

2016 No.000

FINANCIAL SERVICES AND MARKETS

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2016

Made - - - -

Date

Laid before Parliament

Date

Coming into force - -

Date

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 sections 286(1) and (4F), 426 and 428 of the Financial Services and Markets Act 2000^(c), make the following Regulations:

PART 1

Introductory provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services and Markets 2000 (Markets in Financial Instruments) Regulations 2016.

(2) These Regulations come into force on [date].

Interpretation

2. In these Regulations—

“the Act” means the Financial Services and Markets Act 2000;

“algorithmic trading” has the same meaning as in Article 4.1.39 of the markets in financial instruments directive;

(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. Section 286(4F) was inserted by section 30 of the Financial Services Act 2012 (c.21). Other amendments not relevant here.

“commodity derivative” has the same meaning as in Article 4.1.50 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;”

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

“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)(a);

“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 648/2012(b);

“position limit” means the maximum size of the net position which a person may hold at any time in a commodity derivative traded on a trading venue in an EEA State and economically equivalent over the counter contracts;

“the Recognition Regulations” means the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(c);

“trading venue” has the same meaning as in Article 4.1.24 of the markets in financial instruments directive.

PART 2

Competent authorities and exempt investment firms

Designation of the competent authorities

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

Applications to be an exempt investment firm

4.—(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) or 55I (variation by PRA) of the Act.

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

(4) In 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.

(a) OJ L173, 12/6/2014, p349.

(b) OJ L173, 12/06/2014, p.84.

(c) S.I. 2001/995.

(5) An exempt investment firm has no entitlement —

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

the requirements specified in paragraph (8) (“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.

(7) 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.

(8) 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.

(9) In paragraph (8)—

- (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.

(10) For the purposes of this regulation and regulation 5 “exempt investment firm” means an authorised person who—

- (a) is an investment firm within the meaning given in Article 4.1.1 of the markets in financial instruments directive; and
- (b) has a Part 4A permission,

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

Transitional provision: exempt investment firms

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

- (a) an exempt investment firm by virtue of regulation 9A 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 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.

PART 3

Position limits

Position limits on commodity derivatives and economically equivalent contracts

6.—(1) The FCA must establish position limits in accordance with regulation 7 applying to—

- (a) commodity derivatives which are traded only on trading venues in the United Kingdom and economically equivalent over the counter contracts; and

(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.

- (b) commodity derivatives which are traded on trading venues in the EEA when the largest volume of trading in those contracts occurs on trading venues in the United Kingdom and economically equivalent over the counter contracts.
- (2) A person must not hold a position in respect of a contract to which a position limit applies which is in excess of the established limit.
- (3) Paragraph (2) applies—
- (a) regardless as to whether the person is in the United Kingdom or not in respect of a position limit established by the FCA; and
 - (b) in respect of a position limit established by a competent authority other than the FCA in accordance with Article 57 of the markets in financial instruments directive.
- (4) When calculating the position a person holds for the purposes of paragraph (2) positions approved in accordance with Article 57.12.f of the markets in financial instruments directive in a contract held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity must not be counted.
- (5) Where—
- (a) the FCA establishes a position limit for the purposes of paragraph (1)(b); or
 - (b) another competent authority establishes a position limit in relation to a commodity derivative and economically equivalent over the counter contracts which are traded in the United Kingdom,
- the FCA must exchange relevant data with the other competent authorities where the contracts are traded in order to enable monitoring and enforcement of the established position limit for those contracts.
- (6) When the circumstances in paragraph (7) arise the FCA may bring the matter to ESMA's attention for consideration in accordance with Article 19 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).
- (7) The circumstances for the purposes of paragraph (6) are when the FCA disagrees with—
- (a) a position limit another competent authority has established;
 - (b) a position limit another competent authority intends to establish; or
 - (c) another competent authority's decision not to establish a position limit.

Establishing position limits

- 7.—(1) The FCA must establish position limits—
- (a) unless paragraph (6) applies, in accordance with the methodology determined by ESMA under Article 57.3 of the markets in financial instruments directive;
 - (b) 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—
 - (i) prevent market abuse; and
 - (ii) support orderly pricing and settlement conditions, which includes, but is not restricted to—
 - (aa) preventing market distorting positions; and
 - (bb) 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

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

- (c) which take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading.
- (2) Position limits established by the FCA must—
 - (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.
- (3) The FCA must review a position limit it has established 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.
- (4) 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).
- (5) 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) re-establish 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.
- (6) The FCA may only establish position limits which are more restrictive than would be permitted using the ESMA methodology mentioned in paragraph (1)(a) in exceptional cases where more restrictive position limits are objectively justified, taking into account the liquidity of the specific market and the orderly functioning of that market.
- (7) Where the FCA establishes a more restrictive limit in accordance with paragraph (6) 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.
- (8) 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 position limits and position management controls

- 8. The FCA must notify ESMA of the—
 - (a) position limits it establishes under regulation 6; 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

- 9. The FCA may require a person to provide information on, or concerning, a position the person holds in a contract to which an established position limit relates.

Power to intervene

- 10.—(1) The FCA may—
 - (a) limit the ability of any person to enter into a contract for a commodity derivative;

- (b) restrict the size of position any person may hold in such a contract; or
- (c) require any 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) 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.

(3) If the FCA imposes a restriction or requires a reduction under paragraph (1) it must issue a notice to the person.

(4) Section 395 (the FCA's and PRA's procedures) of the Act applies to a notice given under paragraph (3) as if the notice were a supervisory notice under that section.

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

PART 4

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

Algorithmic trading

11.—(1) This regulation applies to a person established in the United Kingdom engaging in algorithmic trading—

- (a) who is not authorised to perform investment services and activities under Part 4A of the Act;
- (b) who is a member or participant of a regulated market or multilateral trading facility; and
- (c) to whom Article 2.1.a, e, i or j of the markets in financial instrument directive applies.

