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# **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**

(Text with EEA relevance)

### TITLE I

#### SUBJECT MATTER, SCOPE AND DEFINITIONS

##### *Article 1*

##### **Subject matter and scope**

1. This Regulation establishes uniform requirements in relation to the following:
  - (a) disclosure of trade data to the public;
  - (b) reporting of transactions to the competent authorities;
  - (c) trading of derivatives on organised venues;
  - (d) ~~non-discriminatory access to clearing and non-discriminatory access to trading in benchmarks;~~[\[deleted\]](#)
  - (e) product intervention powers of competent authorities, ~~ESMA and EBA~~ and powers of [ESMA](#) ~~the competent authority~~ on position management controls and position limits;
  - (f) provision of investment services or activities by third-country firms following an applicable equivalence decision by the ~~Commission~~[Treasury](#) with or without a branch.

2. This Regulation applies to—
- (a) investment firms and credit institutions which have their head office in the United Kingdom which—
- (i) (subject to paragraphs 2A and 2C) have permission under Part 4A of FSMA to carry on regulated activities relating to investment services and activities in the United Kingdom, when those firms or institutions are providing investment services or performing investment activities; and
- (ii) ~~2. This Regulation applies to investment firms, authorised~~ would require authorisation under Directive 2014/65/EU ~~and credit institutions authorised under~~ of the European Parliament and of the Council on markets in financial instruments (in the case of investment firms) or Directive 2013/36/EU of the European Parliament and of the Council ~~when providing investment services and/or performing investment activities and to~~ on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (in the case of credit institutions) (as those directives applied in the European Union immediately before exit day) if they had their head offices in an EEA state; and
- (b) market operators which have their registered office or head office in the United Kingdom, including any UK trading venues they operate.
- 2A. Subject to paragraph 2B, Titles II, III, IV, V, Article 38, and Title VII and EU tertiary legislation (within the meaning of section 20(1) of the European Union (Withdrawal) Act 2018) made under those provisions also apply to investment firms and credit institutions which have temporary permission to carry on such activities under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.
- 2B. Articles 20, 21, 26 and 27 only apply to a firm referred to in paragraph 2A in relation to business of that firm which is carried on through a branch in the United Kingdom.
- 2C. This Regulation does not apply to any firm which has permission under Part 4A of FSMA to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.
- 2D. Subject to paragraph 2E, if—
- (a) a firm referred to in paragraph 2A complies with a requirement in Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments as it has effect in EU law (“the EEA requirement”) in relation to the services it provides in the United Kingdom; and

(b) the EEA requirement has equivalent effect to a requirement in this Regulation as it applies in the United Kingdom (“the UK requirement”),

the firm is to be treated as complying with the UK requirement.

2E. Paragraph 2D does not apply in relation to requirements in Article 23, Title IV, Article 28, Article 29 (so far as that Article applies to CCPs), Article 30, Article 31 or Title VI.

3. Title V of this Regulation also applies to all financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012 and to all non-financial counterparties falling under Article 10(1)(b) of that Regulation.

4. Title VI of this Regulation also applies to CCPs and persons with proprietary rights to benchmarks.

5. Title VIII of this Regulation applies to third-country firms providing investment services or activities within the ~~Union~~United Kingdom following an applicable equivalence decision by the ~~Commission~~Treasury with or without a branch.

5za. For the purposes of paragraph 1(f) and 5, references to applicable equivalence decisions by the Treasury include references to applicable decisions made by the Commission as they applied immediately before exit day.

5a. Title II and Title III of this Regulation shall not apply to securities financing transactions as defined in point (11) of Article 3 of Regulation (EU) 2015/2365 of the European Parliament and of the Council.

6. Articles 8, 10, 18 and 21 shall not apply to regulated markets, market operators and investment firms in respect of a transaction where the counterparty is a member of the European System of Central Banks (ESCB), the Treasury or the Bank of England (“a relevant organisation”) and where that transaction is entered into in performance of monetary, foreign exchange and financial stability policy which that ~~member of the ESCB~~relevant organisation is legally empowered to pursue and where that member has given prior notification to its counterparty that the transaction is exempt.

7. Paragraph 6 shall not apply in respect of transactions entered into by any ~~member of the ESCB~~relevant organisation in performance of their investment operations.

8. ~~ESMA shall, in close cooperation with the ESCB, develop draft regulatory~~The Bank of England may, after consultation with the FCA, make technical standards ~~to specify~~specifying the monetary, foreign exchange and financial stability policy operations and the types of transactions to which paragraphs 6 and 7 apply.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

9. ~~The Commission shall be empowered to adopt delegated acts in accordance with Article 50 to~~ Treasury may, by regulations extend the scope of paragraph 6 to other central banks.

~~To that end, the Commission shall, by 1 June 2015, submit a report to the European Parliament and to the Council assessing the treatment of transactions by third-country central banks which for the purposes of this paragraph includes the Bank for International Settlements. The report shall include an analysis of their statutory tasks and their trading volumes in the Union. The report shall:~~

- ~~(a) identify provisions applicable in the relevant third countries regarding the regulatory disclosure of central bank transactions, including transactions undertaken by members of the ESCB in those third countries, and~~
- ~~(b) assess the potential impact that regulatory disclosure requirements in the Union may have on third-country central bank transactions.~~

~~If the report concludes that the exemption provided for in paragraph 6 is necessary in respect of transactions where the counterparty is a third-country central bank carrying out monetary policy, foreign exchange and financial stability operations, the Commission shall provide that that exemption applies to that third-country central bank.~~

## *Article 2*

### **Definitions**

1. For the purposes of this Regulation, the following definitions apply:

- (1) ~~“investment firm” means an investment firm as defined in Article 4(1)(1) of Directive 2014/65/EU”~~ has the meaning given in paragraph 1A;
- (2) ~~“investment services and activities”~~ means investment any of the services and activities defined in Article 4(1)(2) of Directive 2014/65/EU listed in Part 3 of Schedule 2 to the Regulated Activities Order, relating to any of the instruments listed in Part 1 of Schedule 2 to that Order;
- (3) ~~“ancillary services”~~ means ancillary any of the services as defined listed in Article 4(1)(Part 3) of Directive 2014/65/EU A of Schedule 2 to the Regulated Activities Order;
- (4) ~~“execution of orders on behalf of clients”~~ means execution” means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients as defined in Article 4(1)(5) of Directive 2014/65/EU and includes the conclusion of agreements to sell financial instruments issued by an investment firm or a credit institution at the moment of their issuance;

- (5) ~~“dealing on own account” means dealing on own account as defined in Article 4(1)(6) of Directive 2014/65/EU~~ means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;
- (6) ~~“market maker” means a market maker as defined in Article 4(1)(7) of Directive 2014/65/EU;~~ means a natural or legal person holding themselves out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person’s proprietary capital at prices defined by that person;
- (7) ~~“client” means a client as defined in Article 4(1)(9) of Directive 2014/65/EU~~ means any natural or legal person to whom an investment firm provides investment or ancillary services;
- (8) ~~“professional client” means a professional client as defined in Article 4(1)(10) of Directive 2014/65/EU;~~ means a client who—
- (a) meets the criteria in Schedule 1 to this Regulation; or
  - (b) is a local public authority or municipality—
    - (i) which has requested to be treated as a professional client; and
    - (ii) in relation to which the investment firm has complied with the applicable requirements set out in Chapter 3.5 of the Conduct of Business sourcebook;
- (9) ~~“financial instrument”~~ means a financial instrument as defined in Article 4(1)(15) of Directive 2014/65/EU specified in Part 1 of Schedule 2 to the Regulated Activities Order;
- (10) ~~“market operator” means a market operator as defined in Article 4(1)(18) of Directive 2014/65/EU~~ means a person or persons who manages or operates the business of a regulated market, and may be the regulated market itself;
- (11) ~~“multilateral system” means a multilateral system as defined in Article 4(1)(19) of Directive 2014/65/EU;~~ means any system or facility in which multiple third party buying and selling trading interests in financial instruments are able to interact in the system;
- ~~(12) “systematic internaliser” means a systematic internaliser as defined in Article 4(1)(20) of Directive 2014/65/EU;~~
- (12) “systematic internaliser” means an investment firm which—
- (a) on an organised, frequent, systematic and substantial basis, deals on own account when executing client orders outside a UK regulated market, UK MTF or UK OTF without operating a multilateral system; and
  - (b) either—

- (i) satisfies the criteria set out in Article 12, 13, 14, 15 or 16 of Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, assessed in accordance with Article 17 of that Regulation; or
- (ii) has chosen to opt in to the systematic internaliser regime;

(12A) for the purposes of point (12)—

- (a) the frequent and systematic basis is to be measured by the number of OTC trades in the financial instrument carried out by the investment firm on own account when executing client orders; and
- (b) the substantial basis is to be measured either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the relevant area (within the meaning of Article 14(5A)) in a specific financial instrument;

(13) “regulated market” means a multilateral system operated or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments (in the system and in accordance with its non-discretionary rules) in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems;

(13A) “UK regulated market” means a regulated market which is a recognised investment exchange under section 285 of FSMA, but not an overseas investment exchange within the meaning of section 313(1) of that Act;

~~(13) “(13B) “EU regulated market”” means a regulated market as defined in Article 4(1)(21) which is authorised and functions regularly and in accordance with Title III of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments;~~

~~(14) “multilateral trading facility” or “MTF” means a multilateral trading facility as defined in Article 4(1)(22) of Directive 2014/65/EU;~~

(14) “multilateral trading facility” or “MTF” means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract;

(14A) “UK multilateral trading facility” or “UK MTF” means a multilateral system, operated by a UK investment firm or market operator, which—

- (a) brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract; and
- (b) complies, as applicable, with—
  - (i) Paragraph 9A of the Schedule to the Recognition Requirements Regulations;
  - (ii) the EU regulations specified in Schedule 2 to this Regulation;
  - (iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to MTFs,

and for the purposes of this definition, an investment firm or market operator is a UK investment firm or market operator if it has its head office in the United Kingdom;

(14B) “EU multilateral trading facility” or “EU MTF” means a multilateral system, operated by an investment firm or a market operator which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract in accordance with Title II of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments;

(15) ~~“organised trading facility” or “OTF” means an organised trading facility as defined in Article 4(1)(23) of Directive 2014/65/EU;~~ means a multilateral system—

- (a) which is not a regulated market or an MTF; and
- (b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract;

(15A) “UK organised trading facility” or “UK OTF” means a multilateral system—

- (a) which is not a regulated market or an MTF; and
- (b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract, and complies, as applicable, with—
  - (i) Paragraph 9A of the Schedule to the Recognition Requirements Regulations;
  - (ii) the EU regulations specified in Schedule 2 to this Regulation;
  - (iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to OTFs;

(15B) “EU organised trading facility” or “EU OTF” means a multilateral system—

(a) which is not a regulated market or an MTF; and

(b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments;

~~“(trading venue” means a trading venue as defined in Article 4(1)(24) of Directive 2014/65/EU”~~ means a regulated market, an MTF or an OTF;

(16A) “UK trading venue” means a UK regulated market, a UK MTF or a UK OTF;

(16B) “EU trading venue” means an EU regulated market, an EU MTF or an EU OTF;

(17) ‘liquid market’ means:

(a) for the purposes of Articles 9, 11, and 18, a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, and where the market is assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:

(i) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;

(ii) the number and type of market participants, including the ratio of market participants to traded financial instruments in a particular product;

(iii) the average size of spreads, where available;

(b) for the purposes of Articles 4, 5 and 14, a market for a financial instrument that is traded daily where the market is assessed according to the following criteria:

(i) the free float;

(ii) the average daily number of transactions in those financial instruments;

(iii) the average daily turnover for those financial instruments;

~~“(competent authority” means a competent authority as defined in Article 4(1)(26) of Directive 2014/65/EU;”~~ means the authority designated by regulation 3 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments)

Regulations 2017, or by regulation 17 of the Data Reporting Services Regulations 2017;

- (19) ~~“credit institution” means a credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;~~  
means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;
- (20) ~~“branch” means a branch as defined in Article 4(1)(30) of Directive 2014/65/EU;”~~  
means a place of business other than the head office which is a part of an investment firm, which has no legal personality and which provides investment services or activities and which may also perform ancillary services for which the investment firm has permission under Part 4A of FSMA or otherwise, or is authorised in its home jurisdiction;
- (21) ~~“A person (“A”) has “close links” means close links as defined in Article 4(1)(35) of Directive 2014/65/EU;”~~ with another person (“CL”) if—
- (a) CL is a parent undertaking of A;
  - (b) CL is a subsidiary undertaking of A;
  - (c) CL is a parent undertaking of a subsidiary undertaking of A;
  - (d) CL is a subsidiary undertaking of a parent undertaking of A;
  - (e) CL owns or controls 20% or more of the voting rights or capital of A; or
  - (f) A owns or controls 20% or more of the voting rights or capital of CL,
- and for the purposes of this paragraph “parent undertaking” and “subsidiary undertaking” have the meanings given in section 1162 of the Companies Act 2006, taken with Schedule 7 to that Act;
- (22) ~~“management body” means a management body as defined in Article 4(1)(36) of Directive 2014/65/EU;”~~, in relation to an investment firm, market operator or data reporting services provider, means—
- (23) ~~“structured deposit” means a structured deposit as defined in Article 4(1)(43) of Directive 2014/65/EU;~~
- (a) the board of directors, or if there is no such board, the equivalent body responsible for the management of the firm, operator or provider; or
  - (b) any other person who effectively directs the business of the firm, operator or provider;
- (23) “structured deposit” means a deposit (see point (23A)), which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as—

- (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as Euribor or Libor;
  - (b) a financial instrument or combination of financial instruments;
  - (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
  - (d) a foreign exchange rate or combination of foreign exchange rates;
- (23A) “deposit” means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where—
- (a) its existence can only be proven by a financial instrument, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which existed in a Member State of the European Union on 2 July 2014;
  - (b) its principal is not repayable at par; or
  - (c) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party;
- (24) ~~“transferable securities” means transferable securities as defined in Article 4(1)(44) of Directive 2014/65/EU;~~ “transferable securities” means those classes of securities which are negotiable on the capital market (with the exception of instruments of payment) such as—
- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
  - (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
  - (c) any other securities giving the right to acquire or sell any such securities or giving rise to a cash settlement determined by reference to such securities, currencies, interest rates or yields, commodities or other indices or measures;
- (25) ~~“depository receipts” means depository receipts as defined in Article 4(1)(45) of Directive 2014/65/EU;~~ “depository receipts” means those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer;
- (25A) “money market instruments” means those classes of instruments which are normally dealt with on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment;
- (26) ~~“exchange-traded fund” or “ETF” means an exchange-traded fund as defined in Article 4(1)(46) of Directive 2014/65/EU;~~ “exchange-traded fund” or “ETF” means a fund of which at least one unit

or share class is traded throughout the day on at least one trading venue and with at least one market maker which takes action to ensure that the price of its units or shares on the trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value;

- (27) ‘certificates’ means those securities which are negotiable on the capital market and which in case of a repayment of investment by the issuer are ranked above shares but below unsecured bond instruments and other similar instruments;
- (28) ‘structured finance products’ means those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets;
- (29) ~~“derivatives”~~ means those financial instruments defined in point ~~(44)24~~(c) ~~of Article 4(1) of Directive 2014/65/EU; and~~ or referred to in Annex I, Section C (4) to (10) thereof paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order;
- (30) ~~“commodity derivatives”~~ means those financial instruments ~~defined in point (44)(e) of Article 4~~
- (a) defined in point (24)(c);
- (b) ~~(1) of Directive 2014/65/EU;~~ which relate to a commodity or an underlying referred to in ~~Section C(10) of Annex I to Directive 2014/65/EU~~ paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order; or
- (c) ~~in points (which are referred to in paragraph 5), (6), (7) and ( or 10) of Section C of Annex I thereto~~ Part 1 of Schedule 2 to that Order;
- (31) ‘CCP’ means a CCP within the meaning of Article 2(1) of Regulation (EU) No 648/2012;
- (32) ‘exchange-traded derivative’ means a derivative that is traded on a regulated market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of this Regulation, and as such does not fall within the definition of an OTC derivative as defined in Article 2(7) of Regulation (EU) No 648/2012;
- (33) ‘actionable indication of interest’ means a message from one member or participant to another within a trading system in relation to available trading interest that contains all necessary information to agree on a trade;
- (34) ~~“approved publication arrangement”~~ or ~~“APA” means an approved publication arrangement as defined in Article 4(1)(52) of Directive 2014/65/EU;~~ means a person authorised under regulation 10 or 12A of the Data Reporting Services Regulations 2017 to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of this Regulation;
- (35) ~~“consolidated tape provider”~~ or ~~“CTP” means a consolidated tape provider as defined in Article 4(1)(53) of Directive 2014/65/EU;~~ means a person authorised

under regulation 10 or 12A of the Data Reporting Services Regulations 2017 to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of this Regulation from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

(36) ~~“approved reporting mechanism” or “ARM” means an approved reporting mechanism as defined in Article 4(1)(54) of Directive 2014/65/EU;~~ means a person authorised under regulation 10 or 12A of the Data Reporting Services Regulations 2017 to provide the service of reporting details of transactions to competent authorities on behalf of investment firms;

(37) [deleted]

(38) [deleted]

(39) [deleted]

~~(37) ‘home Member State’ means a home Member State as defined in Article 4(1)(55) of Directive 2014/65/EU;~~

~~(38) ‘host Member State’ means a host Member State as defined in Article 4(1)(56) of Directive 2014/65/EU;~~

~~(39) ‘benchmark’ means any rate, index or figure, made available to the public or published that is periodically or regularly determined by the application of a formula to, or on the basis of the value of one or more underlying assets or prices, including estimated prices, actual or estimated interest rates or other values, or surveys and by reference to which the amount payable under a financial instrument or the value of a financial instrument is determined.~~

(40) ‘interoperability arrangement’ means an interoperability arrangement as defined in Article 2(12) of Regulation (EU) No 648/2012;

(41) ‘third-country financial institution’ means an entity, the head office of which is established in a third country, that is authorised or licensed under the law of that third country to carry out any of the services or activities listed in Directive 2013/36/EU, Directive 2014/65/EU; Directive 2009/138/EC of the European Parliament and of the Council, Directive 2009/65/EC of the European Parliament and of the Council, Directive 2003/41/EC of the European Parliament and of the Council or Directive 2011/61/EU of the European Parliament and of the Council;

(42) ~~“third-country firm” means a third country firm as defined in Article 4(1)(57) of Directive 2014/65/EU;~~ means a firm—

(a) which is a credit institution providing investment services or performing investment activities or an investment firm; and

(b) whose registered office or (if it has no registered office) its head office is located in a third country;

- (43) ‘wholesale energy product’ means wholesale energy products as defined in Article 2(4) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council;
- (44) ‘agricultural commodity derivatives’ means derivative contracts relating to products listed in Article 1 of, and Annex I, Parts I to XX and XXIV/1 to, Regulation (EU) No 1308/2013 of the European Parliament and of the Council;
- (45) ‘liquidity fragmentation’ means a situation in which:
- (a) participants in a trading venue are unable to conclude a transaction with one or more other participants in that venue because of the absence of clearing arrangements to which all participants have access; or
  - (b) a clearing member or its clients would be forced to hold their positions in a financial instrument in more than one CCP which would limit the potential for the netting of financial exposures;
- (46) ~~“sovereign debt” means~~ means a debt instrument issued by a sovereign issuer; ~~debt as defined in Article 4(1)(61) of Directive 2014/65/EU~~
- (46A) “sovereign issuer” means any of the following which issue debt instruments—
- (a) the United Kingdom, including a government department, an agency, or a special purpose vehicle of the United Kingdom;
  - (b) a State other than the United Kingdom, including a government department, an agency or a special purpose vehicle of the State;
  - (c) in the case of a federal State, a member of the federation;
  - (d) a special purpose vehicle for several States;
  - (e) an international financial institution established by two or more States which has the purpose of mobilising funding and providing financial assistance for the benefit of those of its members that are experiencing or threatened by severe financing problems;
  - (f) the European Union;
  - (g) the European Investment Bank;
  - (h) the International Finance Corporation;
  - (i) the International Monetary Fund;
- (47) ‘portfolio compression’ means a risk reduction service in which two or more counterparties wholly or partially terminate some or all of the derivatives submitted by those counterparties for inclusion in the portfolio compression and replace the terminated derivatives with another derivative whose combined notional value is less than the combined notional value of the terminated derivatives;

- (48) ‘exchange for physical’ means a transaction in a derivative contract or other financial instrument contingent on the simultaneous execution of an equivalent quantity of an underlying physical asset;
- (49) ‘package order’ means an order priced as a single unit:
- (a) for the purpose of executing an exchange for physical; or
  - (b) in two or more financial instruments for the purpose of executing a package transaction;
- (50) ‘package transaction’ means:
- (a) an exchange for physical; or
  - (b) a transaction involving the execution of two or more component transactions in financial instruments and which fulfils all of the following criteria:
    - (i) the transaction is executed between two or more counterparties;
    - (ii) each component of the transaction bears meaningful economic or financial risk related to all the other components;
    - (iii) the execution of each component is simultaneous and contingent upon the execution of all the other components.
- (51) [“the FCA” means the Financial Conduct Authority;](#)
- (52) [“the PRA” means the Prudential Regulation Authority;](#)
- (53) [the “Regulated Activities Order” means the Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001;](#)
- (54) [“FSMA” means the Financial Services and Markets Act 2000;](#)
- (55) [“the Recognition Requirements Regulations” mean the Financial Services and Markets Act 2000 \(Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories\) Regulations 2001;](#)
- (56) [the “Markets in Financial Instruments Regulations 2017” means the Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017;](#)
- (57) [“Regulation \(EU\) 2017/565” means Commission Delegated Regulation 2017/565/EU supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;](#)
- (58) [“Regulation \(EU\) 2017/567” means Commission Delegated Regulation 2017/567/EU supplementing Regulation 600/2014/EU of the European Parliament and of the](#)

Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions;

- (59) “Regulation (EU) 2017/575” means Commission Delegated Regulation 2017/575/EU supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions;
- (60) “Regulation (EU) 2017/576” means Commission Delegated Regulation 2017/576/EU supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution;
- (61) “Directive 2014/65/EU” means Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;
- (62) unless the context otherwise requires, all references in this Regulation—
- (a) to a trading venue are to a UK trading venue;
  - (b) to a regulated market are to a UK regulated market;
  - (c) to an MTF are to a UK MTF;
  - (d) to an OTF are to a UK OTF; and
  - (e) to an EU regulated market, EU MTF or EU OTF include EU regulated markets, MTFs and OTFs in EEA countries;
- (63) references to a “third country” (including in expressions including the words “third country”) are, except where the context otherwise requires, to be read as references to a country other than the United Kingdom;
- (64) any reference in this Regulation to a sourcebook or manual is to a sourcebook or manual in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under FSMA as the sourcebook or manual has effect on exit day;
- (65) any reference to the PRA rulebook is to the rulebook published by the PRA containing rules made by that Authority under FSMA as the rulebook has effect on exit day.
- 1A. —
- (1) Subject to point (2), for the purpose of this Regulation, “investment firm” means a person (“P”) whose regular occupation or business is the provision of one or more investment services to third parties or the performance of one or more investment activities on a professional basis.

