section 168 were to subsection (1) of that section.

(14) Section 173 (powers of persons appointed as a result of section 168(2)) does not have effect.

(15) Section 174 (admissibility of statements made to investigators has effect as if—

(a) in subsection (4) the reference to section 168(3) or (5) of the Act were a reference to section 168(3); and

(b) in subsection (5) the reference to section 171, 172, 173 or 175 of the Act were a reference to section 171, 172 or 175 of the Act.

(16) Section 175 (information and documents: supplemental provisions) has effect as if the reference in subsection (8) to section 168(3) or (5) of the Act were a reference to section 168(3).

(17) Section 176 (entry of premises under warrant) has effect as if—

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

"(1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the FCA or an investigator that there are reasonable grounds for believing that the first or second set of conditions is satisfied.";

(b) in subsection (3)(a) the reference to an authorised person or an appointed representative were to a person in respect of whom a requirement is imposed by or under Part 3, 4 or 5 of these Regulations;

(c) subsection (4) were omitted; and

(d) in subsection (11)—

(i) in paragraph (a) "87C, 87J," and ",165A, 169A" were omitted; and

(ii) in paragraph (b) ", 173" were omitted.

**Application of Part 23 (public record, disclosure of information and cooperation) of the Act**

**48.**—(1) Section 348 (restrictions on disclosure of confidential information by FCA, PRA etc) and 349 (exceptions from section 348), and 352 (offences) of the Act(**a**) apply to information received under these Regulations as they do to information received under the Act.

(2) Section 348, 349 and 352 apply for the purposes of paragraph (1) with the modifications set out in paragraph (3) and (4)

(3) Section 348 has effect as if—

(a) in subsection (2)(b) the reference to the functions of the FCA, the PRA, or the Secretary of State under any provision made by or under this Act were a reference to the functions of the FCA under these Regulations; and

(b) in subsection (3) the reference to the Act were to these Regulations;

(c) in subsection (5)—

(i) paragraph (aa) and (c) were omitted; and

(**a**) 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 and paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013. 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, S.I. 2007/1093 and S.I. 2011/1043. Section 352 is amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

(ii) in paragraph (d) the references to section 166 and 166A were to those provisions of the Act as they apply under these Regulations;

(d) in subsection (6)(b) the reference to Part 11 of the Act were to those provisions of the Act as they apply under these Regulations.

(4) Section 352(1) has effect as if the reference to section 348 or 350(5) were to section 348.

(5) In this regulation

"received" means received by a primary recipient as defined in section 348(5) of the Act;

"under the Act" means for the purposes of, or discharge of, any functions of the FCA under any provision made by or under the Act;

"under these Regulations" means for the purposes of, or discharge of, any functions of the FCA under these Regulations; and

**Application of Part 25 of the Act (restitution orders)**

**49.**—(1) Part 25 of the Act (restitution orders) applies, as it does for the purposes of the Act, for the purposes of—

(a) these Regulations; and

(b) the Act as applied and modified by these Regulations.

(2) Part 25 applies for the purposes of paragraph (1) with the modifications set out in paragraph (3) to (9).

(3) A reference to the appropriate regulator, the appropriate regulator or the Secretary of State, or the regulator concerned has effect as if it were a reference to the FCA.

(4) A reference to a relevant requirement has effect as if it were a reference to a requirement which is imposed by or under—

(a) these Regulations; or

(b) the Act as applied and modified by these Regulations.

(5) Section 380 (injunctions) has effect as if subsections (6) and (8) to (12) were omitted.

(6) Section 381 (injunctions in cases of market abuse) does not have effect.

(7) Section 382 (restitution orders) has effect as if subsections (9) to (15) were omitted.

(8) Section 383 (restitution orders in cases of market abuse) does not have effect.

(9) Section 384 (power of FCA or PRA to require restitution) has effect as if—

(a) subsections (2) to (4) were omitted;

(b) in subsection (5)—

(i) in the chapeau the words "and (2)" were omitted; and

(ii) in paragraph (a), (b), and (c), the words "or (3)" were omitted.

(c) in subsection (6)(a) and (b) the words "or (3)" were omitted.

(d) subsections (7) to (13) were omitted.

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

**50.**—(1) Part 26 (notices) of the Act(**a**) applies with respect to the giving of notices under regulation 19, 17, 33, 34, or 37 as it does to the giving of notices under the Act. with the modifications set out in paragraphs (2) to (9).

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(**a**) 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

(2) A reference in Part 26 to a regulator applies as if it were a reference to the FCA.

(3) Section 387 (warning notices) has effect as if—

(a) subsection (1A) were omitted; and

(b) subsection (3A) were omitted.

(4) Omit section 388(1A) (decision notices) of the Act.

(5) Section 390 (final notices) of the Act has effect as if the reference in subsection (6) to section 384(5) were to regulation 37(2).

(6) Section 391 (publication) of the Act has effect as if—

(a) in subsection (1) the reference to a warning notice falling within subsection (1ZB) were to a warning notice given under regulation 43(1)(a) or (b);

(b) subsections (1ZA) and (1ZB) were omitted;

(c) subsection (4A) were omitted;

(d) subsection (5A) were omitted;

(e) subsection (6A) were omitted; and

(f) subsection (8A) were omitted.

(7) Omit sections 391A to 391D.

(8) Section 392 (application of sections 393 and 394) has effect as if for subsection (a) and (b) there were substituted—

"(a) a warning notice given under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX);

(b) a decision notice given under regulation 43(2).".

(9) Section 395 (the FCA's and PRA's procedures) of the Act has effect as if—

(a) for subsection (1) and (2) there were substituted—

"(1) The FCA must determine the procedure that it proposes to follow in relation to a decision which gives rise to an obligation for it to give—

(a) a supervisory notice, warning notice or decision notice.

(2) That procedure must be designed to secure, among other things, that a decision falling within subsection (1) is taken—

(a) by a person not directly involved in establishing the evidence on which the decision is based; or

(b) by 2 or more persons who include a person not directly involved in establishing that evidence.";

(b) subsections (3) and (4) were omitted;

(c) in subsection (9), the words "supervisory notice, or a" and "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.

(d) subsection (9A) were omitted; and

(e) in subsection (13) the reference to the provisions mentioned in paragraph (a) to (g) were a reference to regulation 19(4) or 27(4).

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

**51.**—(1) Part 27 of the Act (offences) applies, as it does for the purposes of the Act, for the purposes of—

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Schedule 3 to the Financial Services (Banking Reform) Act 2013, S.I. 2005/381, S.I. 2005/1433, S.I. 2007/126, S.I. 2007/1973, S.I. 2009/534, S.I. 2010/22, S.I. 2010/747, S.I. 2012/916, S.I. 2013/1388 and S.I. 2013/3115.

(a) these Regulations ; and

(b) the Act as applied and modified by these Regulations.

(2) Part 27 applies for the purposes of paragraph (1) with the modifications set out in paragraphs (3) to (10).