(2) The person must have in place effective systems and controls, suitable to the business the person operates, to ensure that their trading systems—

- (a) are resilient and have sufficient capacity;
- (b) are subject to appropriate trading thresholds and limits;
- (c) prevent the sending of erroneous controls, or the systems otherwise functioning, in a way that may create or contribute to a disorderly market; and
- (d) cannot be used for any purpose that is contrary to the markets in financial instruments regulation.

(3) The person must—

- (a) have in place effective business continuity arrangements to deal with any failure of the person's trading systems; and
- (b) ensure that the person's systems are fully tested and properly monitored to ensure the person meet the requirements of this regulation.

(4) The person must notify—

- (a) the FCA that the person is engaging in algorithmic trading; and
- (b) the competent authority of a regulated market or multilateral trading facility in another EEA State where the person engages in algorithmic trading as a member or participant of that venue.

(5) The FCA may require the person to provide on a regular or ad hoc basis—

- (a) a description of the nature of the person's algorithmic trading strategies;
- (b) details of the trading parameters or limits to which the person's system is subject;

- (c) evidence that the requirements in paragraphs (2) and (3) are met;
 - (d) details of the testing of the person's systems;
 - (e) the information stored in accordance with paragraph (7)(b); and
 - (f) any further information about the person's algorithmic trading and systems used for that trading.
- (6) The FCA must provide, upon request, any information which it receives under paragraph (5) to a competent authority of a trading venue in another EEA State where the person is engaging in algorithmic trading as a member or participant on that venue.
- (7) The person must—
- (a) arrange for records to be kept to enable it to meet any requirements imposed on it under paragraph (5); and
 - (b) store accurate and time sequenced records of all its placed orders, including cancelled orders, executed orders and quotations on trading venues.
- (8) Where the person engages in algorithmic trading to pursue a market making strategy the person must—
- (a) carry out market making continuously during a specified proportion of the regulated market's or multilateral trading facility's trading hours with the result of providing liquidity on a regular and predictable basis to that trading venue, except in exceptional circumstances;
 - (b) enter into a binding written agreement with the regulated market or multilateral trading 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).
- (9) When meeting the requirements in paragraph (8) the person must take into account—
- (a) the liquidity, scale and nature of the specific market; and
 - (b) the characteristics of the instrument traded.
- (10) For the purposes of paragraph (8) a person pursues a market making strategy where—
- (a) the person is a member or participant of one or more regulated markets or multilateral trading facilities;
 - (b) the person'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 regulated market or multilateral trading facility, or across different regulated markets or multilateral trading facilities; and
 - (c) the result is providing liquidity on a regular and frequent basis to the overall market.

Direct electronic access

- 12.—**(1) This regulation applies to a person established in the United Kingdom—
- (a) who is not authorised to perform investment services and activities under Part 4A of the Act;
 - (b) who is a member or participant of a regulated market or multilateral trading facility; and
 - (c) to whom Article 2.1.a, e, i or j of the markets in financial instrument directive applies,
- providing the service of direct electronic access to a regulated market or a multilateral trading facility.
- (2) The person must—
- (a) have in place systems which—
 - (i) enable the person to assess and review the suitability of clients using the service;
 - (ii) prevent clients using the service from exceeding appropriate pre-set trading and credit thresholds; and

- (iii) have risk controls to prevent trading by clients which—
 - (aa) may create risks to the clients themselves;
 - (bb) may create, or contribute to, a disorderly market; or
 - (cc) would be contrary to the markets in financial instruments regulation;
- (b) monitor the transactions made by clients using the service to identify—
 - (i) infringements of the rules of the regulated market or a multilateral trading facility;
 - (ii) disorderly trading conditions; or
 - (iii) conduct which may involve market abuse and which is to be reported to the FCA;
- (c) have a binding written agreement with each client which—
 - (i) details the rights and obligations of both parties arising from the provision of the service; and
 - (ii) states that the person 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
- (d) notify—
 - (i) the FCA that the person is providing direct electronic access services; and
 - (ii) the competent authority of any regulated market or a multilateral trading facility in the EEA to which the person provides direct electronic access services that the person is doing so.
- (3) The FCA may on a regular or ad hoc basis require the person to provide—
 - (a) a description of the systems mentioned in paragraph (2)(a) to (c);
 - (b) evidence that those systems have been applied; and
 - (c) the information stored in accordance with paragraph (4).
- (4) The person must arrange for records to be kept—
 - (i) on the matters referred to in paragraph (2)(a) to (c); and
 - (ii) to enable them to meet any requirement imposed on them under paragraph (3).
- (5) The FCA must provide, upon request, any information which it receives under paragraph (3) to the competent authority of a regulated market or a multilateral trading facility in another EEA State where the person is providing direct electronic access on that venue.

Acting as a general clearing member

- 13.—**(1) This section applies to a person established in the United Kingdom—
- (a) who is not authorised to perform investment services and activities under Part 4A of the Act;
 - (b) who is a member or participant of a regulated market or multilateral trading facility; and
 - (c) to whom Article 2.1.a, e, i or j of the markets in financial instrument directive applies,
- providing the service of acting as a general clearing member for another person (“clearing services”).
- (2) The person must—
- (a) have clear criteria as to the suitability requirements of persons to whom clearing services will be provided to;
 - (b) apply those criteria;
 - (c) impose requirements on the persons to whom clearing services are being provided to reduce risks to those persons and to the market; and

- (d) 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.

Synchronisation of business clocks

14.—(1) This section applies to a person who is member or participant of a trading venue established in the United Kingdom—

- (a) who is not authorised to perform investment services and activities under Part 4A of the Act; and
- (b) to whom a recognition order made under section 290 (recognition orders) of the Act does not relate.

(2) A person to whom this regulation applies must synchronise the business clocks it uses to record the date and time of any reportable event in accordance with regulatory technical standards made under Article 50 of the markets in financial instruments directive.

Imposition of requirements

15.—(1) This regulation applies to persons to whom regulation 11, 12 or 13 applies.