- (2) If P is not a legal person, P is not an investment firm unless—
- (a) P's status ensures a level of protection for third party interests equivalent to that afforded by legal persons;
  - (b) P is subject to prudential supervision appropriate to P's legal form which is equivalent to that given to legal persons; and
  - (c) where P provides services involving the holding of third party funds or transferable securities—
    - (i) the ownership rights of third parties in instruments and funds held by P are safeguarded, especially in the event of—
      - (aa) the insolvency of P's firm or its proprietors; or
      - (bb) seizure, set off or any other action taken by creditors of P's firm or its proprietors;
    - (ii) P's firm is subject to rules designed to monitor the firm's solvency and that of its proprietors;
    - (iii) the annual accounts of P's firm are audited by one or more persons authorised under the law applying to the firm to audit accounts; and
    - (iv) where P is the only proprietor of the firm, P has made provision for the protection of investors if P's firm ceases business following P's death or incapacity or any other such event.
- (3) A person who is an authorised person with permission under Part 4A of FSMA to carry on a regulated activity which is any of the investment services and activities in the United Kingdom satisfies the conditions set out in paragraph (2).
2. The ~~Commission shall be empowered to adopt delegated acts in accordance with Article 50 to~~ Treasury may by regulations specify certain technical elements of the definitions laid down in paragraph 1 to adjust them to market developments.

## TITLE II

### TRANSPARENCY FOR TRADING VENUES

#### CHAPTER 1

##### *Transparency for equity instruments*

##### *Article 3*

#### **Pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments**

1. Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which

are advertised through their systems for shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours.

2. The transparency requirements referred to in paragraph 1 shall be calibrated for different types of trading systems including order-book, quote-driven, hybrid and periodic auction trading systems.
3. Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in paragraph 1 to investment firms which are obliged to publish their quotes in shares, depositary receipts, ETFs, certificates and other similar financial instruments pursuant to Article 14.

#### *Article 4*

#### **Waivers for equity instruments**

1. ~~Competent authorities shall be able to~~The FCA may waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 3(1) for:
  - (a) systems matching orders based on a trading methodology by which the price of the financial instrument referred to in Article 3(1) is derived from the trading venue where that financial instrument was first admitted to trading or the most relevant market in terms of liquidity, where that reference price is widely published and is regarded by market participants as a reliable reference price. The continued use of that waiver shall be subject to the conditions set out in Article 5.
  - (b) systems that formalise negotiated transactions which are:
    - (i) made within the current volume weighted spread reflected on the order book or the quotes of the market makers of the trading venue operating that system, subject to the conditions set out in Article 5;
    - (ii) in an illiquid share, depositary receipt, ETF, certificate or other similar financial instrument that does not fall within the meaning of a liquid market, and are dealt within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator; or
    - (iii) subject to conditions other than the current market price of that financial instrument;
  - (c) orders that are large in scale compared with normal market size;

- (d) orders held in an order management facility of the trading venue pending disclosure.
2. The reference price referred to in paragraph 1(a) shall be established by obtaining:
- (a) the midpoint within the current bid and offer prices of the trading venue where that financial instrument was first admitted to trading or the most relevant market in terms of liquidity; or
  - (b) when the price referred to in point (a) is not available, the opening or closing price of the relevant trading session.

Orders shall only reference the price referred to in point (b) outside the continuous trading phase of the relevant trading session.

3. Where trading venues operate systems which formalise negotiated transactions in accordance with paragraph 1(b)(i):
- (a) those transactions shall be carried out in accordance with the rules of the trading venue;
  - (b) the trading venue shall ensure that arrangements, systems and procedures are in place to prevent and detect market abuse or attempted market abuse in relation to such negotiated transactions in accordance with Article 16 of Regulation (EU) No 596/2014;
  - (c) the trading venue shall establish, maintain and implement systems to detect any attempt to use the waiver to circumvent other requirements of this Regulation ~~or, Commission Delegated Regulation (EU) 2017/565 supplementing~~ [Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that directive, the Markets in Financial Instruments Regulations 2017 or rules or relevant technical standards made by the FCA](#) and to report attempts to the ~~competent authority~~ [FCA](#) (and for these purposes, “relevant technical standards” mean [technical standards made by the FCA under this Regulation](#)).

Where ~~a competent authority~~ [the FCA](#) grants a waiver in accordance with paragraph 1(b)(i) or (iii), ~~that competent authority~~ [the FCA](#) shall monitor the use of the waiver by the trading venue to ensure that the conditions for use of the waiver are respected.

- ~~4. Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver and provide an explanation regarding its functioning, including the details of the trading venue where the reference price is established as referred to in paragraph 1(a). Notification of the intention to grant a waiver shall be made not less than four months before the waiver is intended to take effect. Within two months following receipt of the notification, ESMA shall issue a non-binding opinion to the competent authority in question assessing the compatibility of each waiver with the~~

~~requirements established in paragraph 1 and specified in the regulatory technical standard adopted pursuant to paragraph 6. Where that competent authority grants a waiver and a competent authority of another Member State disagrees, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and shall submit an annual report to the Commission on how they are applied in practice.~~

4. The FCA must monitor the application of any waivers granted under paragraph 1 and publish an annual report on how they are applied in practice.

~~5. A competent authority may, either on its own initiative or upon request by another competent authority,~~The FCA may withdraw a waiver granted under paragraph 1 as specified under paragraph 6, if it observes that the waiver is being used in a way that deviates from its original purpose or if it believes that the waiver is being used to circumvent the requirements established in this Article.

~~Competent authorities shall notify ESMA and other competent authorities of such withdrawal providing full reasons for their decision.~~

~~6. ESMA shall develop draft regulatory~~The FCA may make technical standards to specify the following:

- (a) the range of bid and offer prices or designated market-maker quotes, and the depth of trading interest at those prices, to be made public for each class of financial instrument concerned in accordance with Article 3(1), taking into account the necessary calibration for different types of trading systems as referred to in Article 3(2);
- (b) the most relevant market in terms of liquidity of a financial instrument in accordance with paragraph 1(a);
- (c) the specific characteristics of a negotiated transaction in relation to the different ways the member or participant of a trading venue can execute such a transaction;
- (d) the negotiated transactions that do not contribute to price formation which avail of the waiver provided for under paragraph 1(b)(iii);
- (e) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility of a trading venue pending disclosure for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned;

7. [deleted]

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

~~7. Waivers granted by competent authorities in accordance with Article 29(2) and Article 44(2) of Directive 2004/39/EC and Articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by ESMA by 3 January 2020. ESMA shall issue an opinion to the competent authority in question assessing the continued compatibility of each of those waivers with the requirements established in this Regulation and any delegated act and regulatory technical standard based on this Regulation.~~

## Article 5

### Volume Cap Mechanism

1. In order to ensure that the use of the waivers provided for in Article 4(1)(a) and 4(1)(b)(i) does not unduly harm price formation, trading under those waivers is restricted as follows:
  - (a) the percentage of trading in a financial instrument carried out on a trading venue under those waivers shall be limited to 4 % of the total volume of trading in that financial instrument on all trading venues across the ~~Union~~relevant area over the previous 12 months.
  - (b) overall ~~Union~~-trading in the relevant area in a financial instrument carried out under those waivers shall be limited to 8 % of the total volume of trading in that financial instrument on all trading venues across the ~~Union~~relevant area over the previous 12 months.

That volume cap mechanism shall not apply to negotiated transactions which are in a share, depositary receipt, ETF, certificate or other similar financial instrument for which there is not a liquid market as determined in accordance with Article 2(1)(17)(b) and are dealt within a percentage of a suitable reference price as referred to in Article 4(1)(b)(ii), or to negotiated transactions that are subject to conditions other than the current market price of that financial instrument as referred to in Article 4(1)(b)(iii).

2. Subject to paragraph 3A When the percentage of trading in a financial instrument carried out on a trading venue under the waivers ~~has~~appears to the FCA to have exceeded the limit referred to in paragraph 1(a), the ~~competent authority that authorised the use of those waivers by that venue~~FCA shall within two working days suspend their use on that venue in that financial instrument based on the data published by ~~ESMA~~the FCA referred to in paragraph 4, for a period of six months.
3. Subject to paragraph 3A When the percentage of trading in a financial instrument carried out on all trading venues across the ~~Union~~relevant area under those waivers ~~has~~appears to the FCA to have exceeded the limit referred to in paragraph 1(b), ~~all competent authorities~~the FCA shall within two working days suspend the use of those waivers across the ~~Union~~United Kingdom for a period of six months.

- 3A. Paragraphs 2 and 3 do not apply during the period (“the transitional period”)—
- (a) of four years beginning with exit day; or
  - (b) ending on the day directed by the Treasury, where this is earlier.
- 3B. During the transitional period, the FCA may suspend the use of a waiver provided for in Article 4(1)(a) and 4(1)(b)(i) for a period of up to six months to ensure that its use does not unduly harm price formation if the FCA considers it necessary to do so to advance the FCA’s integrity objective under section 1D of FSMA.
- 3C. The FCA may renew a suspension imposed under paragraph 3B at the end of the six-month period referred to in that paragraph if it considers that the conditions which led it to impose a suspension still exist at that date.
- 3D. In deciding whether to suspend the use of a waiver under paragraph 3B, or to renew a suspension under paragraph 3C, the FCA—
- (a) must also take into account—
    - (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA;
    - (ii) the thresholds applying under Article 5 of Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments as it has effect in EU law; and
    - (iii) the most recent information published by ESMA under Article 5(4), 5(5) and 5(6) before exit day;
  - (b) may take into account—
    - (i) any relevant information produced under Article 3, or under equivalent pre-trading transparency requirements in other jurisdictions, about the use of the waiver in the United Kingdom, or under equivalent waiver arrangements in any other country, in relation to the financial instrument; and
    - (ii) any relevant information available in relation to trading volumes in the financial instrument concerned, whether in the United Kingdom or in any other country.
- 3E. In deciding whether to issue a direction terminating the transitional period, the Treasury must take into account whether the FCA is able to carry out its functions relating to transparency under this Regulation and its implementing measures (as amended under the European Union (Withdrawal) Act 2018).
4. ~~ESMA~~After the transitional period, the FCA shall publish within ~~five~~ten working days of the end of each calendar month, the total volume of ~~Union~~trading in the relevant area per financial instrument in the previous 12 months, the percentage of trading in a financial instrument carried out across the ~~Union~~relevant area under

those waivers and on each trading venue in the previous 12 months, and the methodology that is used to derive those percentages.

5. In the event that the report referred to in paragraph 4 identifies any trading venue where trading in any financial instrument carried out under the waivers has exceeded 3,75 % of the total trading in the ~~Union~~relevant area in that financial instrument, based on the previous 12 months' trading, ~~ESMA~~the FCA shall publish an additional report within ~~five~~ten working days of the 15th day of the calendar month in which the report referred to in paragraph 4 is published. That report shall contain the information specified in paragraph 4 in respect of those financial instruments where 3,75 % has been exceeded.
6. In the event that the report referred to in paragraph 4 identifies that overall ~~Union~~ trading in the relevant area in any financial instrument carried out under the waivers has exceeded 7,75 % of the total ~~Union~~ trading in the relevant area in the financial instrument, based on the previous 12 months' trading, ~~ESMA~~the FCA shall publish an additional report within ~~five~~ten working days of the 15th on the day of the calendar month in which the report referred to in paragraph 4 is published. That report shall contain the information specified in paragraph 4 in respect of those financial instruments where 7,75 % has been exceeded.
7. In order to ensure a reliable basis for monitoring the trading taking place under those waivers and for determining whether the limits referred to in paragraph 1 have been exceeded, operators of trading venues shall be obligated to have in place systems and procedures to:
  - (a) enable the identification of all trades which have taken place on its venue under those waivers; and
  - (b) ensure it does not exceed the permitted percentage of trading allowed under those waivers as referred to in paragraph 1(a) under any circumstances.
8. ~~The period for the publication of trading data by ESMA, and for which trading in a financial instrument under those waivers is to be monitored shall start on 3 January 2017.~~ Without prejudice to Article 4(5), ~~competent authorities~~the FCA shall be empowered to suspend the use of those waivers from the date of application of this Regulation and thereafter on a monthly basis.
9. ~~ESMA shall develop draft regulatory~~The FCA may make technical standards to specify the method, including the flagging of transactions, by which it collates, calculates and publishes the transaction data, as outlined in paragraph 4, in order to provide an accurate measurement of the total volume of trading per financial instrument and the percentages of trading that use those waivers across the ~~Union~~relevant area and per trading venue.
10. For the purposes of this Article, "the relevant area" consists of the United Kingdom and those countries or regions specified by the FCA by direction in accordance with Article 50B.
11. The FCA may only give a direction under paragraph 10 specifying that a country or region is in the relevant area in relation to one or more financial instruments for the

purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess the volume of trading in the financial instruments concerned in that country or region.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

#### Article 6

### Post-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments

1. Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on that trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible.
2. Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 of this Article to investment firms which are obliged to publish the details of their transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments pursuant to Article 20.

#### Article 7

### Authorisation of deferred publication

1. ~~Competent authorities~~The FCA shall be able to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on their type or size.

In particular, the ~~competent authorities~~FCA may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share, depositary receipt, ETF, certificate or other similar financial instrument or that class of share, depositary receipt, ETF, certificate or other similar financial instrument.

Market operators and investment firms operating a trading venue shall obtain ~~the competent authority's~~FCA's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public. ~~ESMA~~The FCA shall monitor the application of those arrangements for deferred trade-publication and ~~shall submit~~must publish an annual report ~~to the Commission~~ on how they are applied in practice.

~~Where a competent authority authorises deferred publication and a competent authority of another Member State disagrees with the deferral or disagrees with the effective application of the authorisation granted, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.~~

2. ~~ESMA shall develop draft regulatory~~The FCA may make technical standards to specify the following in such a way as to enable the publication of information required under ~~Article 64 of Directive 2014/65/EU:~~regulation 14 of the Data Reporting Services Regulations 2017;
- (a) the details of transactions that investment firms, including systematic internalisers and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned in accordance with Article 6(1), including identifiers for the different types of transactions published under Article 6(1) and Article 20, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;
  - (b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible including when trades are executed outside ordinary trading hours.
  - (c) the conditions for authorising investment firms, including systematic internalisers and market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions for each class of financial instruments concerned in accordance with paragraph 1 of this Article and with Article 20(1);
  - (d) the criteria to be applied when deciding the transactions for which, due to their size or the type, including liquidity profile of the share, depositary receipt, ETF, certificate or other similar financial instrument involved, deferred publication is allowed for each class of financial instrument concerned.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## CHAPTER 2

### *Transparency for non-equity instruments*

#### *Article 8*

#### **Pre-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives**

1. Market operators and investment firms operating a trading venue shall make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for bonds, and structured finance products, emission allowances, derivatives traded on a trading venue and package orders. That requirement shall also apply to actionable indication of interests. Market operators and investment firms operating a trading venue shall make that information available to the public on a continuous basis during normal trading hours. That publication obligation does not apply to those derivative transactions of non-financial counterparties which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group.
2. The transparency requirements referred to in paragraph 1 shall be calibrated for different types of trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems.
3. Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information referred to in paragraph 1 to investment firms which are obliged to publish their quotes in bonds, structured finance products, emission allowances and derivatives pursuant to Article 18.
4. Market operators and investment firms operating a trading venue shall, where a waiver is granted in accordance with Article 9(1)(b), make public at least indicative pre-trade bid and offer prices which are close to the price of the trading interests advertised through their systems in bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make that information available to the public through appropriate electronic means on a continuous basis during normal trading hours. Those arrangements shall ensure that information is provided on reasonable commercial terms and on a non-discriminatory basis.

#### *Article 9*

#### **Waivers for non-equity instruments**

1. ~~Competent authorities~~[The FCA](#) shall be able to waive the obligation for market operators and investment firms operating a trading venue to make public the information referred to in Article 8(1) for:

- (a) orders that are large in scale compared with normal market size and orders held in an order management facility of the trading venue pending disclosure;
- (b) actionable indications of interest in request-for-quote and voice trading systems that are above a size specific to the financial instrument, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors;
- (c) derivatives which are not subject to the trading obligation specified in Article 28 and other financial instruments for which there is not a liquid market;
- (d) orders for the purpose of executing an exchange for physical;
- (e) package orders that meet one of the following conditions:
  - (i) at least one of its components is a financial instrument for which there is not a liquid market, unless there is a liquid market for the package order as a whole;
  - (ii) at least one of its components is large in scale compared with the normal market size, unless there is a liquid market for the package order as a whole;
  - (iii) all of its components are executed on a request-for-quote or voice system and are above the size specific to the instrument.

~~2. Before granting a waiver in accordance with paragraph 1, competent authorities shall notify ESMA and other competent authorities of the intended use of each individual waiver and provide an explanation regarding their functioning. Notification of the intention to grant a waiver shall be made not less than four months before the waiver is intended to take effect. Within two months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of the waiver with the requirements established in paragraph 1 and specified in the regulatory technical standards adopted pursuant to paragraph 5. Where that competent authority grants a waiver and a competent authority of another Member State disagrees, that competent authority may refer the matter back to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010. ESMA shall monitor the application of the waivers and submit an annual report to the Commission on how they are applied in practice.~~

2. [\[deleted\]](#)

- 2a. ~~Competent authorities~~[The FCA](#) shall be able to waive the obligation referred to in Article 8(1) for each individual component of a package order.
- 3. ~~Competent authorities, may, either on their own initiative or upon request by other competent authorities,~~[The FCA may](#) withdraw a waiver granted under paragraph 1 if ~~they observe~~[it observes](#) that the waiver is being used in a way that deviates from its

original purpose or if ~~they consider~~ it considers that the waiver is being used to circumvent the requirements established in this Article.

~~Competent authorities shall notify ESMA and other competent authorities of such withdrawal without delay and before it takes effect, providing full reasons for their decision.~~

4. As The competent authority responsible for supervising one or more trading venues on which a class of bond, structured finance product, emission allowance or derivative is traded the FCA may, where the liquidity of that class of financial instrument falls below a specified threshold or if paragraph 4A applies, temporarily suspend the obligations referred to in Article 8. The specified threshold shall be defined on the basis of objective criteria specific to the market for the financial instrument concerned. Notification of such temporary suspension shall be published on the website of the ~~relevant competent authority~~ FCA.

The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the website of the ~~relevant competent authority~~ FCA. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be applicable. Where the temporary suspension is not renewed after that three-month period, it shall automatically lapse.

~~Before suspending or renewing the temporary suspension under this paragraph of 4A.~~

During the transitional period referred to in Article 5(3A), the FCA may suspend the obligations referred to in Article 8, the relevant competent authority shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and second subparagraphs. in relation to a financial instrument or class of financial instrument for a specified period if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.

4B. In deciding whether to suspend those obligations—

(a) the FCA must also take into account—

- (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and
- (ii) the most recent specified threshold published before exit day on the basis of calculations under Article 16 of Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives;

(b) the FCA may also take into account any other relevant information available in relation to liquidity in the relevant class of financial instrument concerned, whether in the United Kingdom or in any other country.