(3) A reference to the Act, or any provision of the Act, applies as if it were a reference to the Act, or any provision of the Act, as it applies under these Regulations.

(4) A reference to a regulator applies as if it were a reference to the FCA.

(5) Section 398 (misleading FCA or PRA) has effect as if—

(a) at the end of subsection 1A(a) there were inserted "or";

(b) for subsection (1A)(b) to (f) there were substituted—

"(b) the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX).."; and

(c) in subsection (2) after "this Act" there were inserted "or the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX)".

(6) Section 399 (misleading the CMA) does not have effect.

(7) Section 400 (offences by bodies corporate) has effect as if

(a) in subsection (1), (3), and (6) after "this Act" there were inserted "or the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX)";

(b) subsection (6A) and (7) were omitted.

(8) Section 401 (proceedings for offences) has effect as if—

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

"(c) an offence under the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX).";

(b) in subsection (2)(a) and (3)(a) "the Secretary of State" were omitted; and

(c) subsection (3A) and (3B) were omitted.

(9) Section 402 (power of FCA to institute proceedings for certain other offences) does not have effect.

(10) Section 403(7) (jurisdiction and procedure in respect of offences) has effect as if for the words "Part 7" to the end there were substituted "the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX)".

**Application of Schedule 1ZA to the Act (Financial Conduct Authority)**

**52.**—(1) Paragraphs 19 to 23 (penalties and fees) and 25 (exemption from liability in damages), of Schedule 1ZA (the Financial Conduct Authority) to the Act(**a**) apply with respect to the discharge by the FCA of its functions under these Regulations as they do with respect to the discharge by it of its functions under the Act.

(2) Paragraphs 19 to 23 and 25 apply for the purposes of paragraph (1) with the modifications set out in paragraph (3) to (7).

(3) A reference to functions has effect as if it were a reference to functions under these Regulations.

(4) A reference to the Act has effect as if it were a reference to these Regulations.

(5) Paragraph 20 has effect as if—

(**a**) Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 (c.21) 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 (c.33) and S.I. 2013/1773. Other amendments are not relevant here.

(a) in sub-paragraph (3)(b) the words "or under a provision mentioned in sub-paragraph (4A)" were omitted.

(b) for sub-paragraph (4) there were substituted—

"(4) For this purpose the FCA's enforcement powers are—

(a) it powers under Part 5 and 6 of the Financial Services and Markets Act (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XX);

(b) its powers under Part 25 of this Act (injunctions and restitution) as applied and modified by those Regulations;

(c) its powers in relation to the investigation of offences under those Regulations;

(d) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under those Regulations."; and

(c) sub-paragraph (4A) and (5) were omitted.

(6) Paragraph 21 has effect as if—

(a) in sub-paragraph (1) the reference to qualifying functions were a reference to the functions of the FCA under these regulations.

(b) sub-paragraph (2) to (2A) were omitted;

(c) sub-paragraph (4) were omitted;

(d) sub-paragraph (6) were omitted; and

(e) in sub-paragraph (7) and (8) a reference to this Act were in each place a reference to these Regulations.

(7) Paragraph 25 has effect as if sub-paragraph (1A) were omitted.

CHAPTER 3

Application of secondary legislation for the purposes of the Regulations

**Disclosure of confidential information**

**53.** The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**a**) have effect for the purposes of section 349(1)(b) (exceptions from section 348) as it applies under regulation 48 as they have effect for the purposes of section 349 generally.

**Service of notices**

**54.** The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(**b**) ("Notice Regulations") apply in respect to any notice or document to be given by the FCA under Part 3, 4 or 5 of these Regulations as if that document were "a relevant document" under the Notice Regulations.

# PART 7

## Amendments to legislation and transitional arrangements

**Amendments to primary and secondary legislation**

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

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

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(**a**) S.I. 2001/2188, amended by S.I. 2001/3437, S.I. 2003/2174, S.I. 2003/2817, S.I. 2005/3071, S.I. 2006/3413, S.I. 2010/1265, S.I. 2012/916 and S.I. 2013/472. Other amendments are not relevant here.

(**b**) S.I. 2001/1420.

(3) Schedule 3, which contains amendments to other primary legislation, has effect.

(4) Schedule 4, which contains amendments to other secondary legislation, has effect.

**Revocation**

**56.** The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007(**a**) are revoked.

*Name*
*Name*
Date — Two Lords Commissioners of Her Majesty's Treasury

# SCHEDULE 1

Regulation

## Amendments to the Financial Services and Markets Act 2000

**1.** The Act is amended as follows.

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

(2) In subsection (1B)—

(a) in paragraph (a)—

(i) omit the words from "which permits" to "appoint tied agents";

(ii) for "Article 23", substitute "Article 29"; and

(iii) at the end, insert "and";

(b) omit paragraph (b).

(3) In subsection (7)(a) for "4.1.25", substitute "4.1.29".

(4) In subsection (8) in the definition of "competent authority" for "4.1.22", substitute "4.1.26".

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

(2) In subsection (6)—

(a) for paragraph (c) substitute—

"(c) enters into a relevant contract with an agent who is not entered—

(i) on 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"; and

(4) In subsection (9) in the definition of "competent authority" for "Article 4.1.22", substitute "Article 4.1.26".

**4.** In section 55K(1)(investment firms: particular conditions that enable cancellation)—

(a) at the end of paragraph (d) for "." substitute ";"; and

(b) insert—

"(e) that the firm has seriously or systematically infringed the markets in financial instruments regulation.".

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(**a**) S.I. 2007/126.

**5.** In section 55R (persons connected with an applicant) after subsection (6) 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) 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;

(ii) 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; or

(iii) an insurance undertaking, as defined by Article 13.1 of the Solvency 2 Directive, authorised in another EEA state.

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

(a) in a case falling within subsection (7)(c)(i) or (ii), consult the competent authorities of the other EEA State responsible for the authorisation of the credit institution or investment firm; and

(b) in a case falling within subsection (7)(c)(i) or (iii), consult the competent authority of the other EEA state responsible for the supervision of the credit institution or insurance undertaking."

**6.** In section 55Z1 (notification to ESMA)—

(a) in paragraph (c), omit "or";

(b) in paragraph (d) for ".", substitute ", or"; and

(c) after paragraph (d) insert—

"(e) the giving by it of an approval under Article 9.2 of the markets in financial instruments directive.".

**7.** In section 86(7) (exempt offers to the public)—

(a) at the end of paragraph (b), insert "or";

(b) at the end of paragraph (c) omit "or"; and

(c) omit paragraph (d).

**8.** In section 89F(4) (transparency rules) for the definition of "financial instrument", substitute—

""financial instrument" has the meaning given in Article 4.1.15 of the markets in financial instruments directive;".

**9.** In section 102A(3) (meaning of "securities" etc) for "Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments", substitute "the markets in financial instruments directive".

**10.** In section 103(1) (interpretation of Part 6) for the definition of "regulated market", substitute—

""regulated market" has the meaning given in Article 4.1.21 of the markets in financial instruments directive;".

