EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Act.

1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

2.1 The instrument contains a range of measures to address deficiencies in retained EU law by:

(a) Remedying the territorial application of the Payment Services Regulations. This will require a small payment institution applicant to demonstrate that where it has "close links" with a person outside the UK that there is nothing which would impede the FCA's effective supervision of the applicant in question;

(b) Expanding the scope of the Temporary Recognition Regime ("TRR") to allow overseas central counterparties ("CCPs") within it to offer new products into the UK;

(c) Clarifying the gateway in the retained Regulation 1060/2009 on Credit Rating Agencies (the "CRAR") which allows the Financial Conduct Authority ("FCA") to share information with the Bank of England, the Prudential Regulation Authority ("PRA") and third country regulatory authorities;

(d) Extending the temporary recognition of EU Simple, Transparent, and Standardised ("STS") securitisations to the end of 2024 (it currently lasts until 31 December 2022); and

(e) Extending the FCA's Temporary Transitional Power ("TTP") for the purposes of modifying the application of the Share Trading Obligation ("STO") and Derivatives Trading Obligation ("DTO").

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 This instrument is being laid for sifting by the Sifting Committees.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is to the whole United Kingdom.

4.2 The territorial application of this instrument is to the whole United Kingdom.

5. European Convention on Human Rights

5.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding Human Rights:

"In my view the provisions of the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 ("EUWA") converted EU law as it stood at IP completion day into domestic law. It also conferred temporary powers on the Government to make secondary legislation, to enable corrections to be made to the laws that do not operate appropriately in a UK-only context, now that the UK has left the EU. This instrument relies upon those correcting powers to make changes to the Payment Services Regulations 2017 (SI 2017/752), the Central Counterparties (Amendment, etc., and Transitional Provision (EU Exit) Regulations 2018 (SI 2018/1184) (the "TRR Regulations"); Regulation (EC) 1060/2009 on Credit Rating Agencies (the "CRAR"); the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/632)("2019 Regulations") ; Regulation (EU) 2017/2402 (the "Securitisation Regulation").

Amendments relating to the FCA's conditions for requiring declaration of 'close links'

6.2 Regulation 2 of this instrument amends Article 14(8)(b) of the Payment Services Regulations 2017, 'Conditions for registration as a small payment institution', to require applicant firms to satisfy the FCA in relation to their 'close links' with non-UK persons (in place of persons outside the EEA). This aligns with the intention of the EUWA to convert EU law into UK domestic law and apply an appropriate scope of application reflecting the UK's market. It also ensures consistency of application with a corresponding provision in Article 6(9)(b), which has already been updated to reflect the geographical nexus of the UK.

Amendments relating to the Temporary Recognition Regime

6.3 The TRR Regulations is one of the statutory instruments that amended the European Market Infrastructure Regulation No 648/2012 ("EU EMIR") to deal with deficiencies arising from the withdrawal of the UK from the EU.

6.4 There have been several other instruments made under section 8 of EUWA which have made amendments to EMIR to ensure it works in a UK context after EU withdrawal. These include: the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018; the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018; the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019; the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019; the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019; the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019; the Securitisation (Amendment) (EU Exit) Regulations 2019; the Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019; the International Accounting Standards and European Public

Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019; the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019; the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) (No.2) Regulations 2019; the and the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020.

6.5 The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (SI 2020/646) (the "EMIR 2.2 Regulations") amended certain deficiencies arising as a result of the UK retaining EMIR 2.2 before IP completion date. However, the EMIR 2.2 Regulations did not amend the restrictions on product scope set out in regulation 17 (5) of the TRR Regulations. This instrument makes amendments to regulation 17 of the TRR Regulations, to allow overseas central counterparties within the TRR to offer new products into the UK, in addition to those which they are currently permitted to offer into the UK under regulation 17 (5) of the TRR Regulations.

