

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to, the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**EXITING THE EUROPEAN UNION  
FINANCIAL SERVICES**

**The Over the Counter Derivatives, Central Counterparties  
and Trade Repositories (Amendment, etc., and  
Transitional Provision) (EU Exit) Regulations 2018**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1*

The Treasury, in exercise of the powers conferred by section 8(1) of, and paragraph 1 of Schedule 4 and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(1) make the following Regulations.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

**PART 1**

**PRELIMINARY**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 and come into force on exit day.

(2) In these Regulations—

“FSMA” means the Financial Services and Markets Act 2000(2);

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(1) 2018 c.16.

(2) 2000 c. 8.

“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<sup>(3)</sup>; “FCA” means the Financial Conduct Authority<sup>(4)</sup>.

## PART 2

### AMENDMENT OF SUBORDINATE LEGISLATION

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

2. The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 <sup>(5)</sup> are amended in accordance with the following provisions of this Part.

#### **Interpretation**

3. In regulation 2, in paragraph (1), for the definition of “the EMIR regulation” substitute—  
““the EMIR regulation” has the meaning given in section 313 of the Act;”.

#### **Designation of competent authorities**

4. In regulation 6—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (b), for “Article 22(1)” substitute “Articles 22 and 25”;
    - (ii) omit sub-paragraphs (e) and (f);
  - (b) omit paragraph (2);
  - (c) in paragraph (3), omit sub-paragraphs (e) to (g);
  - (d) in paragraph (4), omit sub-paragraphs (a) and (b);
  - (e) in paragraph (6)—
    - (i) in sub-paragraph (a), omit “including Article 71(3)”;
    - (ii) at the end of sub-paragraph (a) insert “and”;
    - (iii) omit sub-paragraph (c) and the “and” immediately preceding it;
  - (f) in paragraph (8), in sub-paragraph (b), omit paragraphs (i) and (ii).

#### **Applications, notifications and reports to the FCA**

5. In regulation 8, in paragraph (3), for “Article 11(6), (7), (8), (9) or (10)” substitute “Article 11(8) or (9)”.

#### **Penalties and statements**

6. In regulation 9, in paragraph (10), at the end of sub-paragraph (a) insert “(but not including a requirement enforceable by the FCA pursuant to paragraph (6)(a) or (b) of that regulation)”.

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(3) OJ No. L 201, 27.7.2012, p.1.

(4) See section 1A of the FSMA inserted by section 6(1) of the Financial Services Act 2012 (c.21).

(5) [S.I. 2013/504](#). Relevant amendments are made by [S.I. 2013/1908](#), [2016/715](#) and [2017/701](#).

### **Investigatory powers of ESMA with regard to trade repositories**

7. Omit regulations 15B to 19 (Part 7).

### **Transitional provision**

8. Omit regulation 55A and insert—

#### **“Transitional provision: EMIR regulation**

**55B.** The FCA may grant an exemption in accordance with Article 89a of the EMIR regulation.”.

## **PART 3**

### **AMENDMENT AND REVOCATION OF RETAINED DIRECT EU LEGISLATION**

#### **CHAPTER 1**

#### **AMENDMENT OF THE EMIR REGULATION**

### **Amendments to the EMIR regulation**

9. The EMIR regulation is amended in accordance with this Chapter.

### **Subject matter and scope**

- 10.—(1) Article 1 is amended as follows.

(2) In paragraph 3, for the words from “point (18)(a)” to the end substitute “Articles 2(1)(24) and 2(1)(25A) of MIFIR”.

- (3) In paragraph 4, for point (a) substitute—

“(a) the Bank of England and other public bodies in the United Kingdom charged with or intervening in the management of the public debt;”.

- (4) In paragraph 5—

(a) in point (a), for the words from “Section 4.2” to the end of the point substitute “Article 117 of the Capital Requirements Regulation”;

(b) in point (b), for “point (18) of Article 4 of [Directive 2006/48/EC](#)” substitute “Article 4(1) (8) of the Capital Requirements Regulation”.

- (5) For paragraph 6 substitute—

“6. The Treasury may by regulations amend the list set out in paragraph 4 of this Article.”.

### **Definitions**

- 11.—(1) Article 2 is amended as follows.

- (2) Before point (1) insert—

“(A1) “FSMA” means the Financial Services and Markets Act 2000(6);

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(6) 2000 c.8.