5. ~~ESMA shall develop draft regulatory~~The FCA may make technical standards to specify the following:

- (a) the parameters and methods for calculating the threshold of liquidity referred to in paragraph 4 in relation to the financial instrument. The parameters and methods for ~~Member States~~the FCA to calculate the threshold shall be set in such a way that when the threshold is reached, it represents a significant decline in liquidity across all venues within the ~~Union~~relevant area for the financial instrument concerned based on the criteria used under Article 2(1)(17);
- (b) the range of bid and offer prices or quotes and the depth of trading interests at those prices, or indicative pre-trade bid and offer prices which are close to the price of the trading interest, to be made public for each class of financial instrument concerned in accordance with Article 8(1) and (4), taking into account the necessary calibration for different types of trading systems as referred to in Article 8(2);
- (c) the size of orders that are large in scale and the type and the minimum size of orders held in an order management facility pending disclosure for which pre-trade disclosure may be waived under paragraph 1 for each class of financial instrument concerned;
- (d) the size specific to the financial instrument referred to in paragraph 1(b) and the definition of request-for-quote and voice trading systems for which pre-trade disclosure may be waived under paragraph 1;

When determining the size specific to the financial instrument that would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors, in accordance with paragraph 1(b), ~~ESMA shall~~the FCA must take the following factors into account:

- (i) whether, at such sizes, liquidity providers would be able to hedge their risks;
- (ii) where a market in the financial instrument, or a class of financial instruments, consists in part of retail investors, the average value of transactions undertaken by those investors;
- (e) the financial instruments or the classes of financial instruments for which there is not a liquid market where pre-trade disclosure may be waived under paragraph 1.

5A. For the purposes of this Article, “the relevant area” consists of the United Kingdom and those countries or regions specified by the FCA by direction in accordance with Article 50B.

5B. The FCA may only give a direction under paragraph 5A specifying that a country or region is within the relevant area in relation to one or more financial instruments for the purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess the volume of trading in the financial instruments concerned in that country or region.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

6. In order to ensure the consistent application of points (i) and (ii) of paragraph (1)(e), ~~ESMA shall develop draft regulatory~~the FCA may make technical standards to establish a methodology for determining those package orders for which there is a liquid market. When developing such methodology for determining whether there is a liquid market for a package order as a whole, ~~ESMA shall~~the FCA must assess whether packages are standardised and frequently traded.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 28 February 2017.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

#### *Article 10*

#### **Post-trade transparency requirements for trading venues in respect of bonds, structured finance products, emission allowances and derivatives**

1. Market operators and investment firms operating a trading venue shall make public the price, volume and time of the transactions executed in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue. Market operators and investment firms operating a trading venue shall make details of all such transactions public as close to real-time as is technically possible.
2. Market operators and investment firms operating a trading venue shall give access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under paragraph 1 to investment firms which are obliged to publish the details of their transactions in bonds, structured finance products, emission allowances and derivatives pursuant to Article 21.

## Article 11

### Authorisation of deferred publication

1. ~~Competent authorities~~The FCA shall be able to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on the size or type of the transaction.

In particular, the ~~competent authorities~~FCA may authorise the deferred publication in respect of transactions that:

- (a) are large in scale compared with the normal market size for that bond, structured finance product, emission allowance or derivative traded on a trading venue, or for that class of bond, structured finance product, emission allowance or derivative traded on a trading venue; or
- (b) are related to a bond, structured finance product, emission allowance or derivative traded on a trading venue, or a class of bond, structured finance product, emission allowance or derivative traded on a trading venue for which there is not a liquid market;
- (c) are above a size specific to that bond, structured finance product, emission allowance or derivative traded on a trading venue, or that class of bond, structured finance product, emission allowance or derivative traded on a trading venue, which would expose liquidity providers to undue risk and takes into account whether the relevant market participants are retail or wholesale investors.

Market operators and investment firms operating a trading venue shall obtain the ~~competent authority's~~FCA's prior approval of proposed arrangements for deferred trade-publication, and shall clearly disclose those arrangements to market participants and the public. ~~ESMA shall~~The FCA must monitor the application of those arrangements for deferred ~~trade-publication and shall submit~~trade-publication and must publish an annual report ~~to the Commission~~ on how they are ~~used~~applied in practice.

2. As The competent authority responsible for supervising one or more trading venues on which a class of bond, structured finance product, emission allowance or derivative is traded the FCA may, where the liquidity of that class of financial instrument falls below the threshold determined in accordance with the methodology as referred to in Article 9(5)(a) or if paragraph 2A applies, temporarily suspend the obligations referred to in Article 10. That threshold shall be defined based on objective criteria specific to the market for the financial instrument concerned. Such temporary suspension shall be published on the website of the ~~relevant competent authority~~FCA.

The temporary suspension shall be valid for an initial period not exceeding three months from the date of its publication on the website of the ~~relevant competent authority~~FCA. Such a suspension may be renewed for further periods not exceeding three months at a time if the grounds for the temporary suspension continue to be

applicable. Where the temporary suspension is not renewed after that three-month period, it shall automatically lapse.

~~Before suspending or renewing the temporary suspension of the obligations referred to in Article 10, the relevant competent authority shall notify ESMA of its intention and provide an explanation. ESMA shall issue an opinion to the competent authority as soon as practicable on whether in its view the suspension or the renewal of the temporary suspension is justified in accordance with the first and second subparagraphs.~~

2A. During the transitional period referred to in Article 5(3A), the FCA may suspend the obligations referred to in Article 10 in relation to a financial instrument or class of financial instrument for a specified period if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.

2B. In deciding whether to suspend those obligations—

(a) the FCA must also take into account—

(i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and

(ii) the most recent specified threshold published before exit day on the basis of calculations under Article 16 of Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives;

(b) the FCA may also take into account any relevant information available in relation to liquidity in the relevant class of financial instrument concerned, whether in the United Kingdom or in any other country.

3. ~~Competent authorities~~The FCA may, in conjunction with an authorisation of deferred publication:

(a) request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of deferral;

(b) allow the omission of the publication of the volume of an individual transaction during an extended time period of deferral;

(c) regarding non-equity instruments that are not sovereign debt, allow the publication of several transactions in an aggregated form during an extended time period of deferral;

(d) regarding sovereign debt instruments, allow the publication of several transactions in an aggregated form for an indefinite period of time.

In relation to sovereign debt instruments, points (b) and (d) may be used either separately or consecutively whereby once the volume omission extended period lapses, the volumes could then be published in aggregated form.

In relation to all other financial instruments, when the deferral time period lapses, the outstanding details of the transaction and all the details of the transactions on an individual basis shall be published.

4. ~~ESMA shall develop draft regulatory~~The FCA may make technical standards to specify the following in such a way as to enable the publication of information required under ~~Article 64 of Directive 2014/65/EU~~regulation 14 of the Data Reporting Services Regulations 2017:

- (a) the details of transactions that investment firms, including systematic internalisers, and market operators and investment firms operating a trading venue shall make available to the public for each class of financial instrument concerned in accordance with Article 10(1), including identifiers for the different types of transactions published under Article 10(1) and Article 21(1), distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;
- (b) the time limit that would be deemed in compliance with the obligation to publish as close to real time as possible including when trades are executed outside ordinary trading hours;
- (c) the conditions for authorising investment firms, including systematic internalisers, and market operators and investment firms operating a trading venue, to provide for deferred publication of the details of transactions for each class of financial instrument concerned in accordance with paragraph 1 of this Article and with Article 21(4);
- (d) the criteria to be applied when determining the size or type of a transaction for which deferred publication and publication of limited details of a transaction, or publication of details of several transactions in an aggregated form, or omission of the publication of the volume of a transaction with particular reference to allowing an extended length of time of deferral for certain financial instruments depending on their liquidity, is allowed under paragraph 3.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## CHAPTER 3

### *Obligation to offer trade data on a separate and reasonable commercial basis*

#### *Article 12*

##### **Obligation to make pre-trade and post-trade data available separately**

1. Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public by offering pre-trade and post-trade transparency data separately.
2. ~~ESMA shall develop draft regulatory~~The FCA may make technical standards to specify the offering of pre-trade and post-trade transparency data, including the level of disaggregation of the data to be made available to the public as referred to in paragraph 1.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

#### *Article 13*

##### **Obligation to make pre-trade and post-trade data available on a reasonable commercial basis**

1. Market operators and investment firms operating a trading venue shall make the information published in accordance with Articles 3, 4 and 6 to 11 available to the public on a reasonable commercial basis and ensure non-discriminatory access to the information. Such information shall be made available free of charge 15 minutes after publication.
2. The ~~Commission shall adopt delegated acts in accordance with Article 50~~clarifying Treasury may by regulations clarify what constitutes a reasonable commercial basis to make information public as referred to in paragraph 1.

## TITLE III

### **TRANSPARENCY FOR SYSTEMATIC INTERNALISERS AND INVESTMENT FIRMS TRADING OTC**

#### *Article 14*

##### **Obligation for systematic internalisers to make public firm quotes in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments**

1. Investment firms shall make public firm quotes in respect of those shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading

venue for which they are systematic internalisers and for which there is a liquid market.

Where there is not a liquid market for the financial instruments referred to in the first subparagraph, systematic internalisers shall disclose quotes to their clients upon request.

2. This Article and Articles 15, 16 and 17 shall apply to systematic internalisers when they deal in sizes up to standard market size. Systematic internalisers shall not be subject to this Article and Articles 15, 16 and 17 when they deal in sizes above standard market size.
3. Systematic internalisers may decide the size or sizes at which they will quote. The minimum quote size shall be at least the equivalent of 10 % of the standard market size of a share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue. For a particular share, depositary receipt, ETF, certificate or other similar financial instrument traded on a trading venue each quote shall include a firm bid and offer price or prices for a size or sizes which could be up to standard market size for the class of shares, depositary receipts, ETFs, certificates or other similar financial instruments to which the financial instrument belongs. The price or prices shall reflect the prevailing market conditions for that share, depositary receipt, ETF, certificate or other similar financial instrument.
4. Shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that financial instrument. The standard market size for each class of shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be a size representative of the arithmetic average value of the orders executed in the market for the financial instruments included in each class.
5. The market for each share, depositary receipt, ETF, certificate or other similar financial instrument shall be comprised of all orders executed in the ~~Union~~[relevant area](#) in respect of that financial instrument excluding those that are large in scale compared to normal market size.

5A. For the purposes of this Article—

- (a) “the relevant area” consists of the United Kingdom and those countries or regions specified by the FCA by direction in accordance with Article 50B;
  - (b) the FCA may only give a direction under point (a) specifying that a country or region is within the relevant area in relation to one or more financial instruments for the purposes of this Article if the FCA is able to obtain sufficient reliable trading data to enable it to assess total orders executed in the financial instruments concerned in that country or region.
6. ~~The competent authority of the most relevant market in terms of liquidity as defined in Article 26 for each share, depositary receipt, ETF, certificate and other similar financial instrument~~Unless paragraph 6A applies The FCA shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the

market in respect of ~~that~~each share, depositary receipt, ETF, certificate and other similar financial instrument, the class to which it belongs. That information shall be made public to all market participants and ~~communicated to ESMA which shall publish the information on its website~~published by the FCA.

6A. During the transitional period referred to in Article 5(3A), the FCA may determine the class of each share, depositary receipt, ETF, certificate and other similar financial instruments otherwise than on the basis of the arithmetic average value of the orders executed in the market in that instrument, if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.

6B. In determining the class of a financial instrument as referred to in paragraph 6A—

(a) the FCA must have regard to—

(i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and

(ii) the most recent classes determined for the financial instruments in question before exit day;

(b) the FCA may also take into account any relevant information available in relation to the value of the orders executed in relation to the financial instrument in question in the United Kingdom or in any other country.

6C. If the FCA does not determine the class of a financial instrument during the transitional period in accordance with paragraphs 6A and 6B, the class determined for that financial instrument (if any) before exit day must continue to apply.

7. In order to ensure the efficient valuation of shares, depositary receipts, ETFs, certificates and other similar financial instruments and maximise the possibility of investment firms to obtain the best deal for their clients, ~~ESMA shall develop draft regulatory~~the FCA may make technical standards to specify further the arrangements for the publication of a firm quote as referred to in paragraph 1, the determination of whether prices reflect prevailing market conditions as referred to in paragraph 3, and of the standard market size as referred to in paragraphs 2 and 4.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## *Article 15*

### **Execution of client orders**

1. Systematic internalisers shall make public their quotes on a regular and continuous basis during normal trading hours. They may update their quotes at any time. They shall be allowed, under exceptional market conditions, to withdraw their quotes.

~~Member States shall require that firms~~ Firms that meet the definition of systematic internaliser must notify ~~their competent~~ the FCA in accordance with the rules of that authority. ~~Such notification shall be transmitted to ESMA. ESMA shall establish a list of all SIs in the Union.~~

The FCA must publish a list of the systematic internalisers in the United Kingdom for which it has received notifications.

The quotes shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.

2. Systematic internalisers shall, while complying with ~~Article 27 of Directive 2014/65/EU~~ the rules in section 11.2A of the Conduct of Business sourcebook, Articles 64 to 66 of Regulation (EU) 2017/565, Regulation (EU) 2017/575 and Regulation (EU) 2017/576, execute the orders they receive from their clients in relation to the shares, depositary receipts, ETFs, certificates and other similar financial instruments for which they are systematic internalisers at the quoted prices at the time of reception of the order.

However, in justified cases, they may execute those orders at a better price provided that the price falls within a public range close to market conditions.

3. Systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the requirements established in paragraph 2, in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price.
4. Where a systematic internaliser quoting only one quote or whose highest quote is lower than the standard market size receives an order from a client of a size bigger than its quotation size, but lower than the standard market size, it may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the conditions laid down in paragraphs 2 and 3. Where the systematic internaliser is quoting in different sizes and receives an order between those sizes, which it chooses to execute, it shall execute the order at one of the quoted prices in compliance with ~~Article 28 of Directive 2014/65/~~ rules 11.3.1, 11.4.1, 11.4.4A and 11.4.5 of the Conduct of Business sourcebook, and Articles 67 to 70 of Regulation (EU) 2017/565, except where otherwise permitted under the conditions of paragraphs 2 and 3 of this Article.
5. The ~~Commission shall be empowered to adopt delegated acts in accordance with Article 50, clarifying~~ Treasury may by regulations clarify what constitutes a reasonable commercial basis to make quotes public as referred to in paragraph 1.

#### *Article 16*

#### **Obligations of competent authorities**

The competent ~~authorities~~ authority shall check the following:

- (a) that investment firms regularly update bid and offer prices published in accordance with Article 14 and maintain prices which reflect the prevailing market conditions;
- (b) that investment firms comply with the conditions for price improvement laid down in Article 15(2).

### *Article 17*

#### **Access to quotes**

1. Systematic internalisers shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end there shall be clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as the client credit status, the counterparty risk and the final settlement of the transaction.
2. In order to limit the risk of exposure to multiple transactions from the same client, systematic internalisers shall be allowed to limit in a non-discriminatory way the number of transactions from the same client which they undertake to enter at the published conditions. They may, in a non-discriminatory way and in accordance with ~~Article 28 of Directive 2014/65~~[rules 11.3.1, 11.4.1, 11.4.4A and 11.4.5 of the Conduct of Business sourcebook, and Articles 67 to 70 of Regulation \(EU\) 2017/565](#), limit the total number of transactions from different clients at the same time provided that this is allowable only where the number and/or volume of orders sought by clients considerably exceeds the norm.
3. In order to ensure the efficient valuation of shares, depositary receipts, ETFs, certificates and other similar financial instruments and maximise the possibility for investment firms to obtain the best deal for their clients, the ~~Commission shall adopt delegated acts in accordance with Article 50 specifying~~[Treasury may by regulations specify](#):
  - (a) the criteria specifying when a quote is published on a regular and continuous basis and is easily accessible as referred to in Article 15(1) as well as the means by which investment firms may comply with their obligation to make public their quotes, which shall include the following possibilities:
    - (i) through the facilities of any regulated market which has admitted the financial instrument in question to trading;
    - (ii) through an APA;
    - (iii) through proprietary arrangements;
  - (b) the criteria specifying those transactions where execution in several securities is part of one transaction or those orders that are subject to conditions other than current market price as referred to in Article 15(3);

- (c) the criteria specifying what can be considered as exceptional market conditions that allow for the withdrawal of quotes as well as the conditions for updating quotes as referred to in Article 15(1);
- (d) the criteria specifying when the number and/or volume of orders sought by clients considerably exceeds the norm as referred to in paragraph 2.
- (e) the criteria specifying when prices fall within a public range close to market conditions as referred to in Article 15(2).

### *Article 18*

#### **Obligation for systematic internalisers to make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives**

1. Investment firms shall make public firm quotes in respect of bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which they are systematic internalisers and for which there is a liquid market when the following conditions are fulfilled:
  - (a) they are prompted for a quote by a client of the systematic internaliser;
  - (b) they agree to provide a quote.
2. In relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue for which there is not a liquid market, systematic internalisers shall disclose quotes to their clients on request if they agree to provide a quote. That obligation may be waived where the conditions specified in Article 9(1) are met.
3. Systematic internalisers may update their quotes at any time. They may withdraw their quotes under exceptional market conditions.
- ~~4. Member States shall require that firms that meet the definition of systematic internaliser notify their competent authority. Such notification shall be transmitted to ESMA. ESMA shall establish a list of all systematic internalisers in the Union.~~
4. Firms which meet the definition of systematic internaliser must notify the FCA in accordance with the rules of that authority.
- The FCA must publish a list of the systematic internalisers in the United Kingdom for which it has received notifications.
5. Systematic internalisers shall make the firm quotes published in accordance with paragraph 1 available to their other clients. Notwithstanding, they shall be allowed to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the clients to whom they give access to their quotes. To that end, systematic internalisers shall have in place clear standards for governing access to their quotes. Systematic internalisers may refuse to enter into or discontinue business relationships with clients on the basis of commercial considerations such as

the client credit status, the counterparty risk and the final settlement of the transaction.

6. Systematic internalisers shall undertake to enter into transactions under the published conditions with any other client to whom the quote is made available in accordance with paragraph 5 when the quoted size is at or below the size specific to the financial instrument determined in accordance with Article 9(5)(d).

Systematic internalisers shall not be subject to the obligation to publish a firm quote pursuant to paragraph 1 for financial instruments that fall below the threshold of liquidity determined in accordance with Article 9(4).

7. Systematic internalisers shall be allowed to establish non-discriminatory and transparent limits on the number of transactions they undertake to enter into with clients pursuant to any given quote.
8. The quotes published pursuant to paragraph 1 and 5 and those at or below the size referred to in paragraph 6 shall be made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.
9. The quoted price or prices shall be such as to ensure that the systematic internaliser complies with its obligations under ~~Article 27 of Directive 2014/65/EU~~ [section 11.2A of the Conduct of Business sourcebook, Articles 64 to 66 of Regulation \(EU\) 2017/565, Regulation \(EU\) 2017/575 and Regulation \(EU\) 2017/576](#), where applicable, and shall reflect prevailing market conditions in relation to prices at which transactions are concluded for the same or similar financial instruments on a trading venue.

However, in justified cases, they may execute orders at a better price provided that the price falls within a public range close to market conditions.

10. Systematic internalisers shall not be subject to this Article when they deal in sizes above the size specific to the financial instrument determined in accordance with Article 9(5)(d).
11. In respect of a package order and without prejudice to paragraph 2, the obligations in this Article shall only apply to the package order as a whole and not to any component of the package order separately.

#### *Article 19*

##### **Monitoring by ~~ESMA~~ [the competent authority](#)**

1. ~~Competent authorities and ESMA~~ [The competent authority](#) shall monitor the application of Article 18 regarding the sizes at which quotes are made available to clients of the investment firm and to other market participants relative to other trading activity of the firm, and the degree to which the quotes reflect prevailing market conditions in relation to transactions in the same or similar financial instruments on a trading venue. ~~By 3 January 2020, ESMA shall submit a report to the Commission on the application of Article 18. In the event of significant quoting and trading activity just beyond the threshold referred to in Article 18(6) or~~

~~outside prevailing market conditions, ESMA shall submit a report to the Commission before that date.~~

2. The ~~Commission shall adopt delegated acts in accordance with Article 50 specifying~~Treasury may by regulations specify the sizes referred to in Article 18(6) at which a firm shall enter into transactions with any other client to whom the quote is made available. The size specific to the financial instrument shall be determined in accordance with the criteria set in Article 9(5)(d).
3. The ~~Commission shall adopt delegated acts in accordance with Article 50 clarifying~~Treasury may by regulations specify what constitutes a reasonable commercial basis to make quotes public as referred to in Article 18(8).