**11.** After section 122I (power to suspend trading in financial instruments) insert—

"**Power to suspend auctioning of financial instruments**

**122IA.**—(1) The FCA may suspend the auctioning of a financial instrument which is an auctioned product as defined by Article 4 of the emission allowance auctioning regulation.

(2) A suspension by the FCA takes place—

(a) immediately if the FCA specify this is the case; or

(b) in any other case, on such date as the FCA specify.

(3) The FCA may—

(a) cancel a suspension under subsection (1); and

(b) impose such conditions for cancellation to take effect as it considers appropriate."

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

(2) In subsection (2)—

(a) in the chapeau 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.".

(3) After subsection (7) insert—

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

**13.**—(1) Section 129(7) (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) in paragraph (b) for ".", substitute "; or"; and

(c) after paragraph (b) insert—

"(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.".

**14.** In section 131AB, at the appropriate place insert—

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

**15.** In section 137R(5)(b) (financial promotion rules)—

(a) for sub-paragraph (i), substitute—

"(i) Article 24 or 25 of the markets in financial instruments directive, or"; and

(b) omit paragraph (ii).

**16.** In section 184(4)(a) (disregarded holdings) for "4.1(8)", substitute "4.1.7".

**17.**—(1) Section 194A (contravention by relevant EEA firm with UK branch requirement) is amended as follows.

(2) In subsection (1)(b) 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) after "directive" insert "or regulation".

**18.**—(1) Section 195A (contravention by relevant EEA firm of directive requirements) is amended as follows.

(2) In subsection (1)(a) 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) after "directive" insert "or regulation".

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

(2) In subsection (3)—

(a) in paragraph (a) after "permission" insert "or in accordance with the relevant recognition requirements"; and

(b) for paragraph (b) substitute—

"(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) on—

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

(ii) recognised investment exchanges, or any class of recognised investment exchange, operating a multilateral trading facility or an organised trading facility.

(3) After subsection (3) insert—

"(3A) But compensation may only be paid to claimants under the compensation scheme in respect of claims made in connection with regulated activities carried on by a recognised investment exchange if that regulated activity was the operation of a multilateral trading facility or organised trading facility .

(3B) In subsection (3) "relevant recognition requirements" means the requirements set out in the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations (S.I. 2001/995) relating to the operation of a multilateral trading facility or organised trading facility."

(4) For subsection (4) substitute

"(4) The compensation scheme may provide for the scheme manager to have power to impose levies for the purpose of recovering the cost (whenever occurred) of establishing the scheme on—

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

(b) recognised investment exchanges, or any class of recognised investment exchange, operating a multilateral trading facility or an organised trading facility.

(5) In subsection (5)—

(a) for "authorised person" substitute "authorised person or recognised investment exchange"; and

(b) for "class of person" substitute "class of person or investment exchange".

(6) In subsection (9)—

(a) at the end of paragraph (a) omit "or";

(b) at the of end of paragraph (b) insert "or"; and

(c) after paragraph (b) insert—

"(c) a recognised investment exchange at that time.".

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

(2) In subsection (1) for "authorised persons" substitute "authorised persons or recognised investment exchanges operating a multilateral trading facility or organised trading facility".

(3) After subsection (3)(a) insert—

"(aa) to recognised investment exchanges operating a multilateral trading facility or organised trading facility generally or only to specified investment exchanges or classes of investment exchange."

**21.**In section 224(3) (scheme manager's power to inspect documents held by Official Receiver etc)—

(a) at the end of paragraph (a) omit "or";

(b) at the end of paragraph (b) insert "or"; and

(c) after paragraph (b) insert—

"(c) a recognised investment exchange operating a multilateral trading facility or organised trading facility at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place."

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

**23.** After section 287 (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 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 granting A's application for permission, the FCA concerned 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—

(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 subsections (1) to (3)—

"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.".

**24.** Section 290 (recognition orders) is amended as follows.

(1) In subsection (1A) after "markets in financial instruments directive", insert "or the markets in financial instruments regulation"; and

(2) After subsection (7), insert—

"(8) The FCA must—

(a) provide a copy of the FCA's record of recognised investment exchanges maintained under section 347(1)(e) (the record of authorised persons etc.) to ESMA and all the competent authorities, as defined by Article 4.1.26 of the markets in financial instruments directive, of the other EEA states; and

(b) inform ESMA and those competent authorities of any change to the record of recognised investment exchanges.".

**25.** In section 292(3)(a) (overseas investment exchanges) after "recognition requirements", insert "and requirements contained in any directly applicable Community regulation made under the markets in financial instruments directive or markets in financial instruments regulation".

**26.** In section 297(2A) (revoking recognition)—

(a) in paragraph (b) delete the second "or"; and

(b) after paragraph (c), insert—

"(d) has failed, or is likely to fail, to satisfy the recognition requirements, or

(e) has failed, or is likely to fail, to comply with any obligation imposed on it by or under this Act,".

**27.** After section 299 (complaints about recognised bodies), insert—

"**Notification of conduct concerns**

**299A.**—(1) If the FCA receives a notification from a recognised investment exchange that there have been—

(a) significant infringements of the exchange's rules;

(b) disorderly trading conditions; or

(c) system disruptions in relation to a financial instrument,

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

(2) If the FCA receives a notification from a recognised investment exchange that there has been conduct that may indicate behaviour which is prohibited under the market abuse regulation on, or related to, a trading venue operated by it the FCA must inform ESMA and the competent authorities of all other EEA States of that notification when it is convinced that such behaviour is being, or has been, carried out.

**FCA's power in respect of management body**

**299AB.**—(1) The FCA may approve a person on a management body holding an additional non-executive directorship in accordance with Article 45.2(a) of the markets in financial instruments directive.

(2) If the FCA grants an approval under subsection (1) it must notify that approval to ESMA.

(3) "Management body" has the same meaning as in Article 4.1.36 of the markets in financial instruments directive.".

**28.** In section 301E(4)(a) (disregarded holdings) for "4.1(8)", substitute "4.1.7".

**29.** In section 312A(1) (exercise of passport rights by EEA market operator) for "regulated market or multilateral trading facility", substitute "trading venue".

**30.** In section 312B(1) (removal of passport rights from EEA market operator) for "regulated market or multilateral trading facility", substitute "trading venue".

**31.**—(1) Section 312C (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)—

(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 "the third sub-paragraph of Article 42.6", substitute " Article 53.6".

(4) In subsection (7) for "4.1.22", substitute "4.1.26".

**32.** In section 312D (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".

**33.** In section 313(1) (interpretation of Part 18)—

(a) in the definition of "multilateral trading facility" for "4.1.15", substitute "4.1.22";

(b) in the definition of "regulated market" for "4.1.14", substitute "4.1.21;

(c) in the appropriate place, insert—

(i) ""organised trading facility" has the meaning given in Article 4.1.23 of the markets in financial instruments directive"; and

(ii) ""trading venue" means a multilateral trading facility, a regulated market or an organised trading facility;"

**34.** Section 313C (notification in relation to suspension or removal of a financial instrument from trading) is amended as follows.