Amendments relating to Credit Rating Agencies Regulation

6.6 The CRAR[1] forms part of retained EU law and was amended with effect from IP completion day by the Credit Rating Agencies Regulations (Amendment etc.) (EU Exit) 2019.[2] Secondary legislation is required to fix deficiencies that arise as a result of an incomplete correction of a deficiency fix in retained Regulation 1060/2009. This instrument will ensure that where appropriate the FCA has the power to share information obtained thereunder with other regulators (domestic and third country), consistent with the approach taken to information collected under its other regulatory functions.

6.7 This instrument amends retained CRAR by omitting Article 32 which outlined professional secrecy requirements.

6.8 It also amends Article 34 where "guarantees of professional secrecy which are at least equivalent to those set out in Article 32" is substituted by "the protection of confidential information under the Financial Services and Markets Act 2000(c)".

Amendments relating to Securitisation

6.9 The Securitisation Regulation[3] came into effect in the UK and EU on 1 January 2019. It aimed to strengthen the legislative framework for securitisations and to revive securitisation markets. It consolidated and amended the securitisation requirements previously included in various pieces of legislation.

6.10 The Securitisation (Amendment) (EU Exit) Regulations 2019 (SI 2019/660) ('the Securitisation Exit SI') addressed deficiencies arising from the withdrawal of the UK from the EU.

6.11 The amendments made in this instrument further address failures of the retained EU law to operate effectively and other deficiencies arising from the withdrawal of the

[1] Regulation (EC) No 1060/2009 Of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.
[2] S.I 2019 No. 266.
[3] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/201

UK from the EU. To do so, this instrument amends Article 18(3) of the retained Securitisation Regulation.

Amendments relating to the Temporary Transitional Power

6.12 Part 7 of the 2019 Regulations provides for a power (the TTP) for each of the FCA, PRA and Bank of England to make transitional directions to waive or modify obligations imposed on persons where the nature of the obligation has been altered by the exercise of section 8 of EUWA.[4]

6.13 The UK version of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFIR) imposes, among others, the following such obligations: the STO and the DTO.

6.14 The FCA has used the TTP to make transitional directions modifying the STO[5] and DTO[6.] However, because TTP transitional directions are of no effect in relation to times more than 2 years after the end of 2020[7] and may not be given after the same time,[8] this means that, after the end of 2022, the transitional directions modifying the STO and the DTO will have no effect, nor will the FCA be able to make new transitional directions under the TTP to replace such transitional directions.

6.15 Regulation 4 of this SI amends regulation 200 of Part 7 of the 2019 Regulations so that the period during which the FCA may give a transitional direction modifying the STO and the DTO is extended to the end of 2024, and the period during which such transitional directions may remain in effect is also extended to the end of 2024.

6.16 The Financial Services and Markets (FSM) Bill will contain provisions amending MiFIR that remove the STO and that give the FCA a permanent bespoke power of direction to modify the DTO. Once these provisions come into effect, HM Treasury will be able to use its power to make further transitional amendments provided by the FSM Bill in order to ensure that any subsisting transitional directions in respect of the STO and DTO will no longer remain in effect. These changes will be subject to the passage through Parliament and to parliamentary approval of the FSM Bill.

7. Policy background

What is being done and why?

Amendments to the FCA's conditions for declaring 'close links'

7.1 Under the EUWA, modifications were made to the Payments Services Regulations 2017 (among many other parts of financial services legislation) to ensure that retained EU law applied appropriately to the UK's market. As part of this, references to "close links" were intended to be amended to refer to persons outside the UK (in place of outside the EEA), reflecting the UK's position outside the European single market.

7.2 'Close links' refer to persons who are in close relation to a firm seeking authorisation by the FCA as a payment institution or small payment institution. As part of the

[4] What constitutes a 'relevant obligation' in respect of which the TTP may be used is provided in more detail by regulation 199 of the 2019 Regulations.
[5] FCA Transitional Direction for the Share Trading Obligation (22 December 2020) (https://www.fca.org.uk/publication/handbook/sto-transitional-direction-dec20.pdf).
[6] FCA Transitional Direction for the Derivatives Trading Obligation (30 December 2020) (https://www.fca.org.uk/publication/handbook/direction-derivatives-trading-obligation.pdf).
[7] Regulation 200(2)(c), 2019 Regulations.
[8] Regulation 200(1)(a), 2019 Regulations.

authorisation or registration process, the FCA needs to verify that the 'close link', if based overseas, does not conflict with its ability to supervise and enforce effectively.