(2) The FCA may impose a requirement mentioned in paragraph (3) on a person if it appears to it 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.

(3) 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.

(4) A requirement imposed under paragraph (3) 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).

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

(6) Section 395 of the Act applies to a notice given under paragraph (5) as if the notice were a supervisory notice under that section.

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

PART 5

Administration and enforcement of Parts 3 and 4

Functions of the FCA

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

(2) In discharging its functions 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; and
- (b) advances one or more of its operational objectives as defined in section 1B(3) of the Act.

Monitoring and enforcement

17.—(1) The FCA must maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under Part 3 or 4 of these Regulations are complying with them.

(2) The FCA must also maintain arrangements for enforcing the provisions of Parts 3 and 4 of these Regulations.

Co-operation

18. The FCA must take such steps as it considers appropriate to co-operate with persons who have functions similar to the FCA under these Regulations.

Penalties

19. Paragraphs 19 to 22 (penalties) of Schedule 1ZA to the Act(a) apply with respect to the discharge of the FCA's functions under these Regulations with the following modifications—

- (a) the reference to the Act in each of paragraphs 19, 20(2), 20(3)(b), 20(5)(a), 20(8)(a) and 21(1) includes a reference to these Regulations; and
- (b) the FCA's enforcement powers referred to in paragraph 20(4) include its powers under these Regulations.

Fees

20. Paragraph 23 (fees) of Schedule 1ZA to the Act applies with respect to the discharge by the FCA of its functions under these Regulations with the following modifications—

- (a) the qualifying functions of the FCA referred to in sub-paragraphs (1) and (2) include its functions under these Regulations; and
- (b) the reference to the Act in each of sub-paragraphs (7) and (8) includes a reference to these Regulations.

Guidance

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

- (a) the operation of Parts 3 and 4 of these Regulations;
- (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; or

(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.

- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Exemption from liability in damages

22. Paragraph 25 (exemption from liability in damages) of Schedule 1ZA to the Act applies with respect to the discharge or purported discharge of the FCA's functions under these Regulations with the following modifications—

- (a) the reference to the FCA's functions in sub-paragraph (1) includes a reference to its functions under these Regulations; and
- (b) the reference in sub-paragraph (2) to sections 166 to 169 includes a reference to those sections as applied by these Regulations.

Reporting requirements

23.—(1) A person (P) must provide the FCA with such information in respect of its compliance or non-compliance with any requirement under Part 3 or 4 of these Regulations 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.

Restrictions on disclosure of information

24. Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc), 349 (exceptions from section 348), and 352 (offences) of the Act^(a) apply in relation to the functions of the FCA under these Regulations with the following modifications—

- (a) each reference to the Act in those sections includes a reference to these Regulations;
- (b) the reference in section 348(5)(d) to sections 166A and 166 of that Act includes a reference to those sections as applied by these Regulations; and
- (c) the reference in section 348(6)(b) to a competent person refers to a competent person appointed by the FCA to conduct an investigation under Part 11 of the Act as applied by these Regulations.

Disclosure of confidential information

25. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001^(b) apply in relation to the functions of the FCA under these Regulations.

Investigations under Part 11 of the Act

26.—(1) Part 11 (information gathering and investigations) of the Act^(c) applies with respect to the discharge by the FCA of its functions under these Regulations as if in that Part—

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- (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).
 - (b) 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.
 - (c) 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.

- (a) each reference to the Act included a reference to these Regulations;
 - (b) each reference to an authorised person were a reference to a person in respect of whom a requirement is imposed by or under Part 3 or 4 of these Regulations;
 - (c) each reference to the PRA were omitted;
 - (d) each reference to either regulator were a reference to the FCA only; and
 - (e) each of sections 165A (PRA's power to require information: financial stability), 165B (safeguards etc in relation to exercise of power under section 165A), 165C (orders under section 165A(2)(d)), 169A (support of overseas regulator with respect to financial stability) and 173 (powers of persons appointed as a result of section 168(2)) were omitted.
- (2) With respect to the discharge by the FCA of its functions under these Regulations—
- (a) section 165 (regulators' power to require information: authorised persons etc.) of the Act applies as if in subsection (7), paragraph (b) were omitted;
 - (b) section 166A (appointment of skilled person to collect and update information) of the Act applies as if—
 - (i) each reference to a requirement with respect to information included a reference to a requirement by or under Part 3 or 4 of these Regulations with respect to information; and
 - (ii) subsection (10) were omitted;
 - (c) section 167 (appointment of persons to carry out general investigations) of the Act applies as if in subsection (5A), paragraphs (a) and (c) and in paragraph (b) the words “or the PRA” were omitted;
 - (d) section 168 (appointment of persons to carry out investigations in particular cases) of the Act applies as if—
 - (i) in subsection (1) for paragraph (b) the following were substituted—

“(b) 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 2016.”;
 - (ii) in subsection (3) for “investigating authority” the term “FCA” were substituted; and
 - (iii) subsections (2), (4), (5) and (6) were omitted;
 - (e) section 169 (investigations etc in support of overseas regulator) 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 2016.”;
 - (f) section 170 (investigations: general) of the Act applies as if—
 - (i) in subsection (1) “or (5)” were omitted;
 - (ii) in subsection (3)(a) “or (4)” were omitted;
 - (iii) subsection (3)(b) and the preceding “; or” were omitted; and
 - (iv) for subsection (10) the following were substituted—

“(10) “Investigating authority”, in relation to an investigator, means the FCA.”;
 - (g) section 171 (powers of persons appointed under section 167) of the Act applies as if subsections (3A) and (7) were omitted;
 - (h) section 172 (additional power of persons appointed as a result of section 168(1) or (4)) of the Act applies as if in subsection (4) “or (4)” were omitted;
 - (i) section 174 (admissibility of statements made to investigators) of the Act applies as if in subsection (5) “, 173” were omitted;

- (j) section 175 (information and documents: supplemental provisions) applies as if in subsection (8) “or (5)” were omitted; and
- (k) section 176 (entry of premises under warrant) of the Act applies as if—
 - (i) in subsection (1) “the Secretary of State,” were omitted and “first or second” were substituted for “first, second or third”;
 - (ii) in subsection (3)(a) “or an appointed representative” were omitted;
 - (iii) subsection (4) were omitted; and
 - (iv) in subsection (11)—
 - (aa) in paragraph (a) “87C, 87J,” and “,165A, 169A” were omitted; and
 - (bb) in paragraph (b) “, 173” were omitted.