(1) In subsection (1) for "regulated market", substitute "trading venue".

(2) For subsections (2) to (5), substitute—

"(2) If the FCA receives notice from an institution that it has suspended or removed a financial instrument from trading on a trading venue operated by it the FCA must notify ESMA and the competent authorities of all other EEA States of—

(a) the action taken by the institution; and

(b) any decision whether not to suspend or remove from trading any derivative which relates, or is referenced, to the financial instrument which has been suspended or removed from trading.

(3) Subsection (4) applies if the FCA receives notice from—

(a) an institution, in relation to a trading venue it operates; or

(b) the competent authority of another EEA State, acting pursuant to Article 52(2) of the markets in financial instruments directive,

that it has required the suspension, or removal, from trading of a financial instrument, including any derivative which relates or is referenced to it, due to suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument infringing Articles 7 and 17 of the market abuse regulation.

(4) Where the FCA receives a notice to which subsection (3) applies the FCA must require each institution operating a trading venue in the United Kingdom to suspend, or

remove, as the case may be, the instrument from trading on any trading venue and systematic internaliser operated by the institution unless such a step would be likely to cause significant damage to the interests of investors or to the orderly functioning of the financial markets.

(5) Where the FCA receives a notice to which subsection (3)(a) applies the FCA must as soon as reasonably practicable—

(a) inform ESMA and the competent authorities of all other EEA States of its decision whether to require the suspension or removal of the financial instrument, including any derivative which relates or is referenced to it, from trading together with details of the reasons for a decision not to require a suspension or removal from trading; and

(b) publish its decision in such a manner as it considers appropriate.

(5A) Where the FCA revokes a requirement under section 313A(1) in relation to a financial instrument traded on a regulated market it must as soon as reasonably practicable—

(a) inform ESMA and the competent authorities of all other EEA States of its decision; and

(b) publish its decision in such a manner as it considers appropriate.".

(3) In subsection (6) for "4.1.22", substitute "4.1.26".

**35.** In section 313D (interpretation of Part 18A)—

(a) in the definition of "financial instrument" for "4.1.17", substitute "4.1.15";

(b) in the definition of "multilateral trading facility" for "4.1.15", substitute "4.1.22";

(c) in the definition of "regulated market" for "4.1.14", substitute "4.1.21; and

(d) in the appropriate place, insert—

(i) ""organised trading facility" has the meaning given in Article 4.1.23 of the markets in financial instruments directive;;

(ii) ""systematic internaliser" has the meaning given in Article 4.1.20 of the markets in financial instruments directive;"; and

(iii) ""trading venue" means a multilateral trading facility, a regulated market or an organised trading facility.".

**36.** After section 327(4) (exemption from general prohibition), insert—

"(4A) where the service provided by P is an investment service or activity within Section A of Annex I to the markets in financial services directive that the requirements of Article 4 of the Commission Delegated Regulation (EU) **[REF]** on Directive 2014/65/EC 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 are met.".

**37.**—(1) Section 347 (the record of authorised persons etc) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (hb) omit "and"; and

(b) after paragraph (hb) insert—

"(hc) appointed representatives to whom subsection (2C) applies; and".

(3) In subsection (2A)(c) for "23.3", substitute "29.3";

(4) After subsection (2B) 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 5 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/XXXX).
"

(5) After subsection (4A), insert—

"(4B) The FCA must—

(a) keep a list of persons who are investment firms who have had their authorisation cancelled in accordance with Article 8.b, c or d of the markets in financial instruments directive; and

(b) keep a person on that list for five years from the date the person's authorisation was cancelled.

(4C) Subsection (5) and (6) apply to the list mentioned in subsection (4A) as if it were the record.".

(a) in subsection (8A) in the appropriate place, insert—

""investment firm" has the same meaning as in Article 4.1.1 of the markets in financial instruments directive,".

**38.** After section 354A(3) (FCA's duty to co-operate with others), insert—

"(3A) The FCA must annually provide ESMA with information in accordance with Article 71.4 of the markets in financial instruments directive.

(3B) The FCA must provide, on request, to the competent authority of a trading venue established in another EEA State information it has received from a person in the United Kingdom that the person is—

(a) engaging in algorithmic trading as a member or participant on that trading venue; or

(b) providing direct electronic access to that trading venue.".

**39.** In section 391 (publication) —

(a) in subsection (4) for "sections 391A, 391B and 391C" substitute "sections 391A, 391B, 391C, and 391D"; and

(b) in subsection (7B)(d) after "directive", insert ", the markets in financial instruments regulation and any directly applicable EU regulation made under it".

**40.** After section 391C, 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 decision notice or supervisory 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 subsection (4), 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 (6), information about a matter to which a final notice relates must be published anonymously where—

(a) the sanction or measure is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;

(b) failing to publish anonymously would jeopardise the stability of financial markets or an ongoing investigation; or

(c) failing to publish anonymously would cause, insofar as it can be determined, disproportionate damage to the persons involved.

(5) Where subsection (4) 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.

(6) Information about a matter to which a final notice relates must not be published where anonymous publication under subsection (4) is considered by the regulator to be insufficient to ensure—

(a) that the stability of the financial markets would not be put in jeopardy; or

(b) that the publication would be proportionate with regard to sanctions or measures which are considered by the regulator to be of a minor nature.

(7) Where a regulator publishes information in accordance with subsections (2) to (5), 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 requires the information to be retained for a different period; and

(b) promptly report the information to ESMA."

**41.** After section 398(1A)(c) (Misleading FCA or PRA), insert—

"(ca) the markets in financial instruments regulation;

(cb) the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. XXXX/XXXX);".

**42.** Omit section 405(5)(a) (directions).

**43.** Omit sections 412A (approval and monitoring of trade-matching and reporting systems) and 412B (procedure for approval, suspension and withdrawal).

**44.** In section 417(1) in the appropriate place, insert—

(i) ""EEA market operator" has the meaning given by section 312D;";

(ii) ""markets in financial instruments regulation" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2004 on markets in financial instruments and amending Regulation (EU) No 648/2012;";

(iii) ""multilateral trading facility" has the meaning given by section 313D;"; and

(iv) ""organised trading facility" has the meaning given by section 313D;".

**45.** In section 422A(4)(a) (disregarded holdings) for "4.1(8)", substitute "4.1.7".

**46.** In section 424A(5)(b) (investment firm) for "4.1.20", substitute "4.1.55".

**47.** In Schedule 3 (EEA passport rights)—

(a) for paragraph 4C 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 and amending Directive 2002/92/EC and Directive 2011/61/EU (recast).";

(b) in paragraph 11A for "4.1.25", substitute "4.1.29";

(c) in paragraph 12(3) after "5(a)", insert "or 5(b)";

(d) in paragraph 14(ba) for "31.5", substitute "34.6";

(e) in paragraph 20(4BA) for "31.6", substitute "34.7"; and

(f) in paragraph 20A after "investment firm" in both places, insert "or credit institution".