#### *Article 20*

### **Post-trade disclosure by investment firms, including systematic internalisers, in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments**

1. Investment firms which, either on own account or on behalf of clients, conclude transactions in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an APA.
2. The information which is made public in accordance with paragraph 1 of this Article and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 6, including the regulatory technical standards adopted in accordance with Article 7(2)(a). Where the measures adopted pursuant to Article 7 provide for deferred publication for certain categories of transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.
3. ~~ESMA shall develop draft regulatory~~The FCA may make technical standards to specify the following:
  - (a) identifiers for the different types of transactions published under this Article, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;
  - (b) the application of the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument;
  - (c) the party to a transaction that has to make the transaction public in accordance with paragraph 1 if both parties to the transaction are investment firms.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

#### Article 21

### **Post-trade disclosure by investment firms, including systematic internalisers, in respect of bonds, structured finance products, emission allowances and derivatives**

1. Investment firms which, either on own account or on behalf of clients, conclude transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue shall make public the volume and price of those transactions and the time at which they were concluded. That information shall be made public through an APA.
2. Each individual transaction shall be made public once through a single APA.
3. The information which is made public in accordance with paragraph 1 and the time-limits within which it is published shall comply with the requirements adopted pursuant to Article 10, including the regulatory technical standards adopted in accordance with Article 11(4)(a) and (b).
4. ~~Competent authorities~~The competent authority shall be able to authorise investment firms to provide for deferred publication, or may request the publication of limited details of a transaction or details of several transactions in an aggregated form, or a combination thereof, during the time period of the deferral or may allow the omission of the publication of the volume for individual transactions during an extended time period of deferral, or in the case of non-equity financial instruments that are not sovereign debt, may allow the publication of several transactions in an aggregated form during an extended time period of deferral, or in the case of sovereign debt instruments may allow the publication of several transactions in an aggregated form for an indefinite period of time, and may temporarily suspend the obligations referred to in paragraph 1 on the same conditions as laid down in Article 11.

Where the measures adopted pursuant to Article 11 provide for deferred publication and publication of limited details or details in an aggregated form, or a combination thereof, or for omission of the publication of the volume for certain categories of transactions in bonds, structured finance products, emission allowances and derivatives traded on a trading venue, that possibility shall also apply to those transactions when undertaken outside trading venues.

- 4A. During the transitional period referred to in Article 5(3A), the FCA may suspend the obligations referred to in Article 21(1) in relation to a specified class of financial instruments as described in paragraph 4 for a specified period otherwise than on the conditions laid down in Article 11 if the FCA considers that it is necessary to do so to advance the FCA's integrity objective under section 1D of FSMA.

- 4B. In deciding whether to suspend those obligations—
- (a) the FCA must also take into account—
- (i) its consumer protection objective and competition objective under sections 1C and 1E of FSMA; and
- (ii) the most recent specified threshold published before exit day on the basis of calculations under Article 16 of Commission Delegated Regulation (EU) 2017/583 supplementing Regulation (EU) No 600/2014 on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives;
- (b) the FCA may also take into account any other relevant information available in relation to liquidity in the relevant class of financial instrument concerned, whether in the United Kingdom or in any other country.
5. ~~ESMA shall develop draft regulatory~~The FCA may make technical standards in such a way as to enable the publication of information required under ~~Article 64 of Directive 2014/65/EU~~regulation 14 of the Data Reporting Services Regulations 2017 to specify the following:
- (a) the identifiers for the different types of transactions published in accordance with this Article, distinguishing between those determined by factors linked primarily to the valuation of the financial instruments and those determined by other factors;
- (b) the application of the obligation under paragraph 1 to transactions involving the use of those financial instruments for collateral, lending or other purposes where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument;
- (c) the party to a transaction that has to make the transaction public in accordance with paragraph 1 if both parties to the transaction are investment firms.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## Article 22

### Providing information for the purposes of transparency and other calculations

1. In order to carry out calculations for determining the requirements for the pre-trade and post-trade transparency and the trading obligation regimes imposed by Articles 3

to 11, Articles 14 to 21 and Article 32, which are applicable to financial instruments and for determining whether an investment firm is a systematic internaliser, the competent authorities may require information from:

- (a) trading venues;
  - (b) APAs; and
  - (c) CTPs.
2. Trading venues, APAs and CTPs shall store the necessary data for a sufficient period of time.

~~3. Competent authorities shall transmit to ESMA such information as ESMA requires to produce the reports referred to in Article 5(4), (5) and (6).~~

~~3. [deleted]~~

4. ~~ESMA shall develop draft regulatory~~ The FCA may make technical standards to specify the content and frequency of data requests and the formats and the timeframe in which trading venues, APAs and CTPs must respond to such requests in accordance with paragraph 1, the type of data that must be stored, and the minimum period of time for which trading venues, APAs and CTPs must store data in order to be able to respond to such requests in accordance with paragraph 2.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## Article 23

### Trading obligation for investment firms

1. An investment firm shall ensure the trades it undertakes in shares admitted to trading on a regulated market or traded on a trading venue shall take place on a regulated market, MTF or systematic internaliser, or a third-country trading venue assessed as equivalent by the Commission in accordance with Article 25(4)(a) of Directive 2014/65/EU before exit day, or specified as equivalent in regulations made by the Treasury under paragraph 8 of Schedule 3 on or after exit day, as appropriate, unless their characteristics include that they:
  - (a) are non-systematic, ad-hoc, irregular and infrequent; or
  - (b) are carried out between eligible and/or professional counterparties and do not contribute to the price discovery process.
2. An investment firm that operates an internal matching system which executes client orders in shares, depositary receipts, ETFs, certificates and other similar financial instruments on a multilateral basis must ensure it ~~is authorised as an MTF under~~

~~Directive 2014/65/EU~~ has permission to operate a multilateral trading facility under Part 4A of FSMA and comply with all relevant provisions pertaining to such ~~authorisations~~ permissions.

3. ~~ESMA shall develop draft regulatory~~ The FCA may make technical standards to specify the particular characteristics of those transactions in shares that do not contribute to the price discovery process as referred to in paragraph 1, taking into consideration cases such as:

- (a) non-addressable liquidity trades; or
- (b) where the exchange of such financial instruments is determined by factors other than the current market valuation of the financial instrument.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

4. The Treasury may only specify a third country trading venue as equivalent for the purposes of paragraph 1 if it is satisfied that the legal and supervisory framework of the third country in question ensures that a trading venue authorised in that country—

(a) complies with legally binding requirements equivalent to the requirements resulting from Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse, Title II of this Regulation, provisions of the law of the United Kingdom relied on by the United Kingdom before exit day to implement Title III of Directive 2014/65/EU and Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as those provisions are amended from time to time; and

(b) is subject to effective supervision and enforcement in that third country.

5. For the purpose of paragraph 4, a third-country legal and supervisory framework may be considered equivalent where that framework fulfils at least the following conditions—

(a) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) the markets have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;

- (c) [security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and](#)
- (d) [market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.](#)

#### TITLE IV

### TRANSACTION REPORTING

#### *Article 24*

#### **Obligation to uphold integrity of markets**

~~Without prejudice to the allocation of responsibilities for enforcing Regulation (EU) No 596/2014, competent authorities coordinated by ESMA in accordance with Article 31 of Regulation (EU) No 1095/2010~~[The FCA](#) shall monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.

#### *Article 25*

#### **Obligation to maintain records**

1. Investment firms shall keep at the disposal of the competent authority, for five years, the relevant data relating to all orders and all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under ~~Directive 2005/60/EC of the European Parliament and of the Council. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.~~[the Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017.](#)
2. The operator of a trading venue shall keep at the disposal of the competent authority, for at least five years, the relevant data relating to all orders in financial instruments which are advertised through their systems. The records shall contain the relevant data that constitute the characteristics of the order, including those that link an order with the executed transaction(s) that stems from that order and the details of which shall be reported in accordance with Article 26(1) and (3). ~~ESMA shall perform a facilitation and coordination role in relation to the access by competent authorities to information under this paragraph.~~
3. ~~ESMA shall develop draft regulatory~~[The FCA may make](#) technical standards to specify the details of the relevant order data required to be maintained under paragraph 2 of this Article that is not referred to in Article 26.

Those ~~draft regulatory~~ technical standards shall include the identification code of the member or participant which transmitted the order, the identification code of the order, the date and time the order was transmitted, the characteristics of the order,

including the type of order, the limit price if applicable, the validity period, any specific order instructions, details of any modification, cancellation, partial or full execution of the order, the agency or principal capacity.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## Article 26

### Obligation to report transactions

1. Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to the competent authority as quickly as possible, and no later than the close of the following working day.

~~The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives that information.~~

~~The competent authorities shall make available to ESMA, upon request, any information reported in accordance with this Article.~~

2. The obligation laid down in paragraph 1 shall apply to:
  - (a) financial instruments which are admitted to trading or traded on a [UK, Gibraltar or EU](#) trading venue or for which a request for admission to trading has been made;
  - (b) financial instruments where the underlying is a financial instrument traded on a [UK, Gibraltar or EU](#) trading venue; and
  - (c) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a [UK, Gibraltar or EU](#) trading venue

The obligation shall apply to transactions in financial instruments referred to in points (a) to (c) irrespective of whether or not such transactions are carried out on the trading venue.

3. The reports shall, in particular, include details of the names and numbers of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, means of identifying the investment firms concerned, and a designation to identify a short sale as defined in

Article 2(1)(b) of Regulation (EU) No 236/2012 in respect of any shares and sovereign debt within the scope of Articles 12, 13 and 17 of that Regulation. For transactions not carried out on a trading venue, the reports shall include a designation identifying the types of transactions in accordance with the measures to be adopted pursuant to Article 20(3)(a) and Article 21(5)(a). For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with ~~Article 57 of Directive 2014/65/EU~~[Part 3 of the Markets in Financial Instruments Regulations 2017](#).

4. Investment firms which transmit orders shall include in the transmission of that order all the details as specified in paragraphs 1 and 3. Instead of including the mentioned details when transmitting orders, an investment firm may choose to report the transmitted order, if it is executed, as a transaction in accordance with the requirements under paragraph 1. In that case, the transaction report by the investment firm shall state that it pertains to a transmitted order.
5. The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3.
6. In reporting the designation to identify the clients as required under paragraphs 3 and 4, investment firms shall use a legal entity identifier established to identify clients that are legal persons.

~~ESMA shall develop by 3 January 2016 guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to ensure that the application of legal entity identifiers within the Union complies with international standards, in particular those established by the Financial Stability Board.~~

7. The reports shall be made to the competent authority either by the investment firm itself, an ARM acting on its behalf or by the trading venue through whose system the transaction was completed, in accordance with paragraphs 1, 3 and 9.

Investment firms shall have responsibility for the completeness, accuracy and timely submission of the reports which are submitted to the competent authority.

By way of derogation from that responsibility, where an investment firm reports details of those transactions through an ARM which is acting on its behalf or a trading venue, the investment firm shall not be responsible for failures in the completeness, accuracy or timely submission of the reports which are attributable to the ARM or trading venue. In those cases and subject to ~~Article 66(4) of Directive 2014/65/EU~~[regulation 16\(3\)\(d\) of the Data Reporting Services Regulations](#) the ARM or trading venue shall be responsible for those failures.

Investment firms must nevertheless take reasonable steps to verify the completeness, accuracy and timeliness of the transaction reports which were submitted on their behalf.

The ~~home Member State~~[FCA](#) shall require the trading venue, when making reports on behalf of the investment firm, to have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of

information, to minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times. The ~~home Member State~~[FCA](#) shall require the trading venue to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

Trade-matching or reporting systems, including trade repositories registered or recognised in accordance with Title VI of Regulation (EU) No 648/2012, may be approved by the competent authority as an ARM in order to transmit transaction reports to the competent authority in accordance with paragraphs 1, 3 and 9.

Where transactions have been reported to a trade repository in accordance with Article 9 of Regulation (EU) No 648/2012 which is approved as an ARM and where those reports contain the details required under paragraphs 1, 3 and 9 and are transmitted to the competent authority by the trade repository within the time limit set in paragraph 1, the obligation on the investment firm laid down in paragraph 1 shall be considered to have been complied with.

Where there are errors or omissions in the transaction reports, the ARM, investment firm or trading venue reporting the transaction shall correct the information and submit a corrected report to the competent authority.

~~8. When, in accordance with Article 35(8) of Directive 2014/65/EU, reports provided for under this Article are transmitted to the competent authority of the host Member State, it shall transmit that information to the competent authorities of the home Member State of the investment firm, unless the competent authorities of the home Member State decide that they do not want to receive that information.~~

~~8.~~ [\[deleted\]](#)

9. ~~ESMA shall develop draft regulatory~~[The FCA may make](#) technical standards to specify:

- (a) data standards and formats for the information to be reported in accordance with paragraphs 1 and 3, including the methods and arrangements for reporting financial transactions and the form and content of such reports;
- (b) ~~the criteria for defining a relevant market in accordance with paragraph 4;~~[\[deleted\]](#)
- (c) the references of the financial instruments bought or sold, the quantity, the dates and times of execution, the transaction prices, the information and details of the identity of the client, a designation to identify the clients on whose behalf the investment firm has executed that transaction, a designation to identify the persons and the computer algorithms within the investment firm responsible for the investment decision and the execution of the transaction, a designation to identify the applicable waiver under which the trade has taken place, the means of identifying the investment firms concerned, the way in which the transaction was executed, data fields

necessary for the processing and analysis of the transaction reports in accordance with paragraph 3; and

- (d) the designation to identify short sales of shares and sovereign debt as referred to in paragraph 3;
- (e) the relevant categories of financial instrument to be reported in accordance with paragraph 2;
- (f) the conditions upon which legal entity identifiers are developed, attributed and maintained, by ~~Member States~~ the United Kingdom in accordance with paragraph 6, and the conditions under which those legal entity identifiers are used by investment firms so as to provide, pursuant to paragraphs 3, 4 and 5, for the designation to identify the clients in the transaction reports they are required to establish pursuant to paragraph 1;
- (g) the application of transaction reporting obligations to branches of investment firms;
- (h) what constitutes a transaction and execution of a transaction for the purposes of this Article.
- (i) when an investment firm is deemed to have transmitted an order for the purposes of paragraph 4.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

10. By 3 January 2020, ~~ESMA shall submit~~ the FCA must publish a report ~~to the Commission~~ on the functioning of this Article, including its interaction with the related reporting obligations under Regulation (EU) No 648/2012, and whether the content and format of transaction reports ~~received and exchanged between competent authorities~~ comprehensively enables monitoring of the activities of investment firms in accordance with Article 24 of this Regulation. ~~The Commission may take steps to propose any changes, including providing for transactions to be transmitted only to a single system appointed by ESMA instead of to competent authorities. The Commission shall forward ESMA's report to the European Parliament and to the Council.~~

11. For the purposes of paragraph 2—

(a) 'Gibraltar trading venue' means a Gibraltar regulated market, a Gibraltar multilateral trading facility or a Gibraltar organised trading facility;

(b) for the purposes of subparagraph (a)—

- (i) ‘Gibraltar regulated market’ means a regulated market which is authorised and functions regularly and in accordance with Part 3 of the Financial Services (Markets in Financial Instruments) Act 2018 of Gibraltar (as amended from time to time);
- (ii) ‘Gibraltar multilateral trading facility’ means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract in accordance with Part 2 of the Financial Services (Markets in Financial Instruments) Act 2018 of Gibraltar (as amended from time to time);
- (iii) ‘Gibraltar organised trading facility’ means a multilateral system—
  - (aa) which is not a regulated market or an MTF;
  - (bb) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract, in accordance with Part 2 of the Financial Services (Markets in Financial Instruments) Act 2018 of Gibraltar (as amended from time to time).

*Article 27*

**Obligation to supply financial instrument reference data**

1. With regard to financial instruments admitted to trading on regulated markets or traded on MTFs or OTFs, trading venues shall provide ~~competent authorities~~the FCA with identifying reference data for the purposes of transaction reporting under Article 26.

With regard to other financial instruments covered by Article 26(2)(b) or (c) traded on its system, each systematic internaliser shall provide ~~its competent authority~~the FCA with reference data relating to those financial instruments.

Identifying reference data shall be made ready for submission to the ~~competent authority~~FCA in an electronic and standardised format before trading commences in the financial instrument that it refers to. The financial instrument reference data shall be updated whenever there are changes to the data with respect to a financial instrument. ~~Those notifications are~~This data is to be transmitted ~~by competent authorities~~—without delay to ~~ESMA~~the FCA, which ~~shall~~must publish ~~them immediately~~it as soon as practicable on its website.—~~ESMA shall give competent authorities access to those reference data.~~

2. In order to allow ~~competent authorities~~the FCA to monitor, pursuant to Article 26, the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market, ~~ESMA~~

~~and the competent authorities~~FCA shall establish the necessary arrangements in order to ensure that:

- (a) ~~ESMA and the competent authorities~~the FCA effectively receive the financial instrument reference data pursuant to paragraph 1;
- (b) the quality of the data so received is appropriate for the purpose of transaction reporting under Article 26;
- (c) ~~the financial instrument reference data received pursuant to paragraph 1 is efficiently exchanged between the relevant competent authorities.~~[deleted]

3. ~~ESMA shall develop draft regulatory~~The FCA may make technical standards to specify:

- (a) data standards and formats for the financial instrument reference data in accordance with paragraph 1, including the methods and arrangements for supplying the data and any update thereto to ~~competent authorities and transmitting it to ESMA~~the FCA in accordance with paragraph 1, and the form and content of such data;
- (b) the technical measures that are necessary in relation to the arrangements to be made by ~~ESMA and the competent authorities~~the FCA pursuant to paragraph 2.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## TITLE V

### DERIVATIVES

#### *Article 28*

##### **Obligation to trade on regulated markets, MTFs or OTFs**

1. Financial counterparties as defined in Article 2(8) of Regulation (EU) No 648/2012 and non-financial counterparties that meet the conditions referred to in Article 10(1)(b) thereof shall conclude transactions which are neither intragroup transactions as defined in Article 3 of that Regulation nor transactions covered by the transitional provisions in Article 89 of that Regulation with other such financial counterparties or other such non-financial counterparties that meet the conditions referred to in Article 10(1)(b) of Regulation (EU) No 648/2012 in derivatives pertaining to a class of derivatives that has been declared subject to the trading obligation in accordance with the procedure set out in Article 32 and listed in the register referred to in Article 34 only on:

- (a) regulated markets;
- (b) MTFs;
- (c) OTFs; or
- (d) third-country trading venues, provided that ~~the Commission has adopted a decision in accordance with paragraph 4 and provided that~~
  - (i) either
    - (aa) a decision has been adopted before exit day by the European Commission in accordance with paragraph 4 of this Article as it had effect in the European Union before exit day; or
    - (bb) the Treasury has made regulations in accordance with paragraph 4 of this Article as it applies in the United Kingdom on and after exit day; and
  - (ii) the third country provides for an effective equivalent system for the recognition of UK trading venues authorised under Directive 2014/65/EU to admit to trading or trade derivatives declared subject to a trading obligation in that third country on a non-exclusive basis.

2. The trading obligation shall also apply to counterparties referred to in paragraph 1 which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation with third-country financial institutions or other third-country entities that would be subject to the clearing obligation if they were established in the ~~Union~~United Kingdom. The trading obligation shall also apply to third-country entities that would be subject to the clearing obligation if they were established in the ~~Union~~United Kingdom, which enter into derivatives transactions pertaining to a class of derivatives that has been declared subject to the trading obligation, provided that the contract has a direct, substantial and foreseeable effect within the ~~Union~~United Kingdom or where such obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

~~ESMA shall~~The competent authority must regularly monitor the activity in derivatives which have not been declared subject to the trading obligation as described in paragraph 1 in order to identify cases where a particular class of contracts may pose systemic risk and to prevent regulatory arbitrage between derivative transactions subject to the trading obligation and derivative transactions which are not subject to the trading obligation.

3. Derivatives declared subject to the trading obligation pursuant to paragraph 1 shall be eligible to be admitted to trading on a regulated market or to trade on any trading venue as referred to in paragraph 1 on a non-exclusive and non-discriminatory basis.

4. The ~~Commission may, in accordance with the examination procedure referred to in Article 51(2) adopt decisions determining~~Treasury may by regulations specify that

the legal and supervisory framework of a third country ensures that a trading venue authorised in that third country complies with legally binding requirements which are equivalent to the requirements for the trading venues referred to in paragraph 1(a), (b) or (c) of this Article, resulting from ~~this Regulation~~, [United Kingdom legislation which implemented or replaced](#) Directive 2014/65/EU, and Regulation (EU) No 596/2014, and which are subject to effective supervision and enforcement in that third country.

Those decisions shall be for the sole purpose of determining eligibility as a trading venue for derivatives subject to the trading obligation.

The legal and supervisory framework of a third country is considered to have equivalent effect where that framework fulfils all the following conditions:

- (a) trading venues in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- (b) trading venues have clear and transparent rules regarding admission of financial instruments to trading so that such financial instruments are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
- (c) issuers of financial instruments are subject to periodic and ongoing information requirements ensuring a high level of investor protection;
- (d) it ensures market transparency and integrity via rules addressing market abuse in the form of insider dealing and market manipulation;

~~A decision of the Commission~~ [Regulations made by the Treasury](#) under this paragraph may be limited to a category or categories of trading venues. In that case, a third-country trading venue is only included in paragraph 1(d) if it falls within a category covered by ~~the Commission's decision~~ [regulations made by the Treasury](#).

5. In order to ensure consistent application of this Article, ~~ESMA shall develop draft regulatory~~ [the FCA may make](#) technical standards to specify the types of contracts referred to in paragraph 2 which have a direct, substantial and foreseeable effect within the ~~Union~~ [United Kingdom](#) and the cases where the trading obligation is necessary or appropriate to prevent the evasion of any provision of this Regulation.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

Where possible and appropriate, the ~~regulatory~~ technical standards referred to in this paragraph shall be identical to those adopted under Article 4(4) of Regulation (EU) No 648/2012.