7.3 Under Article 14(8)(b), the conditions for declaring close links are stated as being those who are subject to legal provisions of a jurisdiction that is "not an EEA state". The amendment would refer instead to the UK, and would align with a corresponding provision where a change has already been made to refer to persons outside the UK, in Article 6(9).

7.4 This amendment will provide greater clarity and consistency throughout the legislation to applicant firms, and avoid the inefficiency of the FCA asking applicant firms for further information during the registration process.

Amendments relating to the Temporary Recognition Regime

7.5 This instrument permits overseas CCPs that are in the TRR to offer clearing products in classes of financial instrument that the overseas CCPs are permitted to offer in the country in which they are established, provided that they have notified the Bank of England of their intention to offer these products in the UK. This is in addition to any products that an overseas CCP is currently permitted to offer whilst in the TRR.

Amendments relating to Credit Rating Agencies Regulation

7.6 This instrument strengthens and clarifies the legal gateway which allows the FCA to share information collected under the CRAR with domestic and third country authorities, bringing it in line with legal gateways relating to the FCA's other regulatory functions, as provided for through the confidential information rules under the Financial Services and Markets Act 2000.

7.7 Information-sharing may be required for a number of purposes, for example, information collected by the FCA under the CRAR is used by the PRA to carry out the function of ECAI (External Credit Assessment Institutions) mapping. This maps the credit assessments made by credit rating agencies to the corresponding risk weights, to support the calculation of capital requirements under prudential regulation.

Amendments relating to securitisations

7.8 Securitisation is the process of pooling various financial exposures (such as mortgages, car loans, or consumer loans) to create a financial instrument that can be marketed to investors. These financial instruments are 'tranched', which means that they carry different levels of risk and return to suit the appetite of different investors. This process allows lenders (such as banks) to transfer the risks of loans or other assets to other banks or investors (such as insurance companies or asset managers). This process can help free up lenders' balance sheets to allow for further lending to the economy.

7.9 The Securitisation Regulation (EU) 2017/2402 (the "EU Securitisation Regulation") outlined general rules for securitisation, including transparency and due diligence requirements. It also created a framework for designating specific securitisations as STS (Simple, Transparent, and Standardised).

7.10 STS securitisations are designed to make it easier for investors to understand and assess the risks of a securitisation investment by excluding more complex features. The UK STS framework is in line with international standards for Simple,

Transparent, and Comparable securitisation, set by the Basel Committee on Banking Supervision and International Organization of Securities Commissions.

7.11 Some firms who invest in securitisations (in particular banks, building societies, investment firms and insurance firms) are subject to prudential regulation. Prudential regulation seeks to ensure that financial institutions have adequate financial resources and risk management processes so they can continue to provide vital services to the real economy throughout economic and financial cycles. Banks, building societies, and PRA-designated investment firms are subject to prudential requirements in the Capital Requirements Regulation and relevant PRA rules (these will be referred to as "CRR firms"), and some insurance firms are subject to prudential requirements under the Solvency II regime (these will be referred to as "Solvency II firms"). These two regimes require firms to hold capital against their exposures, including exposures to securitisations, dependent on the risk attached to them.

7.12 CRR firms and Solvency II firms who invest in STS securitisations can benefit from preferential capital treatment for these investments, compared to investing in non-STS securitisations. Preferential treatment means they can be eligible for lower capital requirements compared to other securitisations, reflecting their adherence to simple, transparent, and standardised criteria.

7.13 To be considered STS under the EU Securitisation Regulation, all parties involved in a securitisation – the originator[9], sponsor[10], and Securitisation Special Purpose Entity (SSPE)[11] – must be located within the EU.

7.14 Following EU Exit, in order for a securitisation to be designated as STS, the retained Securitisation Regulation specifies that the originator and sponsor (or for Asset-Backed Commercial Paper (ABCP) securitisations,[12] just the sponsor) of a securitisation must be established in the UK. In addition, the Securitisation Exit SI made provision for certain STS securitisations designated under the EU Securitisation Regulation (with the originator and sponsor in the EU) before 31 December 2022 to be recognised as STS in the UK for the lifetime of the securitisation.