**48.** In Schedule 10A (liability of issuers)—

(a) in paragraph 8(1)(a)—

(i) for "4.1.18", substitute "4.1.44"; and

(ii) for "4.1.19", substitute "4.1.17; and

(b) in paragraph 8(1)(b)—

(i) for "4.1.14", substitute "4.1.21"; and

(ii) for "4.1.15", substitute "4.1.22".

# SCHEDULE 2

Regulation 55(2)

## Amendments to secondary legislation made under the Act

## PART 1

### Consequential amendments to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

**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(**a**) are amended as follows.

(2) In regulation 3(**b**) (interpretation)—

(a) in the definition of "branch" for "Article 4.1.26" substitute "Article 4.1.30";

(b) in the definition of "financial instrument" for "Article 4.1.17" substitute "Article 4.1.15";

(c) in the definition of "multilateral trading facility" for "Article 4.1.15" substitute "Article 4.1.22";

(d) in the definition of "regulated market" for "Article 4.1.14" substitute "Article 4.1.21";

(e) in the definition of "transferable securities" for "Article 4.1.18" substitute "Article 4.1.44";

(f) at the appropriate places insert—

""algorithmic trading" has the meaning given in Article 4.1.39 of the markets in financial instruments directive;

"certificate" 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;

"depositary 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;

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(**a**) S.I. 2001/995.

(**b**) Regulation 3 was amended by S.I. 2006/3386, 2013/3115. There are other amendments but none is relevant.

"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" has the meaning given in Article 4.1.36 of the markets in financial instruments directive;

"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;

"organised trading facility" has the meaning given in Article 4.1.23 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;

"trading venue" means a regulated market, a multilateral trading facility or an organised trading facility;".

(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(**a**) (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

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(**a**) Paragraph 2(3) was inserted by S.I. 2006/3386.

(ii) oversee and monitor decision making.

(4) The management body must—

(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 the–

(i) segregation of duties in the organisation; and

(ii) prevention of conflicts of interest in its operation;

(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;

(c) 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; and

(d) notify the FCA of the identity of all the members of its management body.

*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 section 299AB of the Act, three non-executive directorships); or

(ii) four non-executive directorships (or where so authorised by the FCA under section 299AB of the Act, 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 predominantly pursue 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, scale and complexity of the exchange's activities.".

(6) In paragraph 3 of the Schedule(**a**) (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 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;

(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 and price thresholds or which are clearly erroneous;

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(**a**) Paragraph 3 was amended by S.I. 2006/3386.

(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 it reasonably requires to satisfy itself that the market making agreements comply with this sub-paragraph.

(2) A written agreement of the kind mentioned in sub-paragraph (1)(a) must specify—

(a) the obligations of the investment firm in relation to the provision of liquidity;

(b) where applicable, any obligations arising, or rights accruing, from the participation in a scheme mentioned in sub-paragraph (1)(b); and

(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, 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) to the FCA in a format to be specified by the FCA.

(4) If a regulated market operated by the exchange is material in terms of liquidity of the trading of a financial instrument and trading is halted 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.**—(1) 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—

(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;

(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 Articles 46.1 (general provisions) or 47.3 (equivalence decision) of the markets in financial instruments regulation;

(v) is a third country firm providing the 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; 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 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 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 of direct electronic access on that market by a member of, or participant in, the trading venue in the case of non-compliance with this sub-paragraph.

(2) 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(**a**)

*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 and rebates it grants, must—

(a) be transparent, fair and non-discriminatory;

(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 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 and participants of trading venues operated by it to flag orders generated by algorithmic trading in order for it to be able to identify the—

(a) different algorithms used for the creation of orders; and

(b) the persons initiating those orders.

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(**a**) S.I. 2001/544; article 72 was amended by S.I. 2003/1476, 2006/2383 and 3384, 2009/1342, 2013/504 and 2015/910.

*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 the European Commission pursuant to Article 50 of the markets in financial instruments directive.".

(7) In paragraph 4 of the Schedule(**a**) (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) 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(**b**).

(9) After paragraph 4 of the Schedule 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 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(**c**) (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(**d**) (access to the exchange's facilities)—

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(**a**) Paragraph 4 was amended by S.I. 2006/3386.
(**b**) Paragraphs 4A and 4B were inserted by S.I. 2006/3386 and amended by S.I. 2013/472.
(**c**) Paragraph 7A was inserted by S.I. 2006/3386 and amended by S.I. 2011/1043 and 2016/680.
(**d**) Paragraph 7B was inserted by S.I. 2006/3386 and amended by S.I. 2013/472 and 3115.

(a) in sub-paragraph (2)(b) for "the market" substitute "its trading venues";

(b) in sub-paragraphs (2)(d), (2)(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—

(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 admitted 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 relating to commercial activities; or

(ii) other positions.

(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, or an alternative investment fund or alternative investment fund manager as defined in the alternative investment fund managers directive;

(c) other financial institutions, including insurance undertakings and reinsurance undertakings as defined in the Solvency 2 Directive and institutions 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;

(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 and amending Council Directive 96/61/EC.

(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(**a**) (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 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 sub-paragraph (2), following a decision made under sub-paragraph (2), it must make that decision public and notify the FCA.".

(14) After paragraph 9 of the Schedule (complaints) insert—

*"Specific requirements for regulated markets: execution of orders*

**9ZA.** An exchange must—

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(**a**) Paragraph 7E was inserted by S.I. 1996/3386.

(a) have non-discretionary rules for the execution of orders on a regulated market operated by it; and

(b) not on a regulated market operated by it—

(i) execute any client orders against its proprietary capital; or

(ii) 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 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 the relevant articles and which are not directly applicable given effect—

(a) in the United Kingdom by Part 6 of the Act(**a**) 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;

"the relevant articles" means—

(a) Articles 17, 18 and 19 of the market abuse regulation;

(b) Articles 3, 5, 7, 8, 10, 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;

(c) Articles 4 to 6, 14, 16 to 19 and 30 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; and

(d) EU legislation made under the provisions mentioned in paragraphs (a) to (c).

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(**a**) 2000 c.8; section 73A was inserted by S.I. 2005/381.

*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 membership to (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 they are 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.".

(15) In paragraph 9A of the Schedule(**a**) (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";

(ii) for paragraph (b) substitute—

"(b) any directly applicable EU legislation 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; and

(b) any links to another trading venue owned by the same exchange and a list of their members 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.".

(16) After paragraph 9A of the Schedule insert—

"*Specific requirements for multilateral trading facilities: execution of orders*

**9B.** An exchange must—

(a) have non-discretionary rules for the execution of orders on a multilateral trading facility operated by it; and

(b) not on a multilateral trading facility operated by it—

(i) execute any client orders against its proprietary capital; or

(ii) engage in matched principal trading.

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(**a**) Paragraph 9A was inserted by S.I. 2006/3386.

*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 they are to perform, taking account of the 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 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 judgments, 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.** 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 must comply with rules made by FCA for the purposes of this paragraph.