Article 29

**Clearing obligation for derivatives traded on regulated markets and timing of acceptance for clearing**

1. The operator of a regulated market shall ensure that all transactions in derivatives that are concluded on that regulated market are cleared by a CCP.
2. CCPs, trading venues and investment firms which act as clearing members in accordance with Article 2(14) of Regulation (EU) No 648/2012 shall have in place effective systems, procedures and arrangements in relation to cleared derivatives to ensure that transactions in cleared derivatives are submitted and accepted for clearing as quickly as technologically practicable using automated systems.

In this paragraph, ‘cleared derivatives’ means

- (a) all derivatives which are to be cleared pursuant to the clearing obligation under paragraph 1 of this Article or pursuant to the clearing obligation under Article 4 of Regulation (EU) No 648/2012;
  - (b) all derivatives which are otherwise agreed by the relevant parties to be cleared.
3. ~~ESMA shall develop draft regulatory~~The appropriate regulator may make technical standards to specify the minimum requirements for systems, procedures and arrangements, including the acceptance timeframes, under this Article taking into account the need to ensure proper management of operational or other risks.

~~ESMA~~The appropriate regulator, shall have ongoing authority to develop further ~~regulatory~~ technical standards to update those in force if it considers that that is required as industry standards evolve.

~~ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first and second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

For the purposes of this paragraph, “appropriate regulator” means—

- (a) the Bank of England, in relation to CCPs;
- (b) the FCA in all other cases.

The FCA and the Bank of England must co-ordinate the exercise of their functions when making technical standards under this Article to ensure that the technical standards made under it are mutually compatible.

## Article 30

### Indirect Clearing Arrangements

1. Indirect clearing arrangements with regard to exchange-traded derivatives are permissible provided that those arrangements do not increase counterparty risk and ensure that the assets and positions of the counterparty benefit from protection with equivalent effect to that referred to in Articles 39 and 48 of Regulation (EU) No 648/2012.
2. ~~ESMA shall develop draft regulatory~~The appropriate regulator may make technical standards to specify the types of indirect clearing service arrangements, where established, that meet the conditions referred to in paragraph 1, ensuring consistency with provisions established for OTC derivatives under Chapter II of Commission Delegated Regulation (EU) No 149/2013.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

For the purposes of this paragraph, “appropriate regulator” means—

- (a) the Bank of England, in relation to CCPs;
- (b) the FCA in all other cases.

The FCA and the Bank of England must co-ordinate the exercise of their functions when making technical standards under this Article to ensure that the technical standards made under it are mutually compatible.

## Article 31

### Portfolio Compression

1. When providing portfolio compression, investment firms and market operators shall not be subject to the best execution obligation in ~~Article 27 of Directive 2014/65/EU~~section 11.2A of the Conduct of Business sourcebook, the transparency obligations in Articles 8, 10, 18 and 21 of this Regulation and the obligation in ~~Article 1(6) of Directive 2014/65/EU~~rule 5AA.1.1 in the Market Conduct sourcebook. The termination or replacement of the component derivatives in the portfolio compression shall not be subject to Article 28 of this Regulation.
2. Investment firms and market operators providing portfolio compression shall make public through an APA the volumes of transactions subject to portfolio compressions and the time they were concluded within the time limits specified in Article 10.
3. Investment firms and market operators providing portfolio compressions shall keep complete and accurate records of all portfolio compressions which they organise or

participate in. Those records shall be made available promptly to the relevant competent authority ~~or ESMA~~ upon request.

~~4. The Commission may adopt by means of delegated acts in accordance with Article 50, measures specifying the following:~~

4. The Treasury may by regulations specify the following:

- (a) the elements of portfolio compression,
- (b) the information to be published pursuant to paragraph 2,

in such a way as to make use as far as possible of any existing record keeping, reporting or publication requirements.

#### *Article 32*

### **Trading obligation procedure**

1. ~~ESMA shall develop draft regulatory~~The FCA may make technical standards to specify the following:

- (a) which of the class of derivatives declared subject to the clearing obligation in accordance with Article 5(2) and (4) of Regulation (EU) No 648/2012 or a relevant subset thereof shall be traded on the venues referred to in Article 28(1) of this Regulation;
- (b) the date or dates from which the trading obligation takes effect, including any phase-in and the categories of counterparties to which the obligation applies where such phase-in and such categories of counterparties have been provided for in ~~regulatory~~ technical standards in accordance with Article 5(2)(b) of Regulation (EU) No 648/2012.

~~ESMA shall submit those draft regulatory technical standards to the Commission within six months after the adoption of the regulatory technical standards in accordance with Article 5(2) of Regulation (EU) No 648/2012 by the Commission.~~

~~Before submitting the draft regulatory technical standards to the Commission for adoption, ESMA shall conduct a public consultation and, where appropriate, may consult third-country competent authorities.~~

~~Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

2. In order for the trading obligation to take effect:

- (a) the class of derivatives pursuant to paragraph 1(a) or a relevant subset thereof must be admitted to trading or traded on at least one trading venue as referred to in Article 28(1), and

(b) there must be sufficient third-party buying and selling interest in the class of derivatives or a relevant subset thereof so that such a class of derivatives is considered sufficiently liquid to trade only on the venues referred to in Article 28(1).

3. In developing the ~~draft regulatory~~ technical standards referred to in paragraph 1, ~~ESMA~~the FCA shall consider the class of derivatives or a relevant subset thereof as sufficiently liquid pursuant to the following criteria:

(a) the average frequency and size of trades over a range of market conditions, having regard to the nature and lifecycle of products within the class of derivatives;

(b) the number and type of active market participants including the ratio of market participants to products/contracts traded in a given product market;

(c) the average size of the spreads.

In preparing those ~~draft regulatory~~ technical standards, ~~ESMA~~the FCA shall take into consideration the anticipated impact that trading obligation might have on the liquidity of a class of derivatives or a relevant subset thereof and the commercial activities of end users which are not financial entities.

~~ESMA~~the FCA shall determine whether the class of derivatives or relevant subset thereof is only sufficiently liquid in transactions below a certain size.

4. ~~ESMA~~the FCA shall, on its own initiative, in accordance with the criteria set out in paragraph 2 and after conducting a public consultation, identify and notify to the ~~Commission~~Treasury the classes of derivatives or individual derivative contracts that should be subject to the obligation to trade on the venues referred to in Article 28(1), but for which no CCP has yet received authorisation under Article 14 or 15 of Regulation (EU) No 648/2012 or which is not admitted to trading or traded on a trading venue referred to in Article 28(1).

Following the notification by ~~ESMA~~the FCA referred to in the first subparagraph, the ~~Commission~~Treasury may publish a call for development of proposals for the trading of those derivatives on the venues referred to in Article 28(1).

5. ~~ESMA~~The FCA shall in accordance with paragraph 1, ~~submit to the Commission~~make technical standards to amend, suspend or revoke existing ~~regulatory~~ technical standards whenever there is a material change in the criteria set out in paragraph 2. ~~Before doing so, ESMA may, where appropriate, consult the competent authorities of third countries.~~

~~Power is conferred to the Commission to adopt regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

6. ~~ESMA shall develop~~The FCA may make technical standards to specify the criteria referred to in paragraph 2(b).

~~ESMA shall submit drafts for those regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

### Article 33

#### **Mechanism to avoid duplicative or conflicting rules**

~~1. The Commission shall be assisted by ESMA in monitoring and preparing reports, at least on an annual basis, to the European Parliament and to the Council on the international application of principles laid down in Articles 28 and 29, in particular with regard to potential duplicative or conflicting requirements on market participants, and recommend possible actions.~~

~~1. [\[deleted\]](#)~~

2. The ~~Commission may adopt implementing acts declaring~~[Treasury may by regulations specify](#) that the legal, supervisory and enforcement arrangements of the relevant third country:

- (a) are equivalent to the requirements resulting from Articles 28 and 29;
- (b) ensure protection of professional secrecy that is equivalent to that set out in this Regulation;
- (c) are being effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country.

~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 51.~~

3. ~~An implementing act~~[Regulations](#) on equivalence as referred to in paragraph 2 shall have the effect that counterparties entering into a transaction subject to this Regulation shall be deemed to have fulfilled the obligation contained in Articles 28 and 29 where at least one of the counterparties is established in that third country and the counterparties are in compliance with those legal, supervisory and enforcement arrangements of the relevant third country.

~~4. [Where regulations made under paragraph 2 are revoked, transactions by counterparties shall automatically be subject again to all requirements contained in Articles 28 and 29 of this Regulation.](#)~~

~~4. The Commission shall, in cooperation with ESMA, monitor the effective implementation by third countries, for which an implementing act on equivalence has been adopted, of the requirements equivalent to those contained in Articles 28 and 29 and regularly report, at least on an annual basis, to the European Parliament and to the Council.~~

~~Within 30 calendar days of the presentation of the report where the report reveals a significant defect or inconsistency in the application of the equivalent requirements by third country authorities, the Commission may withdraw the recognition as equivalent of the third country legal framework in question. Where an implementing act on equivalence is withdrawn, transactions by counterparties shall automatically be subject again to all requirements contained in Articles 28 and 29 of this Regulation.~~

#### Article 34

##### Register of derivatives subject to the trading obligation

1. ~~ESMA shall~~The FCA must publish and maintain on its website a register specifying, ~~in an exhaustive and unequivocal manner, the derivatives~~\_\_\_\_\_
  - (a) ~~that are~~every derivative that appears to the FCA to be subject to the obligation to trade on the venues referred to in Article 28(1), ~~the venues where they are admitted to trading or traded, and;~~
  - (b) the venues where the derivative is admitted to trading or traded;
  - (c) the dates from which the obligation takes effect.
2. The FCA may draw on such information as it considers appropriate to maintain the register, including information published in the register maintained by ESMA under Article 34 of Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments as it has effect in EU law.

#### TITLE VI

##### NON-DISCRIMINATORY CLEARING ACCESS FOR FINANCIAL INSTRUMENTS

#### Article 35

##### Non-discriminatory access to a CCP

1. Without prejudice to Article 7 of Regulation (EU) No 648/2012, a CCP shall accept to clear financial instruments on a non-discriminatory and transparent basis, including as regards collateral requirements and fees relating to access, regardless of the trading venue on which a transaction is executed. This in particular shall ensure that a trading venue has the right to non-discriminatory treatment of contracts traded on that trading venue in terms of:
  - (a) collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and

- (b) cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41 of Regulation (EU) No 648/2012.

A CCP may require that the trading venue comply with the operational and technical requirements established by the CCP including the risk management requirements. The requirement in this paragraph does not apply to any derivative contract that is already subject to the access obligations under Article 7 of Regulation (EU) No 648/2012.

A CCP is not bound by this Article if it is connected by close links to a trading venue which has given notification under Article 36(5).

2. A request to access a CCP by a trading venue shall be formally submitted to a CCP, ~~its relevant~~ the competent authority of the CCP and the competent authority of the trading venue. The request shall specify to which types of financial instruments access is requested.
3. The CCP shall provide a written response to the trading venue within three months in the case of transferable securities and money market instruments, and within six months in the case of exchange-traded derivatives, either permitting access, under the condition that a relevant competent authority has granted access pursuant to paragraph 4, or denying access. The CCP may deny a request for access only under the conditions specified in paragraph 6(a). If a CCP denies access it shall provide full reasons in its response and inform its competent authority in writing of the decision. ~~Where the trading venue is established in a different Member State to the CCP,~~ the CCP shall also provide such notification and reasoning to the competent authority of the trading venue. The CCP shall make access possible within three months of providing a positive response to the access request.
4. The competent authority of the CCP or that of the trading venue shall grant a trading venue access to a CCP only where such access:
  - (a) would not require an interoperability arrangement, in the case of derivatives that are not OTC derivatives pursuant to Article 2(7) of Regulation (EU) No 648/2012; or
  - (b) would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation, or would not adversely affect systemic risk.

Nothing in point (a) of the first subparagraph shall prevent access being granted where the request referred to in paragraph 2 requires interoperability and the trading venue and all CCPs party to the proposed interoperability arrangement have consented to the arrangement and the risks to which the incumbent CCP is exposed to arising from inter-CCP positions are collateralised at a third party.

Where the need for an interoperability arrangement is the reason or is part of the reason for denying a request, the trading venue will advise the CCP and inform ~~ESMA~~ the FCA which other CCPs have access to the trading venue and ~~ESMA~~ the FCA will publish that information so that investment firms may choose to exercise their rights under ~~Article 37 of Directive 2014/65/EU~~ paragraphs 7C, 7D, 21A and

[31 of the Schedule to the Recognition Requirements Regulations](#) in respect of those CCPs in order to facilitate alternative access arrangements.

If a competent authority refuses access it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the other competent authority, the CCP and the trading venue including the evidence on which the decision is based.

5. As regards transferable securities and money market instruments, a CCP that has been newly established and authorised as a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012 to clear under Article 17 of Regulation (EU) No 648/2012 or recognised under Article 25 of Regulation (EU) No 648/2012 or authorised under a pre-existing national authorisation regime for a period of less than three years on 2 July 2014 may, before 3 January 2018, apply to its competent authority for permission to avail itself of transitional arrangements. The competent authority may decide that this Article does not apply to the CCP in respect of transferable securities and money market instruments, for a transitional period until 3 July 2020.

Where such a transitional period is approved, the CCP cannot benefit from the access rights under Article 36 or this Article in respect of transferable securities and money market instruments for the duration of that transitional arrangement. ~~The competent authority shall notify members of the college of competent authorities for the CCP and ESMA when a transitional period is approved. ESMA shall publish a list of all notifications that it receives.~~

Where a CCP which has been approved for the transitional arrangements under this paragraph is connected by close links to one or more trading venues, those trading venues shall not benefit from access rights under Article 36 or this Article in respect of transferable securities and money market instruments for the duration of the transitional arrangement.

A CCP which is authorised during the three year period prior to entry into force, but is formed by a merger or acquisition involving at least one CCP authorised prior to that period, shall not be permitted to apply for the transitional arrangements under this paragraph.

6. ~~ESMA shall develop draft regulatory~~ [The Bank of England may, having consulted the FCA, make](#) technical standards to specify:
  - (a) the specific conditions under which an access request may be denied by a CCP, including the anticipated volume of transactions, the number and type of users, arrangements for managing operational risk and complexity or other factors creating significant undue risks;
  - (b) the conditions under which access must be permitted by a CCP, including confidentiality of information provided regarding financial instruments during the development phase, the non-discriminatory and transparent basis as regards clearing fees, collateral requirements and operational requirements regarding margining;

- (c) the conditions under which granting access will threaten the smooth and orderly functioning of markets or would adversely affect systemic risk;
- (d) the procedure for making a notification under paragraph 5;
- (e) the conditions for non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

#### *Article 36*

#### **Non-discriminatory access to a trading venue**

1. Without prejudice to Article 8 of Regulation (EU) No 648/2012, a trading venue shall provide trade feeds on a non-discriminatory and transparent basis, including as regards fees related to access, upon request to any CCP authorised or recognised by Regulation (EU) No 648/2012 that wishes to clear transactions in financial instruments that are concluded on that trading venue. That requirement does not apply to any derivative contract that is already subject to the access obligations under Article 8 of Regulation (EU) No 648/2012.

A trading venue is not bound by this Article if it is connected by close links to a CCP which has given notification that it is availing of the transitional arrangements under Article 35(5).

2. A request to access a trading venue by a CCP shall be formally submitted to a trading venue, ~~its relevant~~the competent authority of the trading venue and the competent authority of the CCP.
3. The trading venue shall provide a written response to the CCP within three months in the case of transferable securities and money market instruments, and within six months in the case of exchange-traded derivatives, either permitting access, under the condition that the relevant competent authority has granted access pursuant to paragraph 4, or denying access. The trading venue may deny access only under the conditions specified under paragraph 6(a). When access is denied the trading venue shall provide full reasons in its response and inform its competent authority in writing of the decision. ~~Where the CCP is established in a different Member State to the trading venue,~~ the trading venue shall also provide such notification and reasoning to the competent authority of the CCP. The trading venue shall make access possible within three months of providing a positive response to the access request.

4. The competent authority of the trading venue or that of the CCP shall grant a CCP access to a trading venue only where such access:
  - (a) would not require an interoperability arrangement, in the case of derivatives that are not OTC derivatives pursuant to Article 2(7) of Regulation (EU) No 648/2012; or
  - (b) would not threaten the smooth and orderly functioning of the markets, in particular due to liquidity fragmentation and the trading venue has put in place adequate mechanisms to prevent such fragmentation, or would not adversely affect systemic risk.

Nothing in point (a) of the first subparagraph shall prevent access being granted where the request referred to in paragraph 2 requires interoperability and the trading venue and all CCPs party to the proposed interoperability arrangement have consented to the arrangement and the risks to which the incumbent CCP is exposed to arising from inter-CCP positions are collateralised at a third party.

Where the need for an interoperability arrangement is the reason or is part of the reason for denying a request, the trading venue will advise the CCP and inform ~~ESMA~~the FCA which other CCPs have access to the trading venue and ~~ESMA~~the FCA will publish that information so that investment firms may choose to exercise their rights under ~~Article 37 of Directive 2014/65/EU paragraphs 7C, 7D, 21A and 31 of the Schedule to the Recognition Requirements Regulations~~ in respect of those CCPs in order to facilitate alternative access arrangements.

If a competent authority denies access it shall issue its decision within two months following receipt of the request referred to in paragraph 2 and provide full reasons to the other competent authority, the trading venue and the CCP including the evidence on which its decision is based.

5. ~~As regards exchange-traded derivatives, a~~This paragraph applies to trading ~~venue~~venues which ~~falls~~fell below the relevant threshold for exchange-traded derivatives in the calendar year preceding the entry into application of this Regulation, ~~may, before the entry into application of this Regulation, notify and notified~~ ESMA and its competent authority that ~~it does~~they did not wish to be bound by this Article for exchange-traded derivatives included within that threshold, ~~for a period of thirty months from the application of this Regulation.~~ A trading venue which remains below the relevant threshold in every year of that, or any further, thirty month period may, at the end of the period, notify ~~ESMA and its competent authority~~the FCA that it wishes to continue to not be bound by this Article for further thirty months. Where notification is given the trading venue cannot benefit from the access rights under Article 35 or this Article for exchange-traded derivatives included within the relevant threshold, for the duration of the opt-out. ~~ESMA~~The FCA shall publish a list of all notifications that it receives.

The relevant threshold for the opt-out is an annual notional amount traded of EUR 1 000 000 million. The notional amount shall be single-counted and shall include all transactions in exchange-traded derivatives concluded under the rules of the trading venue.

Where a trading venue is part of a group which is connected by close links, the threshold shall be calculated by adding the annual notional amount traded of all the trading venues in the group as a whole that are based in the Union.

Where a trading venue which has made a notification under this paragraph is connected by close links to one or more CCPs, those CCPs shall not benefit from access rights under Article 35 or this Article for exchange-traded derivatives within the relevant threshold, for the duration of the opt-out.

6. ~~ESMA shall develop draft regulatory~~The FCA may, having consulted the Bank of England, make technical standards to specify:
- (a) the specific conditions under which an access request may be denied by a trading venue, including conditions based on the anticipated volume of transactions, the number of users, arrangements for managing operational risk and complexity or other factors creating significant undue risks;
  - (b) the conditions under which access shall be granted, including confidentiality of information provided regarding financial instruments during the development phase and the non-discriminatory and transparent basis as regards fees related to access;
  - (c) the conditions under which granting access will threaten the smooth and orderly functioning of the markets, or would adversely affect systemic risk;
  - (d) the procedure for making a notification under paragraph 5, including further specifications for calculation of the notional amount and the method by which ~~ESMA~~the FCA may verify the calculation of the volumes and approve the opt-out.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

#### *Article 37*

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#### **~~Non-discriminatory access to and obligation to licence benchmarks~~**

- ~~1. Where the value of any financial instrument is calculated by reference to a benchmark, a person with proprietary rights to the benchmark shall ensure that CCPs and trading venues are permitted, for the purposes of trading and clearing, non-discriminatory access to:~~
- ~~(a) relevant price and data feeds and information on the composition, methodology and pricing of that benchmark for the purposes of clearing and trading; and~~

~~(b) licencees:~~

~~A licence including access to information shall be granted on a fair, reasonable and non-discriminatory basis within three months following the request by a CCP or a trading venue.~~

~~Access shall be given at a reasonable commercial price taking into account the price at which access to the benchmark is granted or the intellectual property rights are licensed on equivalent terms to another CCP, trading venues or any related persons for the purposes of clearing and trading. Different prices can be charged to different CCPs, trading venues or any related persons only where objectively justified having regard to reasonable commercial grounds such as the quantity, scope or field of use demanded.~~

~~2. Where a new benchmark is developed after 3 January 2018 the obligation to licence starts no later than 30 months after a financial instrument referencing that benchmark commenced trading or was admitted to trading. Where a person with proprietary rights to a new benchmark owns an existing benchmark, that person shall establish that compared to any such existing benchmark the new benchmark meets the following cumulative criteria:~~

~~(a) the new benchmark is not a mere copy or adaptation of any such existing benchmark and the methodology, including the underlying data, of the new benchmark is meaningfully different from any such existing benchmark; and~~

~~(b) the new benchmark is not a substitute for any such existing benchmark.~~

~~This paragraph shall be without prejudice to the application of competition rules and, in particular, Article 101 and 102 TFEU.~~

~~3. No CCP, trading venue or related entity may enter into an agreement with any provider of a benchmark the effect of which would be either:~~

~~(a) to prevent any other CCP or trading venue from obtaining access to such information or rights as referred to in paragraph 1; or~~

~~(b) to prevent any other CCP or trading venue from obtaining access to such a licence, as referred to in paragraph 1.~~

~~4. ESMA shall develop draft regulatory technical standards to specify:~~

~~(a) the information through licensing to be made available under paragraph 1(a) for the sole use of the CCP or trading venue;~~

~~(b) other conditions under which access is granted, including confidentiality of information provided;~~

~~(c) the standards guiding how a benchmark may be proven to be new in accordance with paragraph 2(a) and (b).~~

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

## Article 38

### Access for third-country CCPs and trading venues

1. A trading venue established in a third country may request access to a CCP established in the ~~Union~~United Kingdom only if the ~~Commission has adopted a decision~~Treasury has made regulations in accordance with Article 28(4) relating to that third country. A CCP established in a third country may request access to a trading venue in the ~~Union~~United Kingdom subject to that CCP being recognised under Article 25 of Regulation (EU) No 648/2012. CCPs and trading venues established in third countries shall only be permitted to make use of the access rights in Articles 35 to 36 provided that the ~~Commission has adopted a decision~~Treasury has made regulations in accordance with paragraph 3 that the legal and supervisory framework of the third country is considered to provide for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues established in that third country.