Public censure

27. If the FCA considers that a person has contravened a requirement under Part 3 or 4 of these Regulations, the FCA may publish a statement to that effect.

Financial penalties

28.—(1) If the FCA considers that a person has contravened a requirement under Part 3 or 4 of 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.

Injunctions

29.—(1) If on the application of the FCA, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a requirement imposed under Part 3 or 4 of these Regulations; or
- (b) that any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If on the application of the FCA, the court is satisfied—

- (a) that any person has contravened a requirement imposed under Part 3 or 4 of these Regulations; and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If on the application of the FCA, the court is satisfied that any person may have—

- (a) contravened a requirement imposed under Part 3 or 4 of these Regulations; or
- (b) been knowingly concerned in the contravention of such a requirement,

it may make an order restraining (or in Scotland an interdict prohibiting) them from disposing of, or otherwise dealing with, any assets of theirs which it is satisfied they are reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

Power of FCA to require restitution

30.—(1) The FCA may exercise the power in paragraph (2) if it is satisfied that a person (P) has contravened a requirement imposed under Part 3 or 4 of these Regulations, or has been knowingly concerned in the contravention of such a requirement, and that—

- (a) profits have accrued to P as a result of the contravention; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The power referred to in paragraph (1) is a power to require P, in accordance with such arrangements as the FCA considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the FCA to be just having regard—

- (a) in a case within paragraph (1)(a), to the profits appearing to the FCA to have accrued;
- (b) in a case within paragraph (1)(b), to the extent of the loss or other adverse effect; or
- (c) in a case within both of those paragraphs, to the profits appearing to the FCA to have accrued and to the extent of the loss or other adverse effect.

(3) In paragraph (2) “appropriate person” means a person appearing to the FCA to be someone—

- (a) to whom the profits mentioned in paragraph (1)(a) are attributable; or
- (b) who has suffered the loss or adverse effect mentioned in paragraph (1)(b).

Misleading the FCA

31.—(1) A person must not, for the purposes of compliance or purported compliance with a requirement under Part 3 or 4 of 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, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Restriction on penalties

32.—(1) A person who is convicted of an offence under these Regulations is not subsequently liable to a penalty under regulation 28 in respect of the same acts or omissions that constituted the offence.

(2) A person who is liable to a penalty under regulation 28 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.

Proceedings for offences

33.—(1) Proceedings for an offence under these Regulations may be instituted—

- (a) in England and Wales only by the FCA or by or with the consent of the Director of Public Prosecutions; or

- (b) in Northern Ireland only by the FCA or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Proceedings against unincorporated bodies

34.—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or other unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) A fine imposed on a partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(3) Rules of court relating to the service of documents are to have effect as if a partnership or association were a body corporate.

(4) In proceedings for an offence brought against a partnership or association—

- (a) section 33 (procedure on charge of offence against corporation) of the Criminal Justice Act 1925(a) and section 46 (corporations) of and Schedule 3 to the Magistrates' Courts Act 1980(b) apply as they do in relation to a body corporate;
- (b) sections 70 and 143 (proceedings against organisations) of the Criminal Procedure (Scotland) Act 1995(c) apply; and
- (c) section 18 (procedure on charge) of the Criminal Justice (Northern Ireland) Act 1945(d) and Schedule 4 (corporations) to the Magistrates' Courts (Northern Ireland) Order 1981(e) apply as they do in relation to a body corporate.

(5) Summary proceedings for an offence under regulation 31 may be taken—

- (a) against a body corporate or unincorporated association at any place at which it has a place of business; and
- (b) against an individual at any place where that individual is for the time being.

(6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

Requirement to issue warning notice

35.—(1) Where the FCA proposes to—

- (a) publish a statement under regulation 27;
- (b) impose a penalty under regulation 28; or
- (c) require restitution be paid under regulation 30,

it must give the person concerned a warning notice.

(2) The warning notice must set out the following—

- (a) in the case of a statement under regulation 27 the terms of the proposed statement;
- (b) in the case of a penalty under regulation 28 the amount of the proposed penalty; or
- (c) in the case of a requirement to pay restitution under regulation 30 the amount of the restitution and to whom it is to be paid.

(a) 1925 c.86. Section 33 was amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, the Courts Act 1971 (c.23), Schedule 8, and the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.

(b) 1980 c.43. Schedule 3 was amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4.

(c) 1995 c.46. Section 70 was amended by section 66 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13. Section 143 is amended by section 67 of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13, section 17 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 asp 6 and S.S.I. 2001/128.

(d) 1945 c.15.

(e) S.I. 1981/1675.

Requirement to issue decision notice

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

- (a) publish a statement under regulation 27;
- (b) impose a penalty under regulation 28; or
- (c) require restitution be paid under regulation 30,

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

(2) The decision notice must set out the following—

- (a) in the case of a statement under regulation 27 the terms of the statement;
- (b) in the case of a penalty under regulation 28 the amount of the penalty; or
- (c) in the case of a requirement to pay restitution under regulation 30 the amount of the restitution and to whom it is to be paid.

Notices: other interested parties and third party rights

37. After a statement under regulation 27 is published, the FCA must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) (third party rights) of the Act(a) (as applied by regulation 40).

Referral to Tribunal

38. If the FCA decides to—

- (a) publish a statement under regulation 27;
- (b) impose a penalty under regulation 28; or
- (c) require restitution be paid under regulation 30,

the person concerned may refer the matter to the Tribunal.