7.15 The Explanatory Memorandum for the Securitisation Exit SI noted that the government took this approach while it intended to develop a more permanent solution. As a next step, a framework to assess and recognise STS equivalent non-UK securitisations has been introduced to Parliament in the Financial Services and Markets Bill. This framework would allow HM Treasury to make regulations designating a country or territory equivalent in relation to specified description of securitisations.

7.16 This instrument will extend the transitional period by allowing certain EU STS securitisations issued prior to 31 December 2024 to be recognised as STS in the UK for the lifetime of the securitisation. This will help bridge the gap until a permanent framework for designating equivalent jurisdictions, as explained above, is in effect and an assessment of the EU can be undertaken under it.

[9] The entity which originates the loans being securitised or purchases a third party's loans to be securitised.
[10] A credit institution or investment firm, which is not an originator, and establishes and manages certain types of securitisations.
[11] An entity, other than an originator or sponsor, established for, and whose activities are limited to, carrying out securitisations. An SSPE is structured to isolate its obligations from those of the originator.
[12] A type of short-term securitisation, where the securities issued have an original maturity of one year or less.

7.17 Without the changes made in this instrument, EU STS securitisations issued after 31 December 2022 would no longer be eligible for recognition in the UK.

7.18 Extending the temporary recognition until 31 December 2024 should continue to support robust STS securitisation markets, and choice for UK investors, until an assessment of the EU in respect of specified EU STS securitisations can be conducted under the future framework.

7.19 It will also re-affirm the UK's commitment to a stable and resilient securitisation framework which conforms to international standards, thereby furthering the encouragement of STS securitisations as an important element of well-functioning markets globally.

Amendments relating to the FCA's Temporary Transitional Power

7.20 The STO and DTO were introduced when the UK was a member of the EU to force more trading onto trading venues. Broadly, they require trading of certain instruments to take place on trading venues in the EU or on equivalent third-country venues. Since the UK's exit from the EU, the UK and EU have not recognised each other as equivalent for the purposes of the STO or DTO. This would have meant that UK firms would have been unable to trade EU shares in the EU, where firms can get the best price for their clients, due to overlapping UK and EU STOs. Similarly, overlapping UK and EU DTOs could create conflicts of obligations and disruptions for UK firms, and prevent UK firms from servicing EU clients who do not have access to venues that have been recognised as equivalent by both the UK and EU. The FCA used the TTP to minimise this disruption. Extending the duration of the FCA's use of the TTP will help ensure that UK firms can continue to minimise disruption from conflicting obligations and continue to trade EU shares in the most liquid market where they get the best outcomes and serve EU clients when trading derivatives that are in scope of the DTO.

Explanations

Amendments to the FCA's conditions for declaring 'close links'

What did any law do before the changes to be made by this instrument?

7.21 Article 14(8)(b) of the Payment Services Regulations 2017 states that firms applying to be authorised as small payment institutions by the FCA are required to declare 'close links' that are subject to provisions of jurisdictions that are "not an EEA State".

Why is it being changed?

7.22 Article 14 (8)(b) is being amended in order that applicant firms are required to declare 'close links' outside the UK's territory.

What will it now do?

7.23 Article 14 (8)(b) will substitute the phrase "outside the EEA" with "outside the United Kingdom", in order to legally require applicant firms to declare any 'close links' outside the UK's jurisdiction.

Amendments relating to the Temporary Recognition Regime

What did any law do before the changes to be made by this instrument?

7.24 The TRR Regulations established a three-year temporary regime for overseas CCPs to continue their activities and clearing services in the UK for a limited period following IP completion date. These CCPs would need to have been able to provide those activities and services in the EU under EU EMIR and would need to have notified the Bank of England before IP completion date that they intended to continue to provide such activities in the UK.