#### 2. [deleted]

- ~~2. CCPs and trading venues established in third countries may only request a licence and the access rights in accordance with Article 37 provided that the Commission has adopted a decision in accordance with paragraph 3 of this Article that the legal and supervisory framework of that third country is considered to provide for an effective equivalent system under which CCPs and trading venues authorised in foreign jurisdictions are permitted access on a fair, reasonable and non-discriminatory basis to:~~

~~(a) relevant price and data feeds and information of composition, methodology and pricing of benchmarks for the purposes of clearing and trading; and~~

~~(b) licences;~~

~~from persons with proprietary rights to benchmarks established in that third country.~~

3. The ~~Commission may, in accordance with the examination procedure referred to in Article 51, adopt decisions determining~~Treasury may by regulations determine that the legal and supervisory framework of a third country ensures that a trading venue and CCP authorised in that third country complies with legally binding requirements which are equivalent to the requirements referred to in paragraph ~~21~~21 of this Article and which are subject to effective supervision and enforcement in that third country.

The legal and supervisory framework of a third country is considered equivalent where that framework fulfils all the following conditions:

- (a) trading venues in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- (b) it provides for an effective equivalent system for permitting CCPs and trading venues authorised under foreign regimes access to CCPs and trading venues established in that third country;
- (c) the legal and supervisory framework of that third country provides for an effective equivalent system under which CCPs and trading venues authorised in foreign jurisdictions are permitted access on a fair reasonable and non discriminatory basis to:
  - (i) relevant price and data feeds and information of composition, methodology and pricing of benchmarks for the purposes of clearing and trading; and
  - (ii) licences,
 from persons with proprietary rights to benchmarks established in that third country.

## TITLE VII

### SUPERVISORY MEASURES ON PRODUCT INTERVENTION AND POSITIONS

#### *CHAPTER 1*

#### *Product monitoring and intervention*

#### *Article 39*

#### **Market monitoring**

1. [\[deleted\]](#)

2. [\[deleted\]](#)

~~1. In accordance with Article 9(2) of Regulation (EU) No 1095/2010, ESMA shall monitor the market for financial instruments which are marketed, distributed or sold in the Union.~~

~~2. In accordance with Article 9(2) of Regulation (EU) No 1093/2010, EBA shall monitor the market for structured deposits which are marketed, distributed or sold in the Union.~~

3. ~~Competent authorities~~[The FCA](#) shall monitor the market for financial instruments and structured deposits which are marketed, distributed or sold in or from ~~their Member State~~[the United Kingdom](#).

Article 40

~~[deleted]~~

~~ESMA temporary intervention powers~~

~~1. In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA may, where the conditions in paragraphs 2 and 3 are fulfilled, temporarily prohibit or restrict in the Union:~~

~~(a) the marketing, distribution or sale of certain financial instruments or financial instruments with certain specified features; or~~

~~(b) a type of financial activity or practice.~~

~~A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by ESMA.~~

~~2. ESMA shall take a decision under paragraph 1 only if all of the following conditions are fulfilled:~~

~~(a) the proposed action addresses a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the whole or part of the financial system in the Union;~~

~~(b) regulatory requirements under Union law that are applicable to the relevant financial instrument or activity do not address the threat;~~

~~(c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.~~

~~Where the conditions set out in the first subparagraph are fulfilled, ESMA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a financial instrument has been marketed, distributed or sold to clients.~~

~~3. When taking action under this Article, ESMA shall ensure that the action:~~

~~(a) does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action;~~

~~(b) does not create a risk of regulatory arbitrage, and~~

~~(c) has been taken after consulting the public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EC) No 1234/2007, where the measure relates to agricultural commodities derivatives.~~

~~Where a competent authority or competent authorities have taken a measure under Article 42, ESMA may take any of the measures referred to in paragraph 1 without issuing the opinion provided for in Article 43.~~

- ~~4. Before deciding to take any action under this Article, ESMA shall notify competent authorities of the action it proposes.~~
- ~~5. ESMA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.~~
- ~~6. ESMA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. If the prohibition or restriction is not renewed after that three-month period it shall expire.~~
- ~~7. Action adopted by ESMA under this Article shall prevail over any previous action taken by a competent authority.~~
- ~~8. The Commission shall adopt delegated acts in accordance with Article 50 specifying criteria and factors to be taken into account by ESMA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a).~~

~~Those criteria and factors shall include:~~

- ~~(a) the degree of complexity of a financial instrument and the relation to the type of client to whom it is marketed and sold;~~
- ~~(b) the size or the notional value of an issuance of financial instruments;~~
- ~~(c) the degree of innovation of a financial instrument, an activity or a practice;~~
- ~~(d) the leverage a financial instrument or practice provides.~~

#### *Article 41*

~~[\[deleted\]](#)~~

#### **~~EBA temporary intervention powers~~**

- ~~1. In accordance with Article 9(5) of Regulation (EU) No 1093/2010, EBA may where the conditions in paragraphs 2 and 3 are fulfilled, temporarily prohibit or restrict in the Union:~~
  - ~~(a) the marketing, distribution or sale of certain structured deposits or structured deposits with certain specified features; or~~
  - ~~(b) a type of financial activity or practice.~~

~~A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by EBA.~~

~~2. EBA shall take a decision under paragraph 1 only if all of the following conditions are fulfilled:~~

~~(a) the proposed action addresses a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union;~~

~~(b) regulatory requirements under Union law that are applicable to the relevant structured deposit or activity do not address the threat;~~

~~(c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.~~

~~Where the conditions set out in the first subparagraph are fulfilled, EBA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a structured deposit has been marketed, distributed or sold to clients.~~

~~3. When taking action under this Article, EBA shall ensure that the action:~~

~~(a) does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action; and~~

~~(b) does not create a risk of regulatory arbitrage.~~

~~Where a competent authority or competent authorities have taken a measure under Article 42, EBA may take any of the measures referred to in paragraph 1 without issuing the opinion provided for in Article 43.~~

~~4. Before deciding to take any action under this Article, EBA shall notify competent authorities of the action it proposes.~~

~~5. EBA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.~~

~~6. EBA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. If the prohibition or restriction is not renewed after that three month period it shall expire.~~

~~7. Action adopted by EBA under this Article shall prevail over any previous action taken by a competent authority.~~

~~8. The Commission shall adopt delegated acts in accordance with Article 50 to specify criteria and factors to be taken into account by EBA in determining when there is a significant investor protection concern or a threat to the orderly functioning and~~

~~integrity of financial markets and to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a).~~

~~Those criteria and factors shall include:~~

~~(a) the degree of complexity of a structured deposit and the relation to the type of client to whom it is marketed and sold;~~

~~(b) the size or the notional value of an issuance of structured deposits;~~

~~(c) the degree of innovation of a structured deposit, an activity or a practice;~~

~~(d) the leverage a structured deposit or practice provides.~~

## Article 42

### Product intervention by competent authorities

1. ~~A competent authority~~The FCA may prohibit or restrict the following in or from ~~that Member State~~the United Kingdom:
  - (a) the marketing, distribution or sale of certain financial instruments or structured deposits or financial instruments or structured deposits with certain specified features; or
  - (b) a type of financial activity or practice.
2. ~~A competent authority~~The FCA may take the action referred to in paragraph 1 if it is satisfied on reasonable grounds that:
  - (a) either
    - (i) a financial instrument, structured deposit or activity or practice gives rise to significant investor protection concerns or poses a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of whole or part of the financial system within ~~at least one Member State~~the United Kingdom; or
    - (ii) a derivative has a detrimental effect on the price formation mechanism in the underlying market;
  - (b) existing regulatory requirements under ~~Union~~the law of the United Kingdom (or any part of the United Kingdom) applicable to the financial instrument, structured deposit or activity or practice do not sufficiently address the risks referred to in point (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements;
  - (c) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market

participants who may hold, use or benefit from the financial instrument, structured deposit or activity or practice; and

(d) [deleted]

(e) [deleted]

~~(d) the competent authority has properly consulted competent authorities in other Member States that may be significantly affected by the action;~~

~~(e) the action does not have a discriminatory effect on services or activities provided from another Member State; and~~

(f) it has properly consulted public bodies in the United Kingdom competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EC) No 1234/2007, where a financial instrument or activity or practice poses a serious threat to the orderly functioning and integrity of the physical agricultural market.

Where the conditions set out in the first subparagraph are fulfilled, the ~~competent authority~~FCA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before a financial instrument or structured deposit has been marketed, distributed or sold to clients.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the ~~competent authority~~FCA.

3. ~~The competent authority shall~~Subject to paragraph 4, the FCA must not impose a prohibition or restriction under this Article unless; not less than one month before the measure is ~~intended~~due to take effect, it has ~~notified all other competent authorities and ESMA in writing or through another medium agreed between the authorities the details of:~~published details of the decision to impose the prohibition or restriction on its website in accordance with paragraph 5.

~~(a) the financial instrument or activity or practice to which the proposed action relates;~~

~~(b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and~~

~~(c) the evidence upon which it has based its decision and upon which it is satisfied that each of the conditions in paragraph 2 are met.~~

4. In exceptional cases where the ~~competent authority~~FCA deems it necessary to take urgent action under this Article in order to prevent detriment arising from the financial instruments, structured deposits, practices or activities referred to in paragraph 1, the ~~competent authority~~FCA may take action on a provisional basis ~~with no less than 24 hours' written notice, before the measure is intended to take effect, to all other competent authorities and ESMA or, for structured deposits, EBA,~~ provided that all the criteria in this Article are met and that, in addition, it is clearly established that awaiting for one month ~~notification period~~ would not

adequately address the specific concern or threat. The ~~competent authority~~[FCA](#) shall not take action on a provisional basis for a period exceeding three months.

5. The ~~competent authority~~[FCA](#) shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 1. The notice shall specify details of the prohibition or restriction, a time after the publication of the notice from which the measures will take effect and the evidence upon which it is satisfied each of the conditions in paragraph 2 are met. The prohibition or restriction shall only apply in relation to actions taken after the publication of the notice.
6. The ~~competent authority~~[FCA](#) shall revoke a prohibition or restriction if the conditions in paragraph 2 no longer apply.
7. The ~~Commission shall adopt delegated acts in accordance with Article 50 specifying~~[Treasury may by regulations specify](#) criteria and factors to be taken into account by ~~competent authorities~~[the FCA](#) in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the of the financial system within ~~at least one Member State~~[the United Kingdom](#) referred to in paragraph 2(a).

Those criteria and factors shall include:

- (a) the degree of complexity of a financial instrument or structured deposit and the relation to the type of client to whom it is marketed, distributed and sold;
- (b) the degree of innovation of a financial instrument or structured deposit, an activity or a practice;
- (c) the leverage a financial instrument or structured deposit or practice provides;
- (d) in relation to the orderly functioning and integrity of financial markets or commodity markets, the size or the notional value of an issuance of financial instruments or structured deposits.

#### *Article 43*

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#### **~~Coordination by ESMA and EBA~~**

- ~~1. ESMA or, for structured deposits, EBA shall perform a facilitation and coordination role in relation to action taken by competent authorities under Article 42. In particular ESMA or, for structured deposits, EBA shall ensure that action taken by a competent authority is justified and proportionate and that where appropriate a consistent approach is taken by competent authorities.~~
- ~~2. After receiving notification under Article 42 of any action that is to be imposed under that Article, ESMA or, for structured deposits, EBA shall adopt an opinion on whether the prohibition or restriction is justified and proportionate. If ESMA or,~~

~~for structured deposits, EBA considers that the taking of a measure by other competent authorities is necessary to address the risk, it shall state this in its opinion. The opinion shall be published on ESMA's or, for structured deposits, EBA website.~~

- ~~3. Where a competent authority proposes to take, or takes, action contrary to an opinion adopted by ESMA or EBA under paragraph 2 or declines to take action contrary to such an opinion, it shall immediately publish on its website a notice fully explaining its reasons for so doing.~~

## CHAPTER 2

### *Positions*

#### *Article 44*

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### ~~**Coordination of national position management measures and position limits by ESMA**~~

- ~~1. ESMA shall perform a facilitation and coordination role in relation to measures taken by competent authorities pursuant to Article 69(2)(o) and (p) of Directive 2014/65/EU. In particular, ESMA shall ensure that a consistent approach is taken by competent authorities with regard to when those powers are exercised, the nature and scope of the measures imposed, and the duration and follow-up of any measures.~~
- ~~2. After receiving notification of any measure under Article 79(5) of Directive 2014/65/EU, ESMA shall record the measure and the reasons therefor. In relation to measures taken pursuant to Article 69(2)(o) or (p) of Directive 2014/65/EU, it shall maintain and publish on its website a database with summaries of the measures in force including details of the person concerned, the applicable financial instruments, any limits on the size of positions the persons can hold at all times, any exemptions thereto granted in accordance with Article 57 of Directive 2014/65/EU, and the reasons therefor.~~

#### *Article 45*

~~[\[deleted\]](#)~~

### ~~**Position management powers of ESMA**~~

- ~~1. In accordance with Article 9(5) of Regulation (EU) No 1095/2010, ESMA shall, where both conditions in paragraph 2 are satisfied, take one or more of the following measures:~~
- ~~(a) request from any person all relevant information regarding the size and purpose of a position or exposure entered into via a derivative;~~

~~(b) after analysing the information obtained in accordance with point (a), require any such person to reduce the size of or to eliminate the position or exposure in accordance with the delegated act referred to in paragraph 10(b);~~

~~(c) as a last resort, limit the ability of a person from entering into a commodity derivative.~~

~~2. ESMA shall take a decision under paragraph 1 only if both of the following conditions are fulfilled:~~

~~(a) the measures listed in paragraph 1 address a threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of Directive 2014/65/EU and including in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union;~~

~~(b) a competent authority or competent authorities have not taken measures to address the threat or the measures taken do not sufficiently address the threat;~~

~~ESMA shall perform its assessment of the fulfilment of the conditions referred to in points (a) and (b) of the first subparagraph of this paragraph in accordance with the criteria and factors provided for in the delegated act referred to in paragraph 10(a) of this Article.~~

~~3. When taking measures referred to in paragraph 1 ESMA shall ensure that the measure:~~

~~(a) significantly addresses the threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of Directive 2014/65/EU and including in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union or significantly improve the ability of competent authorities to monitor the threat as measured in accordance with the criteria and factors provided for in the delegated act referred to in paragraph 10(a) of this Article;~~

~~(b) does not create a risk of regulatory arbitrage as measured in accordance with paragraph 10(c) of this Article;~~

~~(c) does not have any of the following detrimental effects on the efficiency of financial markets that is disproportionate to the benefits of the measure: reducing liquidity in those markets, restraining the conditions for reducing risks directly related to the commercial activity of a non-financial counterparty, or creating uncertainty for market participants.~~

~~ESMA shall consult the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No 713/2009 of the European Parliament and of the Council before taking any measures related to wholesale energy products.~~

~~ESMA shall consult the public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EC) No 1234/2007, before taking any measure related to agricultural commodity derivatives.~~

- ~~4. Before deciding to undertake or renew any measure referred to in paragraph 1, ESMA shall notify relevant competent authorities of the measure it proposes. In the case of a request under points (a) or (b) of paragraph 1 the notification shall include the identity of the person or persons to whom it was addressed and the details and reasons therefor. In the event of a measure under paragraph 1(c) the notification shall include details of the person concerned, the applicable financial instruments, the relevant quantitative measures such as the maximum size of a position the person in question can enter into, and the reasons therefor.~~
- ~~5. The notification shall be made not less than 24 hours before the measure is intended to take effect or to be renewed. In exceptional circumstances, ESMA may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours notice.~~
- ~~6. ESMA shall publish on its website notice of any decision to impose or renew any measure referred to in paragraph 1(c). The notice shall include details on the person concerned, the applicable financial instruments, the relevant quantitative measures such as the maximum size of a position the person in question can enter into, and the reasons therefor.~~
- ~~7. A measure referred to in paragraph 1(c) shall take effect when the notice is published or at a time specified in the notice that is after its publication and shall only apply to a transaction entered into after the measure takes effect.~~
- ~~8. ESMA shall review its measures referred to in paragraph 1(c) at appropriate intervals and at least every three months. If a measure is not renewed after that three month period, it shall automatically expire. Paragraphs 2 to 8 shall also apply to a renewal of measures.~~
- ~~9. A measure adopted by ESMA under this Article shall prevail over any previous measure taken by a competent authority under Article 69(2)(o) or (p) of Directive 2014/65/EU.~~
- ~~10. The Commission shall adopt in accordance with Article 50 delegated acts to specify criteria and factors to determine:
  - ~~(a) the existence of a threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of Directive 2014/65/EU and including in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union as referred to in paragraph 2(a) taking account of the degree to which positions are used to hedge positions in physical commodities or commodity contracts and the degree to which prices in underlying markets are set by reference to the prices of commodity derivatives;~~~~

~~(b) the appropriate reduction of a position or exposure entered into via a derivative referred to in paragraph 1(b) of this Article;~~

~~(c) the situations where a risk of regulatory arbitrage as referred to in paragraph 3(b) of this Article could arise.~~

~~Those criteria and factors shall take into account the regulatory technical standards referred to in Article 57(3) of Directive 2014/65/EU and shall differentiate between situations where ESMA takes action because a competent authority has failed to act and those where ESMA addresses an additional risk which the competent authority is not able to sufficiently address pursuant to Article 69(2)(j) or (o) of Directive 2014/65/EU.~~

## TITLE VIII

### PROVISION OF SERVICES AND PERFORMANCE OF ACTIVITIES BY THIRD-COUNTRY FIRMS FOLLOWING AN EQUIVALENCE DECISION WITH OR WITHOUT A BRANCH

#### *Article 46*

#### **General provisions**

1. A third-country firm may provide investment services or perform investment activities with or without any ancillary services to eligible counterparties and to professional clients within ~~the meaning of Section I of Annex II to Directive 2014/65/EU established throughout the Union~~Part 2 of Schedule 1 to this Regulation in the United Kingdom without the establishment of a branch where it is registered in the register of third-country firms kept by ~~ESMA~~the FCA in accordance with Article 47.
2. ~~ESMA~~The FCA shall register a third-country firm that has applied for the provision of investment services or performance of activities ~~throughout~~in the ~~Union~~United Kingdom in accordance with paragraph 1 only where the following conditions are met:
  - (a) the Commission has adopted a decision in accordance with Article 47(1) before exit day which has not been revoked before exit day, or paragraph 2A applies;
  - (b) the firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in the ~~Union~~United Kingdom and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that third country;
  - (c) cooperation arrangements have been established pursuant to Article 47(2).
- ~~3. Where a third-country firm is registered in accordance with this Article, Member States shall not impose any additional requirements on the third-country firm in respect of~~

~~matters covered by this Regulation or by Directive 2014/65/EU and shall not treat third country firms more favourably than Union firms.~~

2A. This paragraph applies if, after exit day, the Treasury has adopted a decision in accordance with—

(a) Article 47(1) of this Regulation, or

(b) regulation 2 of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019.

3. [deleted]

4. The third-country firm referred to in paragraph 1 shall submit its application to ~~ESMA~~the FCA after the adoption before exit day by the Commission of the decision referred to in Article 47 determining or the making of regulations under that Article by the Treasury specifying that the legal and supervisory framework of the third country in which the third-country firm is authorised is equivalent to the requirements described in Article 47(1).

The applicant third-country firm shall provide ~~ESMA~~the FCA with all information necessary for its registration. Within 30 working days of receipt of the application, ~~ESMA~~the FCA shall assess whether the application is complete. If the application is not complete, ~~ESMA~~the FCA shall set a deadline by which the applicant third-country firm is to provide additional information.

The registration decision shall be based on the conditions set out in paragraph 2.

Within 180 working days of the submission of a complete application, ~~ESMA~~the FCA shall inform the applicant third-country firm in writing with a fully reasoned explanation whether the registration has been granted or refused.