Statements of policy

39.—(1) Sections 69 (statements of policy) and 70 (statements of policy: procedure) of the Act(b) apply in relation to the preparation and issuance by the FCA of statements of policy with respect to—

- (a) the imposition of penalties under regulation 28; and
- (b) the amount of penalties imposed under regulation 28,

as they apply in relation to the preparation and issuance by the FCA of statements of policy with respect to action the FCA may take under section 66 (disciplinary powers) of the Act(c).

(2) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the Act(d) apply in relation to the preparation and issuance by the FCA of statements of policy with respect to—

- (a) the imposition of penalties under regulation 28; and

(a) Section 393(4) was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.
(b) Section 69 was amended by paragraph 10 of Schedule 2 to the Financial Services Act 2010, paragraph 17 of Schedule 5 to the Financial Services Act 2012, and paragraph 7 of Schedule 3 to the Financial Services (Banking Reform) Act 2013. Section 70 was amended by paragraph 18 of Schedule 5 to the Financial Services Act 2012.
(c) Section 66 was amended by section 12 of and paragraph 8 of Schedule 2 to the Financial Services Act 2010, paragraph 14 of Schedule 5 to the Financial Services Act 2012, sections 28 and 32 of and paragraph 5 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1773.
(d) Section 210 was amended by paragraph 20 of Schedule 2 to the Financial Services Act 2010 and paragraph 17 of Schedule 9 to the Financial Services Act 2012. Section 211 was amended by paragraph 18 of Schedule 9 to the Financial Services Act 2012.

(b) the amount of penalties imposed under regulation 28,
as they apply in relation to the preparation and issuance by the FCA of statements of policy with respect to action the FCA may take under Part 14 (disciplinary measures) of the Act(a).

Application of Part 26 of the Act

40.—(1) Part 26 (notices) of the Act(b) applies with respect to the discharge by the FCA of its functions under regulations 10, 15, 27, 28 and 30 as if references to the PRA in that Part were omitted.

(2) With respect to the discharge by the FCA of its functions under regulations 27, 28 and 30—

(a) section 387 (warning notices) of the Act applies as if subsections (1A) and (3A) were omitted;

(b) section 388 (decision notices) of the Act applies as if subsection (1A) were omitted;

(c) section 390 (final notices) of the Act applies as if—

(i) in subsection (7) for “In any other case, the” the word “The” were substituted; and

(ii) in subsection (8) the words “or (6)(c)” were omitted;

(d) section 391 (publication) of the Act applies as if—

(i) subsections (1), (1ZB), (5A), (6A), (7A), (7B), (10) and (11) were omitted; and

(ii) for subsection (1ZA) there were substituted—

“(1ZA) Neither the FCA nor a person to whom a warning notice is given or copied may publish the notice or any details concerning it.”;

(e) sections 393 (third party rights) and 394 (access to FCA or PRA material) of the Act apply in respect of a warning notice or a decision notice given in accordance with these Regulations; and

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

(i) for subsection (1) 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 supervisory notice, warning notice or decision notice.”;

(ii) for subsection (2) there were substituted—

“(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.”;

(iii) subsections (3), (4), (9A) and (13) were omitted; and

(iv) 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.

(a) Part 14 was amended by sections 9 and 10 of and Schedule 2 to the Financial Services Act 2010, Schedule 9 to the Financial Services Act 2012 and S.I. 2013/1773.

(b) Part 26 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), sections 13 and 24 of and paragraphs 28 and 29 of Schedule 2 to the Financial Services Act 2010, sections 17, 18, 19 and 24 of and paragraph 37 of Schedule 8, Schedule 9 and paragraph 8 of Schedule 13 to the Financial Services Act 2012, section 4 of and Schedule 3 to the Financial Services (Banking Reform) Act 2013, 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.

Service of notices

41. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001^(a) (“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.

The Tribunal

42.—(1) Part 9 (hearings and appeals) of the Act^(b) 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 following modifications.

(2) Section 133 (proceedings before the Tribunal: general provision) of the Act applies in relation to relevant proceedings as if—

- (a) references to decisions included references to decisions of the FCA only; and
- (b) any of the following decisions was a “disciplinary reference” within the meaning of subsection (7A)—
 - (i) a decision to publish a statement under regulation 27;
 - (ii) a decision to impose a penalty under regulation 28; and
 - (iii) a decision to require restitution be paid under regulation 30.

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

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

“(1) In determining in accordance with section 133(5) (as applied by the Financial Services and Markets 2000 (Markets in Financial Instruments) Regulations 2016) 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 applies as if references to decisions included references to decisions of the FCA only.

Directly applicable EU regulations

43. 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.

^(a) S.I. 2001/1420.

^(b) 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.

PART 6

Amendments to legislation

Amendments to primary and secondary legislation

- 44.**—(1) Schedule 1, which contains amendments to the Act, has effect.
(2) Schedule 2, which contains amendments to secondary legislation, has effect.

Revocation

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

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Regulation 44(1)

Amendments to the Act

1. The Act is amended as follows.
2. In section 39 (exemption of appointed representatives)—
 - (a) in subsection (1B)(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 subsection (1B)(b);
 - (c) in subsection (7)(a) for “4.1.25”, substitute “4.1.29”; and
 - (d) in subsection (8) in the definition of “competent authority” for “4.1.22”, substitute “4.1.26”.
3. In section 39A (certain tied agents operating outside the United Kingdom)—
 - (a) for subsection (1)(a)(ii), substitute—

“(ii) “in another EEA State; and”;
 - (b) in subsection (6)—
 - (i) in paragraph (c) after “347(1)(ha),”, insert “or is not entered on the register of tied agents of another EEA State maintained in that State pursuant to Article 29 of the markets in financial instruments directive,”; and
 - (ii) in paragraph (d) after “record,”, insert “or the register of another EEA State,”;
 - (c) in subsection (8)(a) for “4.1.25”, substitute “4.1.29”; and
 - (d) in subsection (9) in the definition of “competent authority” for “4.1.22”, substitute “4.1.26”.