7.25 Regulation 17(5) of the TRR Regulations sets out the restriction on the products that overseas CCPs can offer whilst in the TRR. The restriction aims to prevent overseas CCPs changing or amending their services before going through the entire procedure for recognition under UK EMIR.

7.26 The TRR Regulations were implemented in 2018. In December 2019, the EU published the next version of EMIR ("EMIR 2.2"), which came into effect in January 2020. In June 2020, and in an exercise of s. 8 EUWA powers, HM Treasury made The Over-the-Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 (SI 2020/646) (the "EMIR 2.2 Regulations") to correct certain deficiencies arising as a result of the UK retaining EMIR 2.2 before exit day. The EMIR 2.2 Regulations amended the TRR, but they did not amend the restrictions on product scope set out in regulation 17 (5) of the TRR Regulations.

Why is it being changed?

7.27 EMIR 2.2 introduced a much more complex process for recognising overseas CCPs, including the tiering of overseas CCPs according to the financial stability risk that they pose to the UK. The Bank was given responsibility for finalising policy on important areas of the implementation of EMIR 2.2, and has subsequently needed to consult on, and implement, the new recognition process in the UK. Therefore, as a result of onshoring EMIR 2.2 into UK law, the limitation on offering new products will in practice apply for much longer than was envisaged when the TRR Regulations were introduced in 2018. Due to the nature and complexity of the process that the Bank must undertake before recognising any overseas CCP, some overseas CCPs will not receive permanent recognition according to the timescales originally anticipated.

7.28 Overseas CCPs spending more time within the TRR whilst this restriction applies may undermine the UK's aim of having an open and fair regime for overseas CCPs, and could lead to competitive distortion in the market, as overseas CCPs, unlike UK CCPs, are unable to expand the types of products that they offer in the UK. UK firms are also restricted from accessing services that are provided by overseas CCPs.

What will it now do?

7.29 The instrument will permit overseas CCPs that are in the TRR to offer clearing products in classes of financial instrument that the overseas CCPs are permitted to offer in the country in which they are established, provided that they have notified the Bank of their intention to offer said products in the UK. This would be in addition to any products that an overseas CCP is currently permitted to offer whilst in the TRR.

Amendments relating to Credit Rating Agencies Regulation

What did any law do before the changes to be made by this instrument?

7.30 Article 32 of the CRAR imposes professional secrecy requirements on the FCA which limit the circumstances under which the FCA can share with other bodies the information it collects under the CRAR.

7.31 It requires the FCA and competent authorities to consider all information collected under the CRAR as confidential and limits the circumstances where this can shared.

7.32 Article 34 of the CRAR contains provisions which set out the requirements placed on regulatory authorities when sharing information.

7.33 The FCA took on supervisory responsibility for credit rating agencies on IP completion day, prior to which Article 32 and 34 placed requirements on the European Securities and Markets Authority (ESMA) as the supervisor of EU credit rating agencies.

Why is it being changed?

7.34 The amendments made to the CRAR following the UK's withdrawal from the European Union resulted in a lack of legal clarity over the legal gateway for information sharing between the FCA and other domestic and third country authorities. The instrument makes a minor amendment to clarify this legal gateway.

What will it now do?

7.35 The legislation will provide that the FCA can share information collected under the CRAR with other UK and third country regulatory authorities in line with information collected under its other regulatory functions, as provided for through the confidential information rules under the Financial Services and Markets Act 2000.

Amendments relating to securitisations

What did any law do before the changes to be made by this instrument?

7.36 The retained Securitisation Regulation provides for a transitional period where securitisations issued prior to 31 December 2022 which meet the relevant STS criteria and are designated as STS under the EU Securitisation Regulation are recognised as STS under the retained Securitisation Regulation. This allows for those EU STS securitisations to be subject to the same capital treatment as UK STS securitisations.

Why is it being changed?

7.37 Without the changes made in this instrument, EU STS securitisations issued after 31 December 2022 would no longer be eligible for recognition in the UK. The framework under which STS-equivalent non-UK securitisations can be recognised would likely not yet be in force by this point.

7.38 Therefore, extending the current arrangements should continue to support robust STS securitisation markets, and choice for UK investors, until an assessment of the EU in respect of EU STS securitisations can be conducted under the future framework.