~~Member States may allow third country firms to provide investment services or perform investment activities together with ancillary services to eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU in their territories in accordance with national regimes in the absence of the Commission decision in accordance with Article 47(1) or where such decision is no longer in effect.~~

5. Third-country firms providing services in accordance with this Article shall inform clients established in the ~~Union~~United Kingdom, before the provision of any investment services, that they are not allowed to provide services to clients other than eligible counterparties and professional clients within ~~the meaning of Section I of Annex II to Directive 2014/65/EU~~Part 2 of Schedule 1 to this Regulation and that they are not subject to supervision in the ~~Union~~United Kingdom. They shall indicate the name and the address of the competent authority responsible for supervision in the third country.

The information in the first subparagraph shall be provided in writing and in a prominent way.

~~Member States shall ensure that~~ where an eligible counterparty or professional client within ~~the meaning of Section I of Annex II to Directive 2014/65/EU~~ Part 2 of Schedule 1 to this Regulation established or situated in the ~~Union~~ United Kingdom initiates at its own exclusive initiative the provision of an investment service or activity by a third-country firm, this Article does not apply to the provision of that service or activity by the third-country firm to that person including a relationship specifically related to the provision of that service or activity. An initiative by such clients shall not entitle the third-country firm to market new categories of investment product or investment service to that individual.

6. Third-country firms providing services or performing activities in accordance with this Article shall, before providing any service or performing any activity in relation to a client established in the ~~Union~~ United Kingdom, offer to submit any disputes relating to those services or activities to the jurisdiction of a court or arbitral tribunal in ~~a Member State~~ the United Kingdom.
7. ~~ESMA shall develop draft regulatory~~ The FCA may make technical standards to specify the information that the applicant third-country firm shall provide to ~~ESMA~~ the FCA in its application for registration in accordance with paragraph 4 and the format of information to be provided in accordance with paragraph 5.

~~ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.~~

#### Article 47

#### Equivalence ~~decision~~ determination

1. The ~~Commission may adopt a decision in accordance with the examination procedure referred to in Article 51(2) in relation to a third country stating~~ Treasury may by regulations specify that the legal and supervisory arrangements of ~~that~~ a third country ensure that firms authorised in that third country comply with legally binding prudential and business conduct requirements which have equivalent effect to the requirements set out in this Regulation, in the law of the United Kingdom which was relied on by the United Kingdom before exit day to implement, in Directive 2013/36/EU and in Directive 2014/65/EU and in the implementing measures adopted under this Regulation and under those Directives and that the legal framework of that third country provides for an effective equivalent system for the recognition of investment firms authorised under third-country legal regimes.

The prudential and business conduct framework of a third country may be considered to have equivalent effect where that framework fulfils all the following conditions:

- (a) firms providing investment services and activities in that third country are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- (b) firms providing investment services and activities in that third country are subject to sufficient capital requirements and appropriate requirements applicable to shareholders and members of their management body;
- (c) firms providing investment services and activities are subject to adequate organisational requirements in the area of internal control functions;
- (d) firms providing investment services and activities are subject to appropriate conduct of business rules;
- (e) it ensures market transparency and integrity by preventing market abuse in the form of insider dealing and market manipulation

2. ~~ESMA~~the FCA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as effectively equivalent in accordance with paragraph 1. Such arrangements shall specify at least:

- (a) the mechanism for the exchange of information between ~~ESMA~~the FCA and the competent authorities of third countries concerned, including access to all information regarding the ~~non-Union~~non-United Kingdom firms authorised in third countries that is requested by ~~ESMA~~the FCA;
- (b) the mechanism for prompt notification to ~~ESMA~~the FCA where a third-country competent authority deems that a third-country firm that it is supervising and ~~ESMA~~the FCA has registered in the register provided for in Article 48 infringes the conditions of its authorisation or other law to which it is obliged to adhere;
- (c) the procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

3. ~~[deleted]~~

~~3. A third-country firm established in a country whose legal and supervisory framework has been recognised to be effectively equivalent in accordance with paragraph 1, and which is authorised in accordance with Article 39 of Directive 2014/65/EU shall be able to provide the services and activities covered under the authorisation to eligible counterparties and professional clients within the meaning of Section I of Annex II to Directive 2014/65/EU in other Member States of the Union without the establishment of new branches. For that purpose, it shall comply with the information requirements for the cross-border provision of services and activities in Article 34 of Directive 2014/65/EU.~~

~~The branch shall remain subject to the supervision of the Member State where the branch is established in accordance with Article 39 of Directive 2014/65/EU. However, and without prejudice to the obligations to cooperate laid down in~~

~~Directive 2014/65/EU, the competent authority of the Member State where the branch is established and the competent authority of the host Member State may establish proportionate cooperation agreements in order to ensure that the branch of the third-country firm providing investment services within the Union delivers the appropriate level of investor protection.~~

4. A third-country firm may no longer use the rights under Article 46(1) where the ~~Commission adopts a decision in accordance with the examination procedure referred to in Article 51(2) withdrawing its decision~~Treasury revokes regulations made under paragraph 1 of this Article in relation to that third country.

#### *Article 48*

### **Register**

~~ESMA~~the FCA shall keep a register of the third-country firms allowed to provide investment services or perform investment activities in the ~~Union~~United Kingdom in accordance with Article 46. The register shall be publicly accessible on the website of ~~ESMA~~the FCA and shall contain information on the services or activities which the third-country firms are permitted to provide or perform and the reference of the competent authority responsible for their supervision in the third country.

#### *Article 49*

### **Withdrawal of registration**

1. ~~ESMA~~the FCA shall withdraw the registration of a third-country firm in the register established in accordance with Article 48 where:
  - (a) ~~ESMA~~the FCA has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in the ~~Union~~United Kingdom, the third-country firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets; or
  - (b) ~~ESMA~~the FCA has well-founded reasons based on documented evidence to believe that, in the provision of investment services and activities in the ~~Union~~United Kingdom, the third-country firm has seriously infringed the provisions applicable to it in the third country and on the basis of which the ~~Commission has adopted the Decision~~Treasury has made regulations in accordance with Article 47(1);
  - (c) ~~ESMA~~the FCA has referred the matter to the competent authority of the third country and that third-country competent authority has not taken the appropriate measures needed to protect investors and the proper functioning of the markets in the ~~Union~~United Kingdom or has failed to demonstrate that the third-country firm concerned complies with the requirements applicable to it in the third country; and

- (d) ~~ESMA~~the FCA has informed the third-country competent authority of its intention to withdraw the registration of the third-country firm at least 30 days before the withdrawal.
2. ~~ESMA~~The FCA shall inform the ~~Commission~~Treasury of any measure adopted in accordance with paragraph 1 without delay and shall publish its decision on its website.
3. The ~~Commission~~Treasury shall assess whether the conditions under which ~~a decision in accordance with regulations under~~ Article 47(1) ~~has~~have been ~~adopted~~made continue to persist in relation to the third country concerned.

## TITLE IX

### ~~DELEGATED~~REGULATIONS, DIRECTIONS AND IMPLEMENTING ACTS~~TRANSFERRED FUNCTIONS~~

#### ~~CHAPTER 1~~

#### ~~Delegated acts~~

#### *Article 50*

#### ~~Exercise of the delegation~~

#### Treasury Regulations

1. ~~The~~Any power to ~~adopt delegated acts is~~make regulations conferred on the ~~Commission subject to the conditions laid down in this Article~~Treasury by this Regulation is exercisable by statutory instrument.
2. ~~The power to adopt delegated acts referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) shall be conferred for an indeterminate period of time from 2 July 2014.~~
3. ~~The delegation of power referred to in Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) and (12) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~
4. ~~As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.~~
5. ~~A delegated act adopted pursuant to Article 1(9), Article 2(2), Article 13(2), Article 15(5), Article 17(3), Article 19(2) and (3), Article 31(4), Article 40(8), Article 41(8), Article 42(7), Article 45(10) and Article 52(10) or (12) shall enter into force only if no objection has been expressed either by the European Parliament or the~~

~~Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.~~

2. Such regulations may—
  - (a) make incidental, supplemental, consequential or transitional provision; and
  - (b) make different provision for different purposes.
3. Unless paragraph 5 applies, a statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.
4. No regulations to which paragraph 5 applies may be made unless—
  - (a) a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House; or
  - (b) paragraph 6 applies.
5. This paragraph applies to any regulations made for the purposes set out in paragraphs 2 and 3 of Schedule 3 which contain a statement by the Treasury that, in their opinion, the effect (or one of the effects) of the proposed regulations would be that an activity which is not a regulated activity for the purposes of FSMA would become a regulated activity.
6. This paragraph applies if regulations to which paragraph 5 applies also contain a statement that the Treasury are of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved.
7. If paragraph 6 applies, the regulations—
  - (a) must be laid before Parliament after being made; and
  - (b) cease to have effect at the end of the relevant period unless before the end of that period the regulations are approved by a resolution of each House of Parliament (but without affecting anything done under the regulations or the power to make new regulations).
8. The “relevant period” is a period of 28 days beginning with the day on which the regulations are made.
9. In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

Article 50A

~~CHAPTER 2~~ **Treasury Directions**

1. Treasury directions under this Regulation may be varied or revoked.
2. A direction given by the Treasury must be laid before each House of Parliament and published in a way appearing to the Treasury to be best calculated to bring it to the attention of the public.

Article 50B

~~Implementing acts~~ **FCA Directions**

1. A direction may only be given, amended or revoked by the FCA under Article 5, Article 9 or Article 14 (“an FCA direction”) with the approval of the Treasury.
2. An FCA direction—
  - (a) may specify different countries in relation to different financial instruments;
  - (b) must specify the date on which the direction comes into effect and the financial instruments or class of instruments to which it applies;
  - (c) may be amended or revoked.
3. The Treasury may refuse to approve an FCA direction if it appears to the Treasury that—
  - (a) the giving of that direction would prejudice any current or proposed negotiations for an international agreement between the United Kingdom and one or more other countries, international organisations or institutions; or
  - (b) there are grounds under section 410 (international obligations) of FSMA to direct the FCA not to give that direction.
4. For the purposes of paragraph 3, “international organisations” includes the European Union.
5. The Treasury must notify the FCA in writing whether or not they approve an FCA direction within four weeks from the day on which that direction is submitted to the Treasury for approval (“the relevant period”).
6. If the Treasury do not give notice under paragraph 5 before the end of the relevant period the Treasury are deemed to have approved the direction.
7. Provision of a draft direction to the Treasury for consultation does not amount to submission of the direction for approval.

8. A copy of each FCA direction given under this Article must be must be laid before Parliament and published in a way appearing to the FCA to be best calculated to bring it to the attention of the public.

*Article 51*

**~~Committee procedure~~**

- ~~1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.~~
- ~~2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.~~

**Transfer of MiFID functions**

1. The Treasury may make regulations for the purposes specified in Part 1 of Schedule 3 to this Regulation.
2. The FCA may make technical standards for the purposes set out in Part 2 of Schedule 3 to this Regulation.
3. The FCA may make technical standards for the purposes set out in Part 3 of Schedule 3 to this Regulation applying to authorised persons who are not PRA-authorised persons.
4. The PRA may make technical standards for the purposes set out in Part 3 of Schedule 3 to this Regulation applying to authorised persons who are PRA-authorised persons.
5. For the purposes of this Article—
- “authorised persons” has the meaning given in section 31(2) of FSMA;
- “PRA-authorised person” has the meaning given in section 2B(5) of FSMA.

TITLE X

FINAL PROVISIONS

*Article 52*

[deleted]

**~~Reports and review~~**

- ~~1. By 3 March 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the impact in practice of the transparency obligations established pursuant to Articles 3 to 13, in particular on the impact of the volume cap mechanism described in Article 5, including on the cost of trading for eligible counterparties and professional clients and on trading of shares~~

~~of small and mid-cap companies, and its effectiveness in ensuring that the use of the relevant waivers does not harm price formation and how any appropriate mechanism for imposing sanctions for infringements of the volume cap might operate, and on the application and continued appropriateness of the waivers to pre-trade transparency obligations established pursuant to Article 4(2) and (3) and Article 9(2) to (5).~~

~~2. The report referred to in paragraph 1 shall include the impact on European equity markets of the use of the waiver under Article 4(1)(a) and (b)(i) and the volume cap mechanism under Article 5, with particular reference to:~~

~~(a) the level and trend of non-lit order book trading within the Union since the introduction of this Regulation;~~

~~(b) the impact on the pre-trade transparent quoted spreads;~~

~~(c) the impact on the depth of liquidity on lit order books;~~

~~(d) the impact on competition and on investors within the Union;~~

~~(e) the impact on trading of shares of small and mid-cap companies;~~

~~(f) developments at international level and discussions with third countries and international organisations.~~

~~3. If the report concludes that the use of the waiver under Article 4(1)(a) and (b)(i) is harmful to price formation or to trading of shares of small and mid-cap companies, the Commission shall, where appropriate, make proposals, including amendments to this Regulation, regarding the use of those waivers. Such proposals shall include an impact assessment of the proposed amendments, and shall take into account the objectives of this Regulation and the effects on market disruption and competition, and potential impacts on investors in the Union.~~

~~4. By 3 March 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the functioning of Article 26, including whether the content and format of transaction reports received and exchanged between competent authorities comprehensively enable to monitor the activities of investment firms in accordance with Article 26(1). The Commission may make any appropriate proposals, including providing for transactions to be reported to a system appointed by ESMA instead of to competent authorities, which allows relevant competent authorities to access all the information reported pursuant to this Article for the purposes of this Regulation and of Directive 2014/65/EU and the detection of insider dealing and market abuse in accordance with Regulation (EU) No 596/2014.~~

~~5. By 3 March 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on appropriate solutions to reduce information asymmetries between market participants as well as tools for regulators to better monitor quotation activities on trading venues. That report shall at least~~

~~assess the feasibility of developing a European best bid and offer system for consolidated quotes to fulfil those objectives.~~

~~6. By 3 March 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the progress made in moving trading in standardised OTC derivatives to exchanges or electronic trading platforms pursuant to Articles 25 and 28.~~

~~7. By 3 July 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the development in prices for pre-trade and post-trade transparency data from regulated markets, MTFs, OTFs, APAs and CTPs.~~

~~8. By 3 July 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council reviewing the interoperability provisions in Article 36 of this Regulation and of Article 8 of Regulation (EU) No 648/2012.~~

~~9. By 3 July 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the application of Articles 35 and 36 of this Regulation and of Articles 7 and 8 of Regulation (EU) No 648/2012.~~

~~By 3 July 2022, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the application of Article 37.~~

~~10. By 3 July 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on the impact of Article 35 and 36 of this Regulation on newly established and authorised CCPs as referred to in Article 35(5) and trading venues connected to those CCPs by close links and whether the transitional arrangement provided for in Article 35(5) shall be extended, weighing the possible benefits to consumers of improving competition and the degree of choice available to market participants against the possible disproportionate effect of those provisions on newly established and authorised CCPs and the constraints of local market participants in accessing global CCPs and the smooth functioning of the market.~~

~~Subject to the conclusions of that report, the Commission may adopt a delegated act in accordance with Article 50 to extend the transitional period in accordance with Article 35(5) by a maximum of 30 months.~~

~~11. By 3 July 2020, the Commission shall, after consulting ESMA, submit a report to the European Parliament and to the Council on whether the threshold laid down in Article 36(5) remains appropriate and whether the opt-out mechanism in respect of exchange-traded derivatives is to remain available.~~

~~12. By 3 July 2016, the Commission shall, based on a risk assessment carried out by ESMA in consultation with the ESRB, submit a report to the European Parliament and to the Council assessing the need to temporarily exclude exchange-traded derivatives from the scope of Article 35 and 36. That report shall take into account risks, if any, resulting from open access provisions regarding exchange-traded derivatives to~~

~~the overall stability and orderly functioning of the financial markets throughout the Union.~~

~~Subject to the conclusions of that report, the Commission may adopt a delegated act in accordance with Article 50 to exclude exchange-traded derivatives from the scope of Articles 35 and 36 for up to thirty months following 3 January 2018.~~

### *Article 53*

#### **Amendment of Regulation (EU) No 648/2012**

Regulation (EU) No 648/2012 is amended as follows:

- (1) in Article 5(2), the following subparagraph is added:

‘In the developing of the draft regulatory technical standards under this paragraph ESMA shall not prejudice the transitional provision relating to C6 energy derivative contracts as laid down in Article 95 of Directive 2014/65/EU.

- (2) Article 7 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. A CCP that has been authorised to clear OTC derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, including as regards collateral requirements and fees related to access, regardless of the trading venue. This in particular shall ensure that a trading venue has the right to non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of:

- (a) collateral requirements and netting of economically equivalent contracts, where the inclusion of such contracts in the close-out and other netting procedures of a CCP based on the applicable insolvency law would not endanger the smooth and orderly functioning, the validity or enforceability of such procedures; and
- (b) cross-margining with correlated contracts cleared by the same CCP under a risk model that complies with Article 41.

A CCP may require that a trading venue comply with the operational and technical requirements established by the CCP, including the risk-management requirements.’;

- (b) the following paragraph is added:

‘6. The conditions laid down in paragraph 1 regarding non-discriminatory treatment in terms of how contracts traded on that trading venue are treated in terms of collateral requirements and netting of economically equivalent contracts and cross-margining with correlated contracts cleared by the same CCP shall be further specified by the technical standards adopted pursuant to Article 35(6)(e) of Regulation (EU) No 600/2014.’;

(3) In Article 81(3), the following subparagraph is added:

‘A trade repository shall transmit data to competent authorities in accordance with the requirements under Article 26 of Regulation (EU) No 600/2014’.

#### Article 54

#### Transitional provisions

1. Third-country firms shall be able to continue to provide services and activities in ~~Member States~~the United Kingdom, in accordance with ~~national regimes~~FSMA until three years after the adoption by the Commission before exit day of a decision in relation to the relevant third country in accordance with Article 47 or after the Treasury have made regulations under that Article after exit day.

2. [deleted]

~~2. If the Commission assesses that there is not a need to exclude exchange-traded derivatives from the scope of Articles 35 and 36 in accordance with Article 52(12), a CCP or a trading venue may, before the entry into application of this Regulation, apply to its competent authority for permission to avail itself of transitional arrangements. The competent authority, taking into account the risks resulting from the application of the access rights under Article 35 or 36 as regards exchange-traded derivatives to the orderly functioning of the relevant CCP or trading venue, may decide that Article 35 or 36 would not apply to the relevant CCP or trading venue, respectively, in respect of exchange-traded derivatives, for a transitional period until 3 July 2020. Where such a transitional period is approved, the CCP or trading venue cannot benefit from the access rights under Article 35 or 36, as regards exchange-traded derivatives for the duration of that transitional period. The competent authority shall notify ESMA, and in the case of a CCP the college of competent authorities for that CCP, when a transitional period is approved.~~

~~Where a CCP which has been approved for the transitional arrangements, is connected by close links to one or more trading venues, those trading venues shall not benefit from access rights under Article 35 or 36 for exchange-traded derivatives for the duration of that transitional period.~~

~~Where a trading venue, which has been approved for the transitional arrangements, is connected by close links to one or more CCPs, those CCPs shall not benefit from access rights under Article 35 or 36 for exchange-traded derivatives for the duration of that transitional period.~~

#### Article 55

#### Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall apply from 3 January 2018.

Notwithstanding the second paragraph, Article 1(8) and (9), Article 2(2), Article 4(6), Article 5(6) and (9), Article 7(2), Article 9(5), Article 11(4), Article 12(2), Article 13(2), Article 14(7), Article 15(5), Article 17(3), Article 19(2) and (3), Article 20(3), Article 21(5), Article 22(4), Article 23(3), Article 25(3), Article 26(9), Article 27(3), Article 28(4), Article 28(5), Article 29(3), Article 30(2), Article 31(4), Article 32(1), (5) and(6), Article 33(2), Article 35(6), Article 36(6), Article 37(4), Article 38(3), Article 40(8), Article 41(8), Article 42(7), Article 45(10), Article 46(7), Article 47(1) and (4), Article 52(10) and (12) and Article 54(1) shall apply immediately following the entry into force of this Regulation.

## SCHEDULE 1

Article 2

# PROFESSIONAL CLIENTS FOR THE PURPOSES OF THIS REGULATION

## PART 1

### Introduction

1. A professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.
2. In order to be considered to be a professional client, the client must comply with the criteria set out in Part 2 or Part 3 of this Schedule.