(a) S.I. 2007/126.

4. In section 55K(1)(d) (investment firms: particular conditions that enable cancellation) after “that Chapter,”, insert “or the markets in financial instruments regulation,”.
5. 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.”.
6. 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”;
 - (c) omit paragraph (d).
7. 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;”.
8. 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”.
9. 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;”.
10. In section 137R(5) (financial promotion rules) for paragraph (b)(i) and (ii), substitute—

“(i) Article 24 or 25 of the markets in financial instruments directive, or”.
11. In section 184(4)(a) (disregarded holdings) for “4.1(8)”, substitute “4.1.7”.
12. In section 194A(1)(b) (contravention by relevant EEA firm with UK branch requirement) for “62.2”, substitute “86.2”.
13. In section 195A(1)(a) (contravention by relevant EEA firm of directive requirements) for “62.1 or 62.3”, substitute “86.1 or 86.3”.
14. Omit section 286(4A) to (4E) (qualification for recognition).
15. In section 290 (recognition orders)—
 - (a) in subsection (1A) after “markets in financial instruments directive”, insert “or the markets in financial instruments regulation”; and
 - (b) after paragraph (7), insert—

“(8) The appropriate regulator must notify ESMA of the making of a recognition order under subsection (1)(a).”.
16. 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”.
17. 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.”.

18. 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.”.

19. In section 301E(4)(a) (disregarded holdings) for “4.1(8)”, substitute “4.1.7”.

20. In section 312B(1) (removal of passport rights from EEA market operator) for “or multilateral trading facility”, substitute “, a multilateral trading facility or an organised trading facility”.

21. In section 312C (exercise of passport rights by recognised investment exchange)—

- (a) in subsection (1) for “regulated market or multilateral trading facility”, substitute “trading venue”;
- (b) in subsection (5)—
 - (i) in paragraph (a)—
 - (aa) for “31.6”, substitute “34.7”; and
 - (bb) after “multilateral trading facility”, insert “or an organised trading facility”; and
 - (ii) in paragraph (b) for “the third sub-paragraph of Article 42.6”, substitute “ Article 53.6”; and
- (c) in subsection (7) for “4.1.22”, substitute “4.1.26”.

22. in section 312D (interpretation of Chapter 3A of Part 18)—

- (a) in paragraph (a) for “Article 31.5”, substitute “or an organised trading facility, Article 34.6”;
- (b) in paragraph (b) for “42.6”, substitute “ 53.6”;
- (c) in the definition of “EEA market operator” for “4.1.13”, substitute “4.1.18”; and

- (d) in the definition of “home state regulator” for “4.1.22”, substitute “4.1.26”.

23. 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; and
- (c) in the appropriate place, insert—
 - ““organised trading facility” has the meaning given in Article 4.1.23 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;”;
 - and
 - ““trading venue” means a multilateral trading facility, a regulated market or an organised trading facility;”.

24. In section 313C (notification in relation to suspension or removal of a financial instrument from trading)—

- (a) in subsection (1) for “regulated market”, substitute “trading venue”.
- (b) 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.”; and
- (c) in subsection (6) for “4.1.22”, substitute “4.1.26”.

25. 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—
 - ““organised trading facility” has the meaning given in Article 4.1.23 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 multilateral trading facility, a regulated market or an organised trading facility.”.

26. In section 347 (the record of authorised persons etc)—

- (a) in subsection (2A)(c) for “23.3”, substitute “29.3”;
- (b) after subsection (4), insert—
 - “(4A) 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.
 - (4B) Subsection (5) and (6) apply to the list mentioned in subsection (4A) as if it were the record.”.
- (c) 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.”.

27. 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.
- (3AA) 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 ”.

28. In section 391(7B)(d) (publication) after “directive”, insert “, the markets in financial instruments regulation and any directly applicable EU regulation made under it”.

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

- “(ca) the markets in financial instruments regulation;”.

30. Omit section 405(5)(a) (directions).

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

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

““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;”.

33. In section 422A(4)(a) (disregarded holdings) for “4.1(8)”, substitute “4.1.7”.

34. In section 424A(5)(b) (investment firm) for “4.1.20”, substitute “4.1.55”.

35. 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”.

36. 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 44(2)

PART 1

Amendment of the Recognition Regulations

1. The Recognition Regulations are amended as follows.

2. In regulation 3 (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”; and

(f) at the appropriate place, insert—

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

(ii) ““certificate” has the meaning given in Article 4.1.47 of the markets in financial instruments directive;”;

- (iii) ““depository receipt” has the meaning given in Article 4.1.45 of the markets in financial instruments directive;”;
- (iv) ““derivative” means a financial instrument listed in Section C(4) to (10) of Annex 1 of the markets in financial instruments directive;”;
- (v) ““direct electronic access” has the meaning given in Article 4.1.41 of the markets in financial instruments directive;”;
- (vi) ““exchange-traded fund” has the meaning given in Article 4.1.46 of the markets in financial instruments directive;”;
- (vii) ““high frequency algorithmic trading technique” has the meaning given in Article 4.1.40 of the markets in financial instruments directive;”;
- (viii) ““liquid market” has the meaning given in Article 4.1.25 of the markets in financial instruments directive;”;
- (ix) ““management body” has the meaning given in Article 4.1.36 of the markets in financial instruments directive;”;
- (x) ““matched principal trading” has the meaning given in Article 4.1.38 of the markets in financial instruments directive;”;
- (xi) ““multilateral system” has the meaning given as in Article 4.1.19 of the markets in financial instruments directive;”;
- (xii) ““organised trading facility” has the meaning given in Article 4.1.23 of the markets in financial instruments directive;”;
- (xiii) ““systematic internaliser” has the meaning given in Article 4.1.20 of the markets in financial instruments directive;”;
- (xiv) ““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 (suitability), substitute—

“(3) The persons on 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 knowledge, skills and experience in order to understand the exchange’s activities and main risks.