*Specific requirements for organised trading facilities: execution of orders*

**9F.**—(1) An exchange operating an organised trading facility must, on that facility—

(a) execute orders on a discretionary basis in accordance with sub-paragraph (4);

(b) not execute any client orders 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 facilities 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,

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 16, 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 it provided the investment firm does not have close links with the exchange.

(11) For the purposes of sub-paragraph (10) "close links" has the same meaning as in Article 4.1.35 of the markets in financial instruments directive.

*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 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 judgments, 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) The FCA may at any time require an exchange to provide in respect of an organised trading facility operated by it, or such a facility it proposes to operate, a detailed explanation 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

(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*

**9K.** An exchange providing data reporting services must comply with Title V of the markets in financial instruments directive.".

(17) In paragraph 21A of the Schedule(**a**) (access to central counterparty, clearing and settlement facilities), omit sub-paragraph (3).

(18) In paragraph 31 of the Schedule(**b**) (access to central counterparty, clearing and settlement facilities), omit sub-paragraph (3).

# PART 2

## Amendments to other legislation made under the Financial Services and Markets Act 2000

### Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001

**2.**—(1) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(**c**) are amended as follows.

(2) In regulation 2 (descriptions of business for which appointed representatives are exempt)—

(a) in paragraph (1A), after "who is" insert "an authorised person,";

(b) in paragraph (1B), for "1.10 and 1.17" substitute "1.9 and 1.15".

(3) In regulation 3(6) (requirements applying to contracts between authorised persons and appointed representatives), for "4.1.25" substitute "4.1.29".

### Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

**3.**—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**d**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in the definition of "markets in financial instruments directive information" after "markets in financial instruments directive" insert "and the markets in financial instruments regulation";

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(**a**) Paragraph 21A was inserted by S.I. 2006/3386 and amended by S.I. 2013/504.
(**b**) Paragraph 31 was inserted by S.I. 2013/504.
(**c**) S.I. 2001/1217, amended by S.I. 2006/3414. There are other amendments but none is relevant.
(**d**) S.I. 2001/2188, amended by S.I. 2006/3413, 2010/2628, 2011/1613, 2012/916, 2013/472, 1773 and 3115 and 2015/575. There are other amendments but none is relevant.

(b) in the definition of "single market information" after "markets in financial instruments directive" insert ", the markets in financial instruments regulation";

(c) in the definition of "single market restrictions" in paragraph (a) for "54 and 58" substitute "76 and 81".

(3) In regulations 8(b)(i) (disclosure of single market information), 9(2ZA)(a), 9(3A)(a) (disclosure by regulators) and 11(d)(i) (disclosure of confidential information not subject to single market restrictions) for "article 63" substitute "article 88".

(4) In regulations 8(b)(ii), 9(3A)(a) and 11(d)(ii) for "article 58.1" substitute "article 81.1".

**Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001**

**4.**—(1) The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(**a**) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation), in the definition of "tied agent", for "4.1.25" substitute "4.1.29".

(3) In regulation 3(2ZA) (contents of regulator's notice), for "31.5" substitute "34.6".

**Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013**

**5.**—(1) — The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(**b**) 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 regulation made under that regulation;";

(b) after paragraph (6)(a) insert—

"(aa) the markets in financial instruments regulation and any directly applicable regulation made under that regulation;";

(c) after paragraph (8)(a) insert—

"(aa) the markets in financial instruments regulation and any directly applicable 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 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 regulation made under that regulation;";

(b) after paragraph (5)(a) insert—

"(aa) the markets in financial instruments regulation and any directly applicable regulation made under that regulation;";

(c) after paragraph (7)(a) insert—

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(**a**) S.I. 2001/2511, amended by S.I. 2006/3385 and 3414. There are other amendments but none is relevant.
(**b**) S.I. 2013/419, amended by S.I. 2013/1773, 2014/2879 and 3348, 2015/1882, 2016/715, 680, 936 and 1023.

"(aa) the markets in financial instruments regulation and any directly applicable 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 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—

"(aa) the markets in financial instruments regulation and any directly applicable regulation made under that regulation;";

(b) after paragraph (4)(a) insert—

"(aa) the markets in financial instruments regulation and any directly applicable regulation made under that regulation;".

**Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013**

**6.** After regulation 55 of the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013(**a**) (transitional and savings 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**

**7.** In article 3 of the Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 2013(**b**) (dealing in investments as principal: designation by the PRA), in paragraph (2)(c)(i) for "31" substitute "34".

**Financial Services and Markets Act 2000 (Ring Fenced Bodies and Core Activities) Order 2014**

**8.** In article 10 of the Financial Services and Markets Act 2000 (Ring Fenced Bodies and Core Activities) Order 2014(**c**) (declaration of eligibility: determining assets held by an individual), in paragraph (5)(b), for "4.1(18)" substitute "4.1(44)".

(**a**) S.I. 2013/504.
(**b**) S.I. 2013/556.
(**c**) S.I. 2014/1960.

# SCHEDULE 3

Regulation 55(3)

## Amendments to other primary legislation

**Building Societies Act 1986**

**1.** In section 81B(1) of the Building Societies Act 1986(**a**) (interpretation of Part 8), 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".

**Finance Act 1991**

**2.** In section 116(4)(aa) of the Finance Act 1991(**b**) (investment exchanges and clearing houses: stamp duty), 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".

**Friendly Societies Act 1992**

**3.**—(1) The Friendly Societies Act 1992(**c**) is amended as follows.

(2) In section 69A(4) (duty to prepare individual accounts), 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".

(3) In section 69E(5) (duty to prepare group accounts), 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".

**Data Protection Act 1998**

**4.** In Schedule 7 to the Data Protection Act 1998(**d**) (miscellaneous exemptions), in paragraph 6(3), in the definition of "instrument", 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".

**Competition Act 1998**

**5.** In Schedule 3 to the Competition Act 1998(**e**) (general exclusions), in paragraph 3(5), in paragraph (a) of the definition of "EEA regulated market", for the words from "Article" to "April 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.** In Schedule 3A to the Terrorism Act 2000(**f**) (regulated sector and supervisory authorities), in Part 1—

(a) in paragraph 1(5)(a) for "point 14" substitute "point 21";

(b) in paragraph 3(1), in the definition of "the Markets in Financial Instruments Directive", for the words from "2004/36/EC" to "April 2004" substitute "2014/65/EU of the European Parliament and of the Council of 15th May 2014".

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(**a**) 1986 c.53; Section 81B was inserted by S.I. 2004/3380 and the definition of "regulated market" was inserted by S.I. 2007/126.

(**b**) 1991 c.31; Section 116(4)(aa) was inserted by paragraphs 7(1) and 7(2) of Schedule 21 to, the Finance Act 2007 (2007 c.11).

(**c**) 1992 c.40; Section 69A(4) was inserted by S.I. 2005/2211, and amended by S.I. 2007/126. Section 69E(5) was inserted by S.I. 2005/2211.

(**d**) 1998 c.29; The definition of "instrument" was amended by S.I. 2002/1555 and S.I. 2007/126.