(A2) “MIFIR” 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) 648/2012(7);

(A3) “Capital Requirements Regulation” means Regulation (EU) No 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) 648/2012;

(A4) “2013 Regulations” means the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013(8);

(A5) “Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(9);

(A6) “PRA-authorised person” has the meaning given in section 2B(5) of the FSMA(10);”.

(3) For point (1) substitute—

“(1) “CCP” means a body corporate or unincorporated association which interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;”.

(4) For point (4) substitute—

“(4) “trading venue” means a UK trading venue within the definition in Article 2(1) (16A) of the MIFIR;”.

(5) For point (5) substitute—

“(5) “derivative” or “derivative contract” means a financial instrument referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order;”.

(6) In point (7)—

(a) for the words “regulated market within the meaning of Article 4(1)(14) of [Directive 2004/39/EC](#)” substitute “UK regulated market within the meaning given in Article 2(1) (13A) of the MIFIR”;

(b) for “regulated market in accordance with Article 2a of this Regulation” substitute “a UK regulated market in accordance with an implementing act adopted by the Commission under Article 2a of this Regulation before exit day or in accordance with regulations made by the Treasury under that Article after exit day”.

(7) For point (8) substitute—

“(8) “financial counterparty” means:

(a) an investment firm within the meaning given in Article 2(1A) of the MIFIR which:

(i) has its registered office or head office in the United Kingdom;

(ii) has permission under Part 4A of the FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;

(iii) would require an authorisation given under [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 2011/61/

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(7) As amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/ ).

(8) [S.I. 2013/504](#).

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

(10) Section 2B is inserted by section 6(1) of the Financial Services Act 2012 (c. 21).

- EU(11) (as it had effect immediately before exit day) if it had its registered office (or if it does not have a registered office, its head office) in an EEA state; and
- (iv) is not a firm which has permission under Part 4A of the FSMA to carry on regulated activities as an exempt investment firm, within the meaning given in regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(12);
- (b) a credit institution which is a CRR firm (within the meaning given in Article 4(1) (2A) of the Capital Requirements Regulation);
- (c) an insurance undertaking or a reinsurance undertaking within the meaning given in section 417 of the FSMA;
- (d) a UK UCITS (within the meaning given in section 237(3) of the FSMA) and, where relevant, its management company (within the meaning given in section 237(2) of the FSMA);
- (e) an occupational pension scheme within the meaning given in section 1(1) of the Pension Schemes Act 1993(13); or
- (f) an AIF (within the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013(14)) managed by an AIFM (within the meaning given in regulation 4 of those Regulations) authorised or registered in accordance with those Regulations;”.
- (8) In point (9), for “Union” substitute “United Kingdom”.
- (9) For point (13) substitute—
- “(13) “competent authority” means:
- (a) the relevant competent authority referred to in the legislation (or the relevant competent authority of the firm, institution, undertaking or other entity) referred to in paragraphs (a) to (f) of point (8);
- (b) the competent authority referred to in Article 10(5); or
- (c) the authority designated under Article 22;”.
- (10) In point (16)—
- (a) for “Articles 1 and 2 of [Directive 83/349/EEC](#)” substitute “section 1162 of the Companies Act 2006(15)”;
- (b) for the words from “the group of undertakings” in the second place where it appears to the end of the point substitute “a group of undertakings meeting the conditions in Article 113(6) of the Capital Requirements Regulation”.
- (11) In point (17), for the words from “of the activities” to the end of the point substitute “of the Annex I activities listed in points (2) to (12) and for this purpose “Annex I activities” has the meaning given in Article 4(1)(26A) of the Capital Requirements Regulation”.
- (12) In point (18), for the words from “Article 2(15)” to the end of the point substitute “Article 4(1)(21) of the Capital Requirements Regulation”.
- (13) In each of points (21) and (22), for “Articles 1 and 2 of [Directive 83/349/EEC](#)” substitute “section 1162 of the Companies Act 2006”.

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(11) OJ No. L 173, 12.6.2014, p.349.

(12) S.I. 2017/701.

(13) 1993 c.48. Section 1 is substituted by section 239 of the Pensions Act 2004 (c.35).

(14) S.I. 2013/1773.

(15) 2006 c.46.