(3) Persons on the management body must—

- (a) commit sufficient time to perform their functions on the management body;
- (b) act with honesty, integrity and independence of mind; and
- (c) effectively—

(i) assess and challenge, where necessary, the decisions of the senior management; and

(ii) oversee and monitor decision making.

(4) The management body must—

- (a) implement governance and organisational arrangements of the exchange to ensure its effective and prudent management 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 persons on the management body;
 - (b) ensure that the management body has access to the information it requires to perform its functions;
 - (c) engage a broad set of qualities and competences when recruiting persons to the management body;
 - (d) have a policy promoting diversity on the management body; and
 - (e) notify the FCA of the identity of all the persons on its management body.

2B.—(1) If an exchange is significant the following requirements apply to the management body—

- (a) persons on the management body must not at the same time hold positions exceeding the following combinations—
 - (i) one executive directorship with two non-executive directorships; or
 - (ii) four 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 held within the same group 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) For the purposes of sub-paragraph (1)(b), the nomination committee must—
- (a) be composed of persons on 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) periodically review the policy of the management body for the selection and appointment of senior management and make recommendations to the management body; and
 - (e) 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
- (e) have a policy promoting diversity on the management body.”.

6. In paragraph 3 of the Schedule (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) 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;
- (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)(o) the exchange must provide environments to facilitate such testing.

- (4) 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;
 - (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.
- (5) A written agreement of the kind mentioned in sub-paragraph (4)(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 (4)(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 regulated market on a regular and predictable basis.
- (6) 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.
- (7) For the purposes of sub-paragraph (6) the exchange must ensure that the parameters for halting trading are calibrated in a way which takes into account the—
- (a) liquidity of different asset classes and subclasses;
 - (b) nature of the trading venue market model; and
 - (c) types of users,
- to ensure the parameters avoid significant disruptions to the orderliness of trading.
- (8) The exchange must report the parameters mentioned in sub-paragraph (7) to the FCA in a format to be specified by the FCA.
- (9) If a regulated market operated by the exchange is material in terms of liquidity of the trading of a financial instrument in the EEA and trading is halted in that instrument it must have systems and procedures in place to ensure that it notifies the FCA.
- (10) Where the exchange permits direct electronic access to a trading venue it operates it must—
- (a) ensure that members or participants of that trading venue are only permitted to provide such services if they are—
 - (i) investment firms authorised in accordance with the markets in financial instruments directive; or
 - (ii) credit institutions authorised in accordance with the capital requirements directive;
 - (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 the member or participant of 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 or participant in the case of non-compliance with this sub-paragraph.
- (11) The exchange's rules on colocation services must be transparent, fair and non-discriminatory.
- (12) 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.
- (13) Nothing in sub-paragraph (12) 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 for placing an order which is cancelled than an order which is executed;
 - (d) imposing a higher fee on participants placing a high ratio of cancelled orders to executed orders; or
 - (e) imposing a higher fee on a person operating a high-frequency algorithmic trading technique.
- (14) 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.
- (15) 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 as required by a regulated technical standard made under Article 49.3 or 4 of the markets in financial instruments directive which is traded on that trading venue.
- (16) 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.
- (17) Nothing in sub-paragraph (15) or (16) requires the exchange to act inconsistently with any regulatory technical standards made under Article 49.3 or 4 of the markets in financial instruments directive.
- (18) 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 made under Article 50 of the markets in financial instruments directive.”.

7. In paragraph 4 of the Schedule—

- (a) in sub-paragraph (2)(aa), delete “”and non-discretionary””; and

(b) in sub-paragraph (2)(ea) in both places for “financial markets”, substitute “trading venues”.

8. In paragraph 4(2)(a) and 7B(2)(b) of the Schedule for “the market”, substitute “its trading venues”.

9. Omit paragraphs 4A and 4B of the Schedule.

10. Omit paragraph 7A(2) to (11) of the Schedule.

11. In paragraphs 7A(1), 7B(2)(d), 7B(2)(e), and 7B(4) of the Schedule for “financial market”, substitute “trading venue”.

12. Omit paragraphs 7B(3), 7D and 7E of the Schedule.

13. After paragraph 7B of the Schedule (access to the exchange’s facilities), 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 and to unilaterally take action to ensure the termination or reduction if the person does not comply; and
- (d) 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 and 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 made by the European Commission in accordance with Article 58.6 of the markets in financial instruments directive, make 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) investment funds, either as an undertaking for collective investments in transferable securities as defined in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS) (recast), or an alternative investment fund or alternative investment fund manager as defined in Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;
 - (c) other financial institutions, including insurance undertakings and reinsurance undertakings as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (recast) 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) commercial undertakings; or
 - (e) in the case of emission allowances, or emission allowance derivatives, operators 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.”.

14. In paragraph 7E of the Schedule for “regulated market”, substitute “trading venue”.

15. After paragraph 7E of the Schedule, insert—

“**7F.**—(1) 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 of trading of that financial instrument.

(2) 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 (1), it must make that decision public and notify the FCA.

(3) 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 (1), following a decision made under sub-paragraph (1), it must make that decision public and notify the FCA.”.

16. After paragraph 9 of the Schedule (complaints), insert—

“Multilateral systems

9ZA. An exchange must only operate a multilateral system as a regulated market, a multilateral trading facility or an organised trading facility.”.

17. in paragraph 9A of the Schedule—

- (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) for sub-paragraph (2), substitute—

“(2) 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.”; and

- (d) for sub-paragraph (3), substitute—

“(3) 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.”.

18. After paragraph 9A of the Schedule, insert—

“Specific requirements for regulated markets

10. An exchange must—

- (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.

11.—(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 users of a regulated market operated by it to obtain access to information made public under the disclosure obligations.

