Draft Regulations laid before Parliament under section 3(10) of the Financial Service and Markets Act 2023 (c. 29), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2026 No.

FINANCIAL SERVICES AND MARKETS

The Over the Counter Derivatives (Intragroup Transactions) Regulations 2026

Made - - - - ***

Coming into force in accordance with regulation 1(2)

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

The Treasury have consulted the Financial Conduct Authority and the Prudential Regulation Authority as required by section 3(6) of that Act.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with section 3(10) of the Financial Services and Markets Act 2023(**b**).

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Over the Counter Derivatives (Intragroup Transactions) Regulations 2026.

(2) These Regulations come into force on the day on which the revocation of Part 5 of the OTC Derivatives (EU Exit) Regulations 2019 by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 comes into force.

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

(4) In these Regulations—

(a) "the 2019 Regulations" means the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019(**c**);

(b) "the EMIR Regulation" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories(**d**).

(**a**) 2023 c. 29.
(**b**) For the meaning of "the affirmative procedure", see section 84(3) of the Financial Services and Markets Act 2023.
(**c**) S.I. 2019/335, as amended by S.I. 2020/1385; there are other amending instruments but none are relevant.
(**d**) EUR 2012/648, as amended by S.I. 2019/335, 2019/685, 2021/1376; there are other amending instruments but none are relevant.

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Amendments to the definition of an intragroup transaction in Article 3 of the EMIR Regulation

2.—(1) Article 3 of the EMIR Regulation (intragroup transactions) is amended as follows.

(2) In paragraph 1—

(a) after "In relation to", insert "a financial counterparty or";

(b) omit the words from "and that counterparty is established" to the end.

(3) Omit paragraph 2.

(4) In paragraph 3—

(a) in point (a)(i), for "legislation of the United Kingdom that was relied upon immediately before IP completion day to implement Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC" substitute "the Companies Act 2006(**a**);";

(b) in point (a)(iii)(aa), for the words starting from "by the Commission before IP completion day" to the end of the paragraph substitute "under the Commission Decision of 12 December 2008 on the use by third countries' issuers of securities of certain third country's national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements (2008/961/EC)(**b**);";

(c) in point (a)(iii)(ab), omit the words "in accordance with regulations made by the Treasury after IP completion day".

Amendments to the intragroup transaction exemption in Article 4 of the EMIR Regulation

3.—(1) Article 4 of the EMIR Regulation (clearing obligation) is amended as follows.

(2) In paragraph 2—

(a) for point (a), substitute—

"(a) to OTC derivative contracts between two counterparties established in the United Kingdom and belonging to the same group, where the transactions between the counterparties meet the conditions in Article 3;";

(b) for point (b), substitute—

"(b) to OTC derivative contracts between a counterparty established in the United Kingdom and a counterparty established in a third country belonging to the same group, where—

(i) the transactions between the counterparties meet the conditions in Article 3;

(ii) the counterparty established in the United Kingdom notifies the FCA that it intends to make use of the exemption for those OTC derivative contracts;

(iii) the FCA does not object to the counterparty's use of the exemption.

The counterparty may use the exemption upon the expiry of the 30 calendar day period beginning on the day after the day on which the FCA receives

(**a**) 2006 c. 46.
(**b**) EUDN 2008/961, as amended by S.I. 2019/707.

the complete notification or, if the FCA confirms its non-objection before the expiry of this period, the day on which the counterparty receives the FCA's confirmation of non-objection.".

Amendments to the intragroup transaction exemption in Article 11 of the EMIR Regulation

4.—(1) Article 11 of the EMIR Regulation (risk-mitigation techniques for OTC derivative contracts not cleared by a CCP) is amended as follows.