(**e**) 1998 c.41; The definition of "EEA regulated market" was amended by S.I. 2007/126.

(**f**) 2000 c.11; Schedule 3A was inserted by S.I. 2007/3288.

**Proceeds of Crime Act 2002**

**7.** In Schedule 9 to the Proceeds of Crime Act 2002(**a**) (regulated sector and supervisory authorities), in Part 1—

(a) in paragraph 1(5)(a) for "point 14" substitute "point 21";

(b) in paragraph 3(1), in the definition of "the Markets in Financial Instruments Directive", for the words from "2004/39/EC" to "April 2004" substitute "2014/65/EU of the European Parliament and of the Council of 15th 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(**b**) (exception for returns from certain shares)—

(a) for "Directive 2004/39/EC" substitute "Directive 2014/65/EU";

(b) for "Article 4.1(14)" substitute "Article 4.1.21".

**Companies Act 2006**

**9.**—(1) The Companies Act 2006(**c**) is amended as follows.

(2) In section 474(1) (minor definitions), in the definition of "MiFID investment firm"—

(a) 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";

(b) for paragraphs (b) and (c), substitute—

"and

(b) a company which fulfils the requirements in regulation 4 or 5 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;".

(3) In section 494A (interpretation), in the definition of "transferable securities", for "Directive 2004/39/EC" substitute "Directive 2014/65/EU".

(4) In section 519A(2) (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 (minor definitions), in the definition of "MiFID investment firm", 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".

(6) In section 1173 (minor definitions: general)—

(a) in subsection (1)—

(i) in the definition of "regulated market"—

(aa) for "Directive 2004/39/EC" substitute "Directive 2014/65/EU";

(bb) for "Article 4.1(14)" substitute "Article 4.1.21";

(ii) in the definition of "transferable securities", for "Directive 2004/39/EC" substitute "Directive 2014/65/EU".

(b) in subsection (2), for "Directive 2004/39/EC" substitute "Directive 2014/65/EU".

(7) In section 1241(3) (meaning of "registered third country auditor" and "UK-traded non-EEA company")—

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(**a**) 2002 c.29; Schedule 9 was substituted by S.I. 2007/3287.

(**b**) 2005 c.5; Section 381E was inserted by section 28 of, and paragraphs 1 and 3 of Schedule 12 to, the Finance Act 2013.

(**c**) 2006 c.46; In section 474(1), the definition of "MiFID investment firm" was inserted by S.I. 2007/2932. Section 494A was inserted by S.I. 2016/649. Section 519A was inserted by sections 18(1) and 18(3) of the Deregulation Act 2015, and Section 519A(2) was amended by S.I. 2016/649. In section 539, the definition of "MiFID investment firm" was inserted by S.I. 2007/2932. In section 1173, the definition of "transferable securities" was inserted by S.I. 2015/980. Section 1241 was amended by S.I. 2007/3494. Paragraph 20A of Schedule 10 was inserted by S.I. 2007/3494, and amended by S.I. 2016/649.

(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";

(b) in the definition of "transferable securities", for "Article 4.1(18)" substitute "Article 4.1.44".

(8) In Schedule 10 (recognised supervisory bodies), in paragraph 20A, 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(**a**) (requirements for the giving of approval)—

(a) for "Directive 2004/39/EC" substitute "Directive 2014/65/EU";

(b) for "Article 4.1(14)" substitute "Article 4.1.21".

**Counter-Terrorism Act 2008**

**11.** In Schedule 7 to the Counter-Terrorism Act 2008(**b**) (terrorist financing and money laundering), in paragraph 7, in the definition of "the markets in financial instruments directive", for the words from "Directive" to "April 2004" substitute "Directive 2014/65/EU of the European Parliament and of the Council of 15th May 2014".

**Corporation Tax Act 2010**

**12.** In section 1158(4) of the Corporation Tax Act 2010(**c**) (meaning of "investment trust")—

(a) for "Directive 2004/39/EC" substitute "Directive 2014/65/EU";

(b) for "Article 4.1(14)" substitute "Article 4.1.21".

**Finance Act 2010**

**13.** In Schedule 1 to the Finance Act 2010(**d**) (bank payroll tax), in paragraph 45(15), 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".

**Finance Act 2011**

**14.** In Schedule 19 to the Finance Act 2011(**e**) (the Bank levy), in paragraph 13(4), in the definition of "dealing on own account", 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 (Banking Reform) Act 2013**

**15.** In section 11(3)(b) of the Financial Services (Banking Reform) Act 2013(**f**) (review of proprietary trading: interpretation), 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".

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(**a**) 2007 c.3; Section 274(4) was inserted by section 5 of, and paragraphs 2(1) and 2(2)(d) of Schedule 2 to, the Finance (No. 3) Act 2010 (2010 c.33).
(**b**) 2008 c.28.
(**c**) 2010 c.4: Section 1158 was substituted by section 49(2) of the Finance Act 2011 (2011 c.11).
(**d**) 2010 c.13.
(**e**) 2011 c.11.
(**f**) 2013 c.33.

# SCHEDULE 4

Regulation 55(4)

## Consequential 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(**a**) (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(**b**) (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".

**Uncertificated Securities Regulations 2001**

**3.** In Schedule 1 to the Uncertificated Securities Regulations 2001(**c**) (requirements for approval of a person as operator)—

(a) omit paragraph 28(3);

(b) in paragraph 28(4)—

(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"—

(aa) for "2004/39/EC" substitute "2014/65/EU";

(bb) for "21st April 2004" substitute "15th May 2014".

**Insurers (Reorganisation and Winding Up) Regulations 2004**

**4.** In regulation 44(3) of the Insurers (Reorganisation and Winding Up) Regulations 2004(**d**) (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(**e**) (protection of third party purchasers)—

(a) for "2004/39/EC" substitute "2014/65/EU";

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(**a**) S.I. 1993/2004; Regulation 5B was inserted by S.I. 2011/2503.
(**b**) S.I. 1999/2979; Paragraph (b) in the definition of "institution" was amended by S.I. 2007/126. The definition of "securities" was amended by S.I. 2007/126.
(**c**) S.I. 2001/3755; Paragraph 28 was inserted by S.I. 2007/124. The definition of "branch" was amended by S.I. 2013/3115.
(**d**) S.I. 2004/353; Paragraph (3) was amended by S.I. 2007/126.
(**e**) S.I. 2004/1045; Paragraph (3) was amended by S.I. 2007/126.

(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(**a**) (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(**b**) (index tracking funds), for the definition of "regulated market" substitute—

> ""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).".

**Money Laundering Regulations 2007**

**8.**—(1) The Money Laundering Regulations 2007(**c**) are amended as follows.

(2) In regulation 2(1) (interpretation), in the definition of "the markets in financial instruments directive", for the words from "Directive" to "April 2004" substitute "Directive 2014/65/EU of the European Parliament and of the Council of 15th May 2014".

(3) In regulation 3(3)(ca) (application of the Regulations), for "2(1)(i)" substitute "2(1)(j)".