What will it now do?

7.39 This instrument intends to maintain increased choice for UK investors who want to invest in certain EU STS securitisations. This will be done by extending the existing arrangements for capital treatment for investment in EU STS securitisations issued between 31 December 2022 until 31 December 2024.

7.40 This is done with an aim of supporting the growth of the STS securitisation market, both in the UK and internationally.

Amendments relating to the FCA's Temporary Transitional Power

What did any law do before the changes to be made by this instrument?

7.41 Article 23 of MiFIR contains the STO, which requires UK authorised investment firms to trade in-scope shares on UK trading venues or UK systematic internalisers, or a third-country venue recognised as equivalent.

7.42 Article 28 of MiFIR contains the DTO, which requires financial counterparties and some non-financial counterparties to trade certain classes of derivatives on UK trading venues, or third-country trading venues recognised as equivalent.

7.43 As part of the 2019 Regulations HM Treasury gave the Bank of England, the PRA and FCA the power to modify certain regulatory obligations by making transitional directions in relation to EU-derived financial services legislation for a period up to two years after the UK's left the EU in practice (i.e. until 31 December 2022). This is known as the Temporary Transitional Power (or TTP).

Why is it being changed?

7.44 The TTP was used by the FCA to modify the UK DTO and UK STO in December 2020. The power was used by the FCA to address conflicts that occurred from an overlap between the UK's DTO and STO and the EU's STO and DTO in the absence of mutual equivalence between the UK and EU.

7.45 The DTO and STO were introduced when the UK was a member of the EU to force more trading onto organised trading systems.

7.46 The absence of mutual equivalence, and the restrictive nature of the STO and DTO when applied in one country, meant that UK firms were subject to potentially overlapping obligations, unable to trade EU shares in the EU (which is the most liquid market for EU shares) and could not trade certain derivatives with EU clients.

7.47 To mitigate against this the FCA have used their TTP since 31 December 2020 to limit the overlap between the UK and EU's trading obligations by allowing UK firms to continue trading shares on any eligible EU trading venues or systematic internalisers from the end of the IP and to use EU venues when trading derivatives in scope of the DTO with an EU client who does not have arrangements in place to execute trades on a venue that is an equivalent third-country trading venue under both the UK and EU versions of Article 28 of MiFIR.

7.48 Regulation 4 of this instrument will extend the FCA's TTP for two years, until 31 December 2024, so that the FCA can continue to address any conflicts with the EU DTO and EU STO in the absence of an equivalence decision.

7.49 The government has brought forward legislation as part of the FSM Bill to delete the STO and provide the FCA with permanent powers to modify the DTO. These

permanent changes will be subject to the passage and parliamentary approval of the FSM Bill.

What will it now do?

7.50 This instrument will extend the period that the FCA can use its TTP to mitigate disruption in relation to the STO and DTO by two years.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

Amendments to the FCA's conditions for declaring 'close links'

10.1 This amendment has not formally been consulted on given it is fixing an unintended error. It looks to amend a small inconsistency in retained EU law that was not adjusted to apply to the UK's jurisdiction. The change aligns with HM Treasury's published approach to financial services legislation under the EUWA to fix deficiencies. Further, an existing SI makes changes to this effect for a parallel provision under Article 6 of the Payment Services Regulations 2017. This amendment will provide greater clarity and consistency throughout the legislation to applicant firms and avoid the inefficiency of the FCA asking applicant firms for further information during the registration process.

Amendments relating to the Temporary Recognition Regime

10.2 A public consultation was not undertaken for this amendment to the TRR Regulations as this is a small technical amendment to ensure that firms within the TRR are able to expand their product offering in the UK.

10.3 HM Treasury has engaged extensively with the Bank of England and the Financial Conduct Authority on this issue.

Amendments relating to the Credit Rating Agencies Regulation

10.4 No consultation has been undertaken on the amendments made to the CRAR by this instrument. HM Treasury has engaged directly with the FCA and Bank of England, as the UK authorities that will be directly affected by these amendments.