(2) For paragraph 8, substitute—

"8. An intragroup transaction falling within Article 3(1), which is entered into by a counterparty established in the United Kingdom and a counterparty established in a third country, is exempt from the requirement in paragraph 3 of this Article where the counterparty established in the United Kingdom notifies the FCA that it intends to make use of the exemption for those intragroup transactions, provided that the following conditions are fulfilled—

(a) the risk-management procedures of the counterparties are adequately sound, robust and consistent with the level of complexity of the derivative transaction;

(b) there is no current or foreseen practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties;

(c) the FCA does not object to the counterparty's use of the exemption.

The counterparty may use the exemption upon the expiry of the 30 calendar day period beginning on the day after the day on which the FCA receives the complete notification or, if the FCA confirms its non-objection before the expiry of this period, the day on which the counterparty receives the FCA's confirmation of non-objection.".

(3) Omit paragraphs 9 and 11.

(4) In paragraph 14—

(a) in point (c), for "paragraph 9;" substitute "paragraph 8.";

(b) omit point (d).

(5) In paragraph 16, for "paragraphs 8 and 9" substitute "paragraph 8".

(6) In paragraph 17, for "paragraphs 5, 8 and 9" substitute "paragraphs 5 and 8".

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

5.—(1) The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013(**a**) are amended as follows.

(2) For regulation 6(3)(d) (designation of competent authorities), substitute—

"(d) considering notifications under Article 11(5) to (8) (risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty: exemptions).".

(3) In regulation 8(3) (applications, notifications and reports to the FCA), omit "or (9)".

(**a**) S.I. 2013/504, amended by S.I. 2013/1908 and S.I. 2019/335; there are other amending instruments but none are relevant.

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Transitional provision

6.—(1) An application or notification made by a counterparty to the FCA fulfilling one of the conditions specified in paragraph (2) is considered validly made for the purposes of Articles 4(2)(b) or 11(8) of the EMIR Regulation (as applicable) after these Regulations come into force.

(2) The conditions referred to in paragraph 1 are that the application or notification was made—

(a) before IP completion day in the circumstances described in regulation 80(1) or (2) of the 2019 Regulations as they applied at the time of the application or notification;

(b) in the circumstances described in regulation 82(5) of the 2019 Regulations as it applied at the time of the application or notification;

(c) in accordance with Articles 4(2), 11(8) or (9) of the EMIR Regulation (including when read together with regulation 82(2) of the 2019 Regulations) as they applied at the time of the application or notification;

and the FCA has approved the application or not objected to the notification, in each case before the date these Regulations come into force.

Name
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Two of the Lords Commissioners of His Majesty's Treasury

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EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EUR 2012/648) (the "EMIR Regulation") sets out an obligation for over-the-counter (OTC) derivatives contracts to be cleared through central counterparties and provides for exemptions in relation to certain intragroup transactions. Further temporary provisions were made in relation to these exemptions in Part 5 of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/335) (the "2019 Regulations"). These Regulations use section 3 of the Financial Services and Markets Act 2023 (2023 c. 29) to amend provisions setting out the intragroup exemptions from the clearing and risk management obligations in the EMIR Regulation and replace the temporary provisions made in relation to these exemptions in the 2019 Regulations.

Regulation 2 amends the definition of an intragroup transaction in Article 3 of the EMIR Regulation so that any transaction between entities within the same consolidated group qualifies as intragroup regardless of the jurisdiction in which those entities are established.

Regulation 3 amends the processes applicable to the intragroup exemptions in Article 4 of the EMIR Regulation and provides for a notification process for transactions between a UK entity and an overseas group entity, subject to a 30-day non-objection period by the FCA.

Regulation 4 amends the processes applicable to the intragroup exemptions in Article 11 of the EMIR Regulation and provides for a notification process for transactions between a UK entity and an overseas group entity, subject to a 30-day non-objection period by the FCA, whilst removing the requirement for public disclosure of margin exemptions.

Regulation 5 makes consequential amendments to the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013.

Regulation 6 makes transitional provision in respect of the current temporary intragroup exemptions in Part 5 of the 2019 Regulations so that exemptions granted under previous temporary provisions remain valid without requiring reapplication.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

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