**Payment Services Regulations 2009**

**9.** In regulation 19(15) of the Payment Services Regulations 2009(**d**) (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(**e**) (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 25th 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".

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(**a**) S.I. 2005/3378.
(**b**) S.I. 2006/964; Regulation 14ZD was inserted by S.I. 2011/2192.
(**c**) S.I. 2007/2157; Regulation 3(3)(ca) was inserted by S.I. 2012/1906.
(**d**) S.I. 2009/209.
(**e**) S.I. 2009/322; The definition of "Markets in Financial Instruments Directive" was inserted by S.I. 2009/1826. The definition of "transferable securities" was inserted by S.I. 2009/1826.

**Offshore Funds (Tax) Regulations 2009**

**11.** In regulation 12 (general interpretation) of the Offshore Funds (Tax) Regulations 2009(**a**) , 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(**b**) (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".

**Electronic Money Regulations 2011**

**13.** In regulation 21(7) of the Electronic Money Regulations 2011(**c**) (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) The Recognised Auction Platforms Regulations 2011(**d**) are amended as follows.

(2) In Schedule 1 (modifications of the Financial Services and Markets Act 2000 for the purposes of articles 37 to 43 of the Emission Allowance Auctioning Regulation), in paragraph 1(2)(b), for "Article 4.1(17)" substitute "Article 4.1.15".

(3) In 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)—

(a) in paragraph 1(a), for "regulated market" substitute "trading venue";

(b) in paragraph 2(a), for "regulated market" substitute "trading venue";

(c) in paragraph 3—

(i) in sub-paragraph (a), for "regulated market" substitute "trading venue";

(ii) in sub-paragraph (b), for "42.6" substitute "53.6";

(d) 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(**e**) (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)".

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(**a**) S.I. 2009/3001; The definition of "regulation market" was inserted by S.I. 2011/1211.
(**b**) S.I. 2010/772.
(**c**) S.I. 2011/99.
(**d**) S.I. 2011/2699.
(**e**) S.I. 2011/2999.

**Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors' Reports) (Authorised Person) Order 2012**

**16.** In article 1(3) (citation, coming into force and interpretation) of the Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors Reports)(Authorised Person) Order 2012(**a**), in the definition of "regulated market", for the words from "Article" to "April 2004" substitute "Article 4.2.21 of Directive 2014/65/EU of the European Parliament and of the Council".

**Unauthorised Unit Trusts (Tax) Regulations 2013**

**17.** In regulation 23(3) of the Unauthorised Unit Trusts (Tax) Regulation 2013(**b**) (no tax charge for disposal of interests in offshore non-reporting funds: qualifying index), for "Directive 2004/39/EC" substitute "Directive 2014/65/EU".

**Capital Requirements Regulations 2013**

**18.** In regulation 33 of the Capital Requirements Regulations 2013(**c**) (colleges of supervisors)—

(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(**d**) (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(**e**) 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 (S.I. 2017/XX), other than its functions under regulation 32 (guidance) of those Regulations.

(f) its functions under the Data Reporting Services Regulations 2017 (S.I. 2017/XX), 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 (S.I.2017/XX) are relevant functions for the purposes of section 85(2) of the Financial Services Act 2012.".

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(**a**) S.I. 2012/1439.
(**b**) S.I. 2013/2819.
(**c**) S.I. 2013/3115.
(**d**) S.I. 2014/911.
(**e**) S.I. 2014/1195.

**Reports on Payments to Governments Regulations 2014**

**21.** In regulation 2(1) of the Reports on Payments to Governments Regulations 2014(**a**) (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 15th May 2014".

**Public Contracts Regulations 2015**

**22.** In regulation 10(1)(e)(i) of the Public Contracts Regulations 2015(**b**) (specific exclusions for service contracts), for "Directive 2004/39/EC" substitute "Directive 2014/65/EU".

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations transpose parts of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast). (OJ L173, 12/6/2014, p.349) ("MiFID2").

Regulation 4 designates the Financial Conduct Authority ("FCA"), the Prudential Conduct Authority and the Bank of England as the United Kingdom's national competent authorities for the purposes of MiFID2.

Regulation 5 provides that the optional exemptions in Article 3(1)(a) to (c) of MiFID2 relating to the provision of investment services and activities on a limited basis which does not involve the holding of client funds applies in the United Kingdom.

Part 3 of these Regulations provides for the imposition of limits on the maximum size of position a person may hold in a commodity derivative and economically equivalent over the counter derivative contracts ("position limits"). Position limits will be set by the FCA when a commodity derivative is only traded in the United Kingdom, or the United Kingdom is the largest European market for one. Position limits set by competent authorities in other EEA States will also apply in the United Kingdom. Persons holding positions in the contracts to which the position limits relate must not exceed the limits or may be subject to the enforcement regime in Part 5 of these Regulations.

Part 4 of these Regulations gives effect to provisions in MiFID2 concerning the regulation of the conduct of persons who are not required to be authorised under MiFID2, but nonetheless participate in financial markets. These requirements relate to engaging in algorithmic trading, providing the service of direct electronic access to regulated markets and multilateral trading facilities, acting as a clearing member and the synchronisation of business clocks.

Part 5 of these Regulations provide for the administration and enforcement of Parts 3 and 4 of these Regulations. It gives the FCA functions and powers to do this and applies parts of the Financial Services and Markets Act 2000 (c.8) ("the Act) in relation to those functions.

Part 6 of these Regulations provides for Schedule 1 to these Regulations, which makes amendments to the Act which are consequential to the implementation of MiFID2, and Schedule 2 to these Regulations, to make amendments to statutory instruments made under the Act.

Part 1 of Schedule 2 ("Part 1") makes amendments to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (S.I. 2001/995) in relation to the authorisation requirements for Recognised Investment Exchanges ("Exchanges"). Principally these amendments give effect to the new trading venue

(**a**) S.I. 2014/3209.
(**b**) S.I. 2015/102.

created under MiFID2, the organised trading facility. An organised trading facility is, like a multilateral trading facility and a regulated market, a multilateral trading system, though differs in that discretion may be exercised in trades made on the venue. Part 1 also imposes position management and position reporting requirements concerning commodity derivative trading on Exchanges. In addition, Part 1 gives effect to new organisational and management requirements imposed on Exchanges.

Part 2 of Schedule 2 makes amendments to other statutory instruments made under the Act consequential to the transposition of MiFID2 through these Regulations and amendments made to the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001. Under that Order the operation of an organised trading facility and the selling of, and advising clients on, structured deposits are to become regulated activities for the purposes of the Act and Emission Allowances are to become a specified investment.

Schedule 3 makes consequential amendments to primary legislation. In particular, it makes amendments substituting references to Directive 2004/39/EC in primary legislation with references to Directive 2014/65/EU.

Schedule 4 makes consequential amendments to other secondary legislation. In particular, it makes amendments substituting references to Directive 2004/39/EC in primary legislation with references to Directive 2014/65/EU.