Amendments relating to Securitisation

10.5 A formal consultation for amendments related to securitisations for this instrument has not been undertaken. However, industry respondents gave their views on the approach taken to recognising EU STS in the Securitisation Exit SI in response to a

call for evidence which formed part of HM Treasury's review of the Securitisation Regulation.[13]

10.6 Respondents found the temporary recognition of EU STS securitisations a helpful part of the government's approach to exiting the EU.

Amendments relating to the Temporary Transitional Powers

10.7 A formal consultation for this instrument has not been undertaken. However, the FCA's previous use of the TTP in 2020 was welcomed by the industry.

10.8 Furthermore, when the government consulted on the removal of the STO and giving the FCA a permanent power to modify the DTO in its Wholesale Markets Review (WMR) consultation[14] (which was open between July to September 2021) there was near universal support for the proposed changes which reflect the action the FCA has taken through the TTP.

11. Guidance

11.1 HM Treasury does not propose to provide any guidance in relation to this instrument. The Financial Conduct Authority has the power to issue guidance in relation to the CRAR and the payment services regulations. The Bank of England and the Financial Conduct Authority both have the power to issue guidance in relation to MiFIR.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the impact of this SI is small (the cost to businesses is < £5m per year). A de minimis Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

Amendments to the FCA's conditions for declaring 'close links'

13.2 This legislative amendment applies to small businesses where they are seeking to apply for authorisation as a small payment institution with the FCA. The amendment fixes an unintended error and will provide greater clarity and consistency throughout the legislation to applicant firms and avoid the inefficiency of the FCA asking applicant firms for further information during the registration process.

[13] HM Treasury, Review of the Securitisation Regulation: Report and call for evidence response, December 2021 – https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040038/Securitisation_Regulation_Review.pdf

[14] HM Treasury, Wholesale Markets Review consultation and consultation response - UK Wholesale Markets Review: a consultation - GOV.UK (www.gov.uk)

Amendments relating to the Temporary Recognition Regime

13.3 The basis for the final decision not to take action to mitigate the impact on small businesses is that the amendments made by this instrument are not expected to have an impact on small businesses.

Amendments relating to the Credit Rating Agencies Regulation

13.4 The amendments made to the CRAR do not apply to activities that are undertaken by small businesses.

Amendments relating to securitisations

13.5 The legislation applies to activities that are undertaken by small businesses where they invest in securitisations.

13.6 To minimise the impact of regulatory changes on all firms, including small businesses, this instrument addresses failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

13.7 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is one of extending pre-existing temporary legislation, which mitigates the need for transitional or familiarisations costs.

Amendments relating to the FCA's Temporary Transitional Power

13.8 The legislation applies to activities that are undertaken by small businesses where they engage in the trading of derivatives or shares.

13.9 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018 no review clause is required.

15. Contact

15.1 Giorgia Bracelli at HM Treasury (email: Giorgia.bracelli@hmtreasury.gov.uk); Eddie Kaye at HM Treasury (email: Eddie.Kaye@hmtreasury.gov.uk; Alex Stirling at HM Treasury (email: alex.stirling@hmtreasury.gov.uk), can be contacted with any queries regarding the instrument amending the Temporary Recognition Regime, Credit Rating Agencies Regulation, Temporary Transitional Power respectively.

15.2 Naomi Wang at HM Treasury (email: naomi.wang@hmtreasury.gov.uk), can be contacted with any queries regarding the amendment to the Payment Services Regulations. Zia Shakeel at HM Treasury (email: Zia.Shakeel@hmtreasury.gov.uk) can be contacted with any queries regarding the amendment relating to securitisations.

15.3 Daniel Rusbridge, Deputy Director for Financial Services Strategy, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Economic Secretary to the Treasury (John Glen) at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Sifting statement(s)

1.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

Amendments to the FCA's conditions for declaring 'close links'

1.2 This is the case because there is a low level of public interest in this amendment; the revision is a technical regulatory change to bring this part of the Payment Services Regulations in line with equivalent provisions pertaining to "close links" across the FCA's payment services and e-money regulations. This instrument does not make substantive changes to the regulatory regime for small payment institutions.