(5) The exchange must maintain arrangements to regularly review whether financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.

(6) 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; or
- (c) a person who—
 - (i) is fit and proper;
 - (ii) has a sufficient level of trading ability and competence;
 - (iii) where applicable, has adequate organisational requirements; and
 - (iv) has sufficient resources for the role they are to perform, taking account of the exchanges arrangements under sub-paragraph (7).

(7) The exchange must ensure that it has arrangements, which comply with paragraph 7D, to secure the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on a regulated market operated by it (being rights and liabilities in relation to those transactions).

(8) 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 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; and

“the relevant articles” means—

- (a) Articles 17, 18 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 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;
- (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) Community legislation made under the provisions mentioned in paragraphs (a) to (c).

Specific requirements for multilateral trading facilities

12. 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 propriety capital; or

- (ii) engage in matched principal trading.

13.—(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 that 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) 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; or
- (c) a person who—
 - (i) is fit and proper;
 - (ii) has a sufficient level of trading ability and competence;
 - (iii) where applicable, has adequate organisational requirements; and
 - (iv) has sufficient resources for the role they are to perform, taking account of the exchange's arrangements under sub-paragraph (4).

(4) The exchange must ensure that it has arrangements, which comply with paragraph 7D, to secure the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on a multilateral trading facility operated by it (being rights and liabilities in relation to those transactions).

(5) In this paragraph “the disclosure obligations” and “the relevant articles” have the same meaning as in paragraph 11(8).

SME growth markets

14. An exchange operating a multilateral trading facility may register that facility as an SME growth market in accordance with Article 33 of the markets in financial instruments directive if it complies with rules made by FCA for that purpose.

Specific requirements for organised trading facilities

15.—(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); and
- (c) ensure that the organised trading facility does not connect with another organised trading facility or with a systematic internaliser in a way which enables orders in the different organised trading facilities or systematic internaliser to interact.

(2) An exchange may only engage in—

- (a) matched principal trading on an organised trading facility operated by it in respect of bonds, structured finance products, emission allowances and derivatives which have not been declared subject to the clearing obligation in accordance with Article 5 of Regulation (EU) No 648/2012 of the European Parliament and Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, 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.
- (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 of two or more orders it wants to match.
- (8) Subject to the requirements of this paragraph 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.

16.—(1) 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.

(2) 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.

(3) In this paragraph "the disclosure obligations" and "the relevant articles" have the same meaning as in paragraph 11(8).

17.—(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.

18.—(1) An exchange providing data reporting services must comply with Title V of the markets in financial instruments directive.”.

PART 2

Consequential amendments to other statutory instruments made under the Financial Services and Markets Act 2000

19. In the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Activities) Order 2001(**a**)—

- (a) in article (3) (interpretation) in the definition of “regulated market” for “4.1.14”, substitute “4.1.21”; and
- (b) in article 5(2) and (3) (qualifying investments) for “4.1.17”, substitute “4.1.15”.

20. In the Financial Services and Markets Act 2000 (Exemption) Order 2001(**b**)—

- (a) after article 5(1)(ca) (exempt persons), insert—
 - “(cb) article 25DA (operating an organised trading facility);”;
- (b) in paragraph 42 (gas industry) of the Schedule—
 - (i) in sub-paragraph (1)—
 - (aa) for “or 25D”, substitute “, 25D or 25DA”; and
 - (bb) for “or operating a multilateral trading facility”, substitute “, operating a multilateral trading facility or operating an organised trading facility”;
 - (ii) in sub-paragraph (2)—
 - (aa) for “or 25D”, substitute “, 25D or 25DA”; and
 - (bb) for “or operating a multilateral trading facility”, substitute “, operating a multilateral trading facility an operating a organised trading facility”; and
- (c) in paragraph 49 (electricity industry) of the Schedule—
 - (i) in sub-paragraph (1)—
 - (aa) after “25D”, insert “, 25DA”; and
 - (bb) after “operating a multilateral trading facility”, insert “, operating an organised trading facility”;
 - (ii) in sub-paragraphs (2), (4) and (5) for “or 25D”, substitute “, 25D or 25DA”; and
 - (iii) in sub-paragraph (3) after “25D”, insert “, 25DA”.

21. In regulation 2(1B) (businesses for which appointed persons are exempt) of the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(**c**) for “1.10 and 1.17”, substitute “1.9 and 1.15”.

22. In the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**d**)—

- (a) in regulation 2 (interpretation) in the definition of—

(a) S.I. 2001/996. The definition of “regulated markets” was inserted by S.I. 2005/381 and articles 5(2) and (3) were inserted by S.I. 2011/2699. Other amendments are not relevant here.

(b) S.I.2001/1201. Article 5 and paragraphs 42 and 49 of the Schedule were amended by S.I. 2007/125. Other amendments are not relevant here.

(c) S.I. 2001/1217. Regulation 2(1B) was inserted by S.I. 2006/3414. Other amendments are not relevant here.

(d) S.I. 2001/2188. Regulations 2, 8 and 9 were amended by S.I. 2006/34113. Regulation 9 was also amended by S.I. 2013/1773. Other amendments are not relevant here.

- (i) “markets in financial instruments directive information” after “markets in financial instruments directive”, insert “and markets in financial instruments regulation”;
- (ii) “single market information” after “markets in financial instruments directive”, insert “, markets in financial instruments regulation”;
- (iii) “single market restrictions” in paragraph (a) for “54 and 58”, substitute “76 and 81”;
- (b) 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”;and
- (c) in regulation 9(3A)(a) and 11(d)(i) for “article 58.1”, substitute “article 81.1”.

23. In regulation 3(2ZA) (contents of regulator’s notice) of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(a) for “31.5”, substitute “34.6”.

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 3 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 4 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

(a) S.I. 2001/2511. Regulation 3(2ZA) was inserted by S.I. 2006/3414. Other amendments are not relevant here.

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 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, including through the facilitation of negotiations between trading parties. 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.