## PART 2

### Categories of client who are considered to be professional clients

3. The following are professional clients in relation to all investment services and activities and financial instruments for the purposes of the Regulation—
  - (a) entities which are required to be authorised or regulated to operate in the financial markets (including all authorised entities carrying out the characteristic activities of the entities mentioned; entities which are authorised or regulated in the United Kingdom under FSMA, entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by another third country) and comprising—
    - (i) credit institutions;
    - (ii) investment firms;
    - (iii) other authorised or regulated financial institutions;
    - (iv) insurance companies;
    - (v) collective investment schemes and management companies of such schemes;
    - (vi) pension funds and management companies of such funds;
    - (vii) commodity and commodity derivatives dealers;



## PART 3

### Clients who may be treated as professionals on request

5. — (1) Clients other than those mentioned in Part 2, including public sector bodies, local public authorities, municipalities and private individual investors, may also waive some or all of the protections afforded by the conduct of business rules.
- (2) Investment firms may treat any of those clients as professional clients provided the relevant criteria and procedure mentioned below are fulfilled, but those clients are not to be presumed to possess market knowledge and experience comparable to that of the categories listed in Part 2.
- (3) A waiver under point (1) is only valid if the investment firm has undertaken an adequate assessment of the expertise, experience and knowledge of the client (“the assessment”), and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.
- (4) The fitness test applied—
- (a) to managers and directors who have been approved for the purpose of section 59 of FSMA;
  - (b) to managers and directors of entities which are—
    - (i) authorised persons within the meaning of section 31(2) of FSMA; or
    - (ii) recognised investment exchanges, recognised clearing houses or recognised central counterparties within the meaning of section 285 of FSMA,
- may be relied on for the purposes of the assessment.
- (5) In the case of small entities, the person subject to the assessment must be the person authorised to carry out transactions on behalf of the entity.
- (6) The assessment may not be relied on for the purposes of point (3) unless at least two of the following criteria are satisfied—
- (a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
  - (b) the size of the client’s financial instrument portfolio, including cash deposits and financial instruments, exceeds 500,000 euros;
  - (c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

## PART 4

### Procedure

6. — (1) A client satisfying the criteria in Part 3 may only be treated as a professional client if the following procedure is followed—
  - (a) the client must state in writing to the investment firm that it wishes to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product;
  - (b) the investment firm must give the client a clear written warning of the protections and investor compensation rights it may lose;
  - (c) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.
- (2) Before deciding to accept any request from a client to be treated as a professional client, investment firms must take all reasonable steps to ensure that the client in question meets the relevant requirements stated in Part 3.
- (3) Points (1) and (2) do not apply in relation to a client who has already been categorised as a professional client under parameters and procedures similar to those referred to in this Schedule.
- (4) Investment firms must implement appropriate written internal policies and procedures to categorise clients.
- (5) A professional client is responsible for keeping the investment firm informed about any change which could affect its current categorisation as a professional client.
- (6) Should the investment firm become aware however that the client no longer fulfils the conditions which made that client eligible to be treated as a professional client, the investment firm must take appropriate action.

## SCHEDULE 2

Article 2

### Directive 2014/65/EU – EU Regulations made under Title II

1. Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.
2. Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards

- organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.
3. Commission Delegated Regulation (EU) 2017/569 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading.
  4. Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions.
  5. Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.
  6. Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes.
  7. Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading.
  8. Commission Implementing Regulation (EU) 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communications and the publication of the suspension and removal of financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.
  9. Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions.
  10. Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms.
  11. Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council.

12. Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm.

## SCHEDULE 3

Article 51

### Transfer of Functions to the Treasury and Regulators

#### PART 1

##### Directive functions transferred to the Treasury

1. To clarify, for the purposes of section 327(4) of FSMA and of the Regulated Activities Order, when an activity is provided in an incidental manner.
2. To specify—
  - (a) the derivative contracts referred to in paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order that have the characteristics of wholesale energy products that must be physically settled and energy derivative contracts referred to in that paragraph;
  - (b) the derivative contracts referred to in paragraph 7 of Part 1 of Schedule 2 to the Regulated Activities Order that have the characteristics of other derivative financial instruments;
  - (c) the derivative contracts referred to in paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order that have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, an MTF or an OTF;
  - (d) technical elements of the definitions laid down in Article 2, to adjust them to market developments, technological developments and experience of behaviour that is prohibited under Regulation (EU) 596/2014 of the European Parliament and of the Council on market abuse.
3. To make further provision in relation to the criteria set out in section 186 of FSMA.
4. To specify the concrete organisational requirements equivalent to those set out in paragraphs 2 to 10 of Article 16 of Directive 2014/65/EU laid down in rules made by the competent authority under FSMA to be imposed on investment firms and on branches of third-country firms which have permission under Part 4A of FSMA to carry on regulated activities consisting of different investment services or activities and ancillary services or combinations thereof.

5. To define the steps that investment firms might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when providing various investment and ancillary services and combinations thereof.
6. To establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm.
7. — (1) To ensure that investment firms comply with the principles laid down in rules made by the competent authority under FSMA, equivalent to those in Article 24 of the Directive 2014/65/EU, when providing investment or ancillary services to their clients, including—

  - (a) the conditions with which information must comply in order to be fair, clear and not misleading;
  - (b) details about the content and format of information to clients in relation to client categorisation, investment firms and their services, financial instruments, costs and charges;
  - (c) the criteria for the assessment of a range of financial instruments available on the market;
  - (d) the criteria to assess compliance of firms receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the client.

(2) In formulating the requirements for information on financial instruments for the purposes of paragraph 7(1)(b), information on the structure of the product must be included, where applicable, taking into account any relevant standardized information required under retained EU law.

(3) Any rules made for the purposes set out in point (1) must take into account—

  - (a) the nature of the service(s) offered or provided to the client or potential client, taking into account the type, object, size and frequency of the transactions;
  - (b) the nature and range of products being offered or considered including different types of financial instruments;
  - (c) the retail or professional nature of the client or potential clients or, where relevant, their classification as eligible counterparties.
8. — (1) To determine whether the legal and supervisory framework of a third country ensures that a regulated market or other trading venue authorised in that country complies with legally binding requirements which are equivalent to the requirements applicable to that trading venue which result from Regulation (EU) No 596/2014, from Title II of this Regulation, and from the law of the United Kingdom which was relied on immediately before exit day to implement Title III of Directive 2004/65/EU and Directive 2014/109/EC of the European Parliament and of the Council on the

harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, and which are subject to effective supervision and enforcement in that third country.

(2) For the purposes of point (1), the legal and supervisory framework of a third country may be considered equivalent where the framework fulfils the following conditions—

(a) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) the markets have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;

(c) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and

(d) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.

9. — (1) To ensure that investment firms comply with the principles laid down in rules made by the competent authority under FSMA, equivalent to the principles set out in paragraphs 2 to 6 of Article 25 of Directive 2014/65/EU when providing investment or ancillary services to their clients, including providing for the—

(a) information investment firms must obtain when assessing the suitability or appropriateness of the services and financial instruments for their clients;

(b) criteria firms must use to assess non-complex financial instruments for the purposes of rule 10A.4.1(2)(f) of the Conduct of Business sourcebook;

(c) content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided.

(3) Regulations made for the purposes set out in point (1) must take into account—

(a) the nature of the service offered or provided to the client or potential client, having regard to the type, object, size and frequency of the transactions;

(b) the nature of the products being offered or considered, including different types of financial instruments;

(c) the retail or professional nature of the client or potential clients or, where appropriate, their classification as eligible counterparties.

10. To make provision concerning—

(a) the criteria for determining the relative importance of the different factors that may be taken into account by an investment firm executing an order for a client for determining the best possible result for their client, taking into

account the size and type of order and the retail or professional nature of the client;

- (b) factors that may be taken into account by an investment firm when reviewing its execution arrangements and the circumstances under which changes to such arrangements may be appropriate, and in particular, the factors for determining which venues enable investment firms to obtain on a consistent basis the best possible result for executing client orders;
- (c) the nature and extent of the information to be provided to clients on their execution policies.

11. To define—

- (a) the conditions and nature of the procedures and arrangements which result in the prompt, fair and expeditious execution of client orders and the situations in which or types of transaction for which investment firms may reasonably deviate from prompt execution so as to obtain more favourable terms for clients;
- (b) the different methods through which an investment firm can be deemed to have met its obligation to disclose not immediately executable client limit orders to the market.

12. To specify—

- (a) the procedures to be followed by eligible counterparties requesting treatment as clients under rule 3.7.1 of the Conduct of Business sourcebook;
- (b) the procedures to be followed by investment firms for obtaining the confirmation from prospective eligible counterparties referred to in rule 3.6.6 of the Conduct of Business sourcebook;
- (c) the pre-determined proportionate requirements, including quantitative thresholds that would allow an undertaking to be considered to be an eligible counterparty for the purposes of rule 3.6.4A of the Conduct of Business sourcebook.

13. To determine circumstances that trigger an information requirement, as referred to in—

- (a) rule 5.6.1 of the Market Conduct sourcebook; or
- (b) rule 3.21.1 or 3.25.1 of the Recognised Investment Exchanges sourcebook.

14. To specify further the requirements laid down in rule 5.10.2 of the Market Conduct sourcebook, taking into account the need for the requirements to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market and that de-registrations do not occur nor must registrations be refused as a result of a merely temporary failure to meet the conditions set out in paragraph (1) of that rule. 15. To

list situations constituting significant damage to investors' interests and the orderly functioning of the market for the purposes of sections 313CA and 313CB of FSMA, and paragraph 7E in the Schedule to the Recognition Requirements Regulations.

15. To list situations constituting significant damage to investors' interests and the orderly functioning of the market for the purposes of sections 313CA and 313CB of FSMA, and paragraph 7E in the Schedule to the Recognition Requirements Regulations.

16. To specify the thresholds referred to in paragraph 7BB(2)(a) of the Recognition Requirements Regulations, having regard to the total number of open positions and their size and the total number of persons holding a position.

17. To clarify what constitutes a reasonable commercial basis—

(a) to make information public as referred to in regulation 14 of the Data Reporting Services Regulations 2017;

(b) to provide access to data streams as referred to in regulation 15 of those Regulations.

## PART 2

### Powers to make technical standards transferred to the FCA

19. — (1) To specify the criteria for establishing when an activity is to be considered to be ancillary to the main business of a firm at group level for the purposes of paragraph 1(k) of Schedule 3 to the Regulated Activities Order.

(2) Any criteria specified under point (1) must take into account the following elements—

(a) the need for ancillary activities to constitute a minority of activities at a group level;

(b) the size of their trading activity compared to the overall market trading activity in that asset class.

(3) In determining the extent to which ancillary activities constitute a minority of activities at a group level the competent authority may determine that the capital employed for carrying out the ancillary activity relative to the capital employed for carrying out the main business is to be considered (though this factor is not sufficient to demonstrate that the activity is ancillary to the main business of the group).

(4) The activities referred to in this paragraph must be considered at a group level.

(5) ~~Notwithstanding the second paragraph, Article 37(1),~~ No account is to be taken, for the purposes of points (2) and (3) ~~shall apply from 3 January 2020,~~ of—

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

- (a) intra-group transactions as referred to in Article 3 of Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade depositories that serve group-wide liquidity or risk management purposes;
- (b) transactions in derivatives which are objectively measurable in reducing risks directly relating to the commercial activity or treasury financing activity;
- (c) transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue, where such obligations are required by regulatory authorities in accordance with domestic law, or by trading venues.

20. To determine—

- (a) the specific content, the format and the periodicity of data relating to the quality of execution to be published in accordance with paragraph 4C of the Schedule to the Recognition Requirement Regulations, taking into account the type of execution venue and the type of financial instrument concerned;
- (b) the content and the format of information to be published by investment firms in accordance with rule 11.2A.39 of the Conduct of Business sourcebook.

21. To specify further the cases in which the connection between a derivative as referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order relating to or referenced to a financial instrument suspended or removed from trading and the original financial instrument implies that the derivative is also to be suspended or removed from trading, in order to achieve the objective of the suspension or removal of the underlying financial instrument.

22. To determine the format and timing of communications and publications by an investment firm or market operator of an MTF or an OTF relating to its decisions to suspend or remove from trading a financial instrument and any related derivative.

23. To specify further—

- (a) the requirements to ensure trading systems of regulated markets are resilient and have adequate capacity;
- (b) the ratio referred to in rule 5.3A.2(7) and 5A.5.2(7) of the Market Conduct sourcebook, taking into account factors such as the value of unexecuted orders in relation to the value of executed transactions;
- (c) the controls concerning direct electronic access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access;

- (d) the requirements to ensure that co-location services and fee structures are fair and non-discriminatory and that fee structures do not create incentives for disorderly trading conditions or market abuse;
  - (e) the determination of where a regulated market is material in terms of liquidity in that financial instrument;
  - (f) the requirements to ensure that market making schemes are fair and non-discriminatory and to establish minimum market making obligations that regulated markets must provide for when designing a market making scheme and the conditions under which the requirement to have in place a market making scheme is not appropriate, taking into account the nature and scale of the trading on that regulated market, including whether the regulated market allows for or enables algorithmic trading to take place through its systems;
  - (g) the requirements to ensure appropriate testing of algorithms so as to ensure that algorithmic trading systems including high-frequency algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market.
24. To specify minimum tick sizes or tick size regimes for specific shares, depositary receipts, exchange-traded funds, certificates, and other similar financial instruments where necessary to ensure the orderly functioning of markets, in accordance with the factors in paragraph 3G of the Schedule to the Recognition Requirements Regulations and the price, spreads and depth of liquidity of the financial instruments.
25. To specify minimum tick sizes or tick size regimes for specific financial instruments other than those referred to in paragraph 24 where necessary to ensure the orderly functioning of markets, in accordance with the factors in paragraph 3G of the Schedule to the Recognition Requirements Regulations and the price, spreads and depth of liquidity of the financial instruments.
26. To specify the level of accuracy to which clocks are to be synchronised in accordance with international standards.
27. To specify the characteristics of different classes of financial instruments which must be taken into account by the regulated market when it assesses whether a financial instrument is issued in a manner consistent with the conditions laid down in the paragraph 9ZB(1)(a) and (b) of the Schedule to the Recognition Requirements Regulations for admission to trading on the different market segments which it operates.
28. To clarify the arrangements that a regulated market—
- (a) is required to implement so as to be considered to have fulfilled its obligation to verify that the issuer of a transferable security complies with its obligations under the law of England and Wales, Scotland and Northern Ireland in respect of initial, ongoing or ad hoc disclosure obligations;

- (b) has to establish pursuant to paragraph 3 in order to facilitate its members or participants in obtaining access to information which has been made public under the conditions established by the law of England and Wales, Scotland and Northern Ireland.
29. To specify further the cases in which the connection between a derivative relating or referenced to a financial instrument suspended or removed from trading and the original financial instrument implies that the derivative is also to be suspended or removed from trading, in order to achieve the objective of the suspension or removal of the underlying financial instrument.
30. To specify further the format and the timing of the publications market operators are required to make in relation to their decisions on the suspension or removal of financial instruments and any related derivative from trading.
31. — (1) To determine the methodology for calculation which will be applied in establishing the spot month position limits and other months' position limits for physically settled and cash settled commodity derivatives based on the characteristics of the relevant derivative.
- (2) The methodology for calculation must take into account the following factors—
- (a) the maturity of the commodity derivative contracts;
  - (b) the deliverable supply in the underlying commodity;
  - (c) the overall open interest in that contract and the overall open interest in other financial instruments with the same underlying commodity;
  - (d) the volatility of the relevant markets, including substitute derivatives and the underlying commodity markets;
  - (e) the number and size of the market participants;
  - (f) the characteristics of the underlying commodity market, including patterns of production, consumption and transportation to market;
  - (g) the development of new contracts.
- (3) The appropriate regulator must take into account experience regarding the position limits of investment firms or market operators operating a trading venue and of other jurisdictions.
32. To determine—
- (a) the criteria and methods for determining whether a position qualifies as reducing risks directly relating to commercial activities for the purpose of position limits applying to commodity derivatives;
  - (b) the methods to determine when positions of a person are to be aggregated within a group;

- (c) the criteria for determining whether a contract is an economically equivalent over-the-counter (OTC) contract to that traded on a trading venue, referred to in regulation 16(1) of the Markets in Financial Instruments Regulations 2017, in a way that facilitates the reporting of positions taken in equivalent OTC contracts to the FCA;
  - (d) the methodology for aggregating and netting OTC and on-venue commodity derivatives positions to establish the net position for purposes of assessing compliance with the limits. Such methodologies must establish criteria to determine which positions may be netted against one another and must not facilitate the build-up of positions in a manner inconsistent with the objectives set out in regulation 16(2) of the Markets in Financial Instruments Regulations 2017;
  - (e) the procedure setting out how persons may apply for the exemption under regulation 17 of the Markets in Financial Instruments Regulations 2017 and how the FCA will approve such applications.
- 33. To determine the format of the weekly reports referred to in paragraph 7BB of the Schedule to the Recognition Requirement Regulations and direction 10.4.5 of the Market Conduct sourcebook and of the breakdowns in paragraph 7BB(2)(b) of that Schedule and paragraph (2) of that direction.
- 34. To determine—
  - (a) the information to be provided to the FCA in relation to an application for authorisation under regulation 7 of the Data Reporting Services Regulations 2017, including the programme of operations;
  - (b) to determine standard forms, templates and procedures for the provision of information referred to in regulation 7 of those Regulations.
- 35. To determine common formats, data standards and technical arrangements facilitating the consolidation of information referred to in regulation 14(1) of the Data Reporting Services Regulations 2017.
- 36. To specify—
  - (a) the means by which an APA (within the meaning of regulation 2(1) of the Data Reporting Services 2017) may comply with the information obligation referred to in regulation 14 of the Data Reporting Services Regulations 2017;
  - (b) the content of the information published under regulation 14 of those Regulations, including the information referred to in regulation 14(4) in such a way as to enable the publication of information required under regulations 14;
  - (c) the concrete organisational requirements laid down in regulation 14(5) of those Regulations.

37. To determine data standards and formats for the information to be published in accordance with Articles 6, 10, 20 and 21 of Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments, including financial instrument identifier, price, quantity, time, price notation, venue identifier and indicators for specific conditions the transactions were subject to as well as technical arrangements promoting an efficient and consistent dissemination of information in a way ensuring for it to be easily accessible and utilisable for market participants as referred to in regulation 15(3) and (7) of the Data Reporting Services Regulations 2017, including identifying additional services the CTP (within the meaning of regulation 2(1) of the Data Reporting Services 2017) could perform which increase the efficiency of the market.

38. To specify—

(a) the means by which the CTP may comply with the information obligation referred to in regulation 15(1) and (5) of the Data Reporting Services Regulations 2017;

(b) the content of the information published under regulation 15 of those Regulations;

(c) the financial instruments data of which must be provided in the data stream and for non-equity instruments the trading venues and APAs which need to be included;

(d) other means to ensure that the data published by different CTPs is consistent and allows for comprehensive mapping and cross-referencing against similar data from other sources, and is capable of being aggregated at the level of the United Kingdom;

(e) the concrete organisational requirements laid down in regulation 15(10) and (11) of the Data Reporting Services Regulations 2017.

39. To specify—

(a) the means by which the ARM (within the meaning of regulation 2(1) of the Data Reporting Services 2017) may comply with the information obligation referred to in regulation 16(1) of the Data Reporting Services Regulations 2017; and

(b) the concrete organisational requirements laid down in regulation 16(3) and (4) of those Regulations.

### PART 3

#### Powers to make technical standards transferred to the PRA and the FCA

40. To specify—

- (a) the information to be provided to the competent authorities by an investment firm applying for authorisation under FSMA, including information in relation to the firm's programme of operations;
  - (b) the requirements applicable to the management of investment firms under rules 4.2.2R and 4.2.6R of the Senior Management, Systems and Controls sourcebook, or rules 3.1 and 3.2 of the General Organisational Requirements for investment firms in the PRA rulebook, as applicable;
  - (c) the information required for applications under direction 10A.13.3D of the Supervision Manual in the FCA Handbook or rule 2.2 of the Senior Managers Regime – Applications and Notifications Part of the PRA rulebook;
  - (d) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory function of the competent authority.
41. To develop standard forms, templates and procedures for the notification or provision of information provided for under paragraph 40(b).
42. To establish an exhaustive list of information to be included by persons who have decided to acquire or increase control over a UK authorised person in the notification required under section 178 of FSMA.
43. To determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in sections 187A to 187C of FSMA.
44. To specify the following—
- (a) the details of organisational requirements laid down in regulations 30, 32 and 33 of the Markets in Financial Instruments Regulations 2017, sections 7A.3 and 7A.4 of the Market Conduct sourcebook or the Algorithmic Trading Part of the PRA rulebook, as applicable, on investment firms providing different investment services or activities and ancillary services or combinations thereof, whereby the specifications in relation to the organisational requirements laid down in regulations 32 and 33 of those Regulations must set out specific requirements for direct market access and for sponsored access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access;
  - (b) the circumstances in which an investment firm would be obliged to enter into the market making agreement referred to in regulation 30(10)(b) of the Markets in Financial Instruments Regulations 2017 and the content of such agreements, including the proportion of the trading venue's trading hours laid down in regulation 30(10)(a) of those Regulations;
  - (c) the situations constituting exceptional circumstances referred to in regulation 30(10) of the Markets in Financial Instruments Regulations 2017, including

circumstances of extreme volatility, political and macroeconomic issues, system and operational matters, and circumstances which contradict the investment firm's ability to maintain prudent risk management practices as laid down in regulation 30(3) of those Regulations;

- (d) the content and format of the approved form referred to in regulation 30(9) of the Markets in Financial Instruments Regulations 2017 and the length of time for which such records must be kept by the investment firm.

<b>Summary report:</b>	
<b>Litéra® Change-Pro TDC 7.5.0.185 Document comparison done on 22/02/2019 16:37:10</b>	
<b>Style name:</b> Shearman & Sterling	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> dm://LNDOCS01/1116640/1	
<b>Modified DMS:</b> dm://LNDOCS01/1116640/4	
<b>Changes:</b>	
<a href="#">Add</a>	1275
<del>Delete</del>	763
<del>Move From</del>	6
<del>Move To</del>	6
<del>Table Insert</del>	0
<del>Table Delete</del>	0
<del>Table moves to</del>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>2050</b>