Amendments relating to the Temporary Recognition Regime

1.3 This is the case because there is a low level of public interest in this instrument; these amendments are technical regulatory changes that are necessary to ensure a coherent regulatory regime and to ensure the UK clearing markets functions effectively.

Amendments relating to Credit Rating Agencies Regulation

1.4 This is the case because there is a low level of public interest in this instrument; these amendments are technical regulatory changes that bring the FCA's information sharing powers under the CRAR in line with its equivalent powers for other regulatory functions. This instrument does not make substantive changes to the regulatory regime for credit rating agencies and will not change the way firms currently operate.

Amendments relating to securitisations

1.5 This is the case because there is a low level of public interest in this instrument and these amendments are technical regulatory changes that extend current arrangements for the recognition of certain securitisations for another two years. This instrument does not make substantive changes to the regulatory regime for securitisations and will not change the way firms currently operate.

Amendments relating to the FCA's Temporary Transitional Power

1.6 This is the case because there is a low level of public interest in this instrument since there are no expected significant impacts or costs on UK businesses; these amendments will enable the FCA to continue modifying the STO and DTO for a

further two years to prevent barriers to trading and costs for firms. The government plans to make permanent changes to the STO and DTO as part of the FSM Bill, subject to parliamentary approval. This instrument will ensure that there is continuity until the changes in the FSM Bill can take effect.

2. Appropriateness statement

2.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022 does no more than is appropriate".

2.2 This is the case because the instrument;

- removes the barrier restricting overseas CCPs in the TRR from offering new products in the UK, ensuring the regime does not distort the competitiveness of the clearing market in favour of UK CCPs;
- remedies deficiencies that arise as a result of a previous incomplete correction of a deficiency fix in the CRAR, ensuring the regulatory regime for credit rating agencies operates effectively in a UK-only context and remedies deficiencies that come about as a result of conflicting EU and UK trading obligations by extending the FCA's TTP for the purpose of the STO and DTO;
- ensures that the regulatory regime for STS securitisations operates effectively in a UK-only context; remedies an error in the Payment Services Regulations to ensure the regulation operates effectively in a UK-jurisdictional context.

3. Good reasons

3.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.2 These are:

- The amendment to the Payment Services Regulations 2017 fixes a deficiency, in that a reference to the EEA should be to the UK following the UK's withdrawal from the EU.
- The TRR Regulations do not currently operate effectively as they do not permit overseas CCPs to offer new products whilst in the TRR in circumstances where overseas CCPs will be subject to these restrictions for longer than initially anticipated. The amendments to the TRR Regulations remedy this deficiency by ensuring that the TRR – which is now expected to run for longer than originally envisaged – does not stop overseas CCPs from offering new products in the UK as the clearing market evolves.
- The amendments to the CRAR fix deficiencies that arise as a result of an incomplete correction of a deficiency fix of the CRAR, addressing existing legislative ambiguity such that the regulation operates effectively in a UK-only context.

- The amendments to the Securitisation Regulation ensure that UK investors can have the same level of choice of STS securitisations as they do now for another two years, while the government intends to make permanent changes to enable the recognition of STS-equivalent non-UK securitisations as part of the FSM Bill, subject to parliamentary approval.
- The extension of the FCA's TTP for the purpose of the STO and DTO enables the FCA to address conflicts that occur from an overlap between the UK's DTO and STO and the EU's STO and DTO in the absence of mutual equivalence between the UK and EU. The government is intending to make permanent changes to mitigate against overlap as part of the FSM Bill. This change will ensure that firms do not have to make unnecessary changes until these come into effect, subject to parliamentary approval.
- The amendment to the FCA's conditions for declaring 'close links' will ensure that the UK's jurisdiction applies to the requirement on small payment institutions, to appropriately reflect the application of retained EU law to the UK's market. This will provide greater clarity and consistency throughout the legislation for applicant firms.

4. Equalities

4.1 The Economic Secretary to the Treasury (John Glen) has made the following statements:

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Economic Secretary to the Treasury (John Glen) have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

5. Explanations

5.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.