

**TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS  
DIRECTIVE) (EU EXIT) (No 1) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in the exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations as specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Amendments to EU Regulations**

- F. The following EU Regulations are amended in accordance with Annexes A–S of this instrument.

(1)	(2)
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.	Annex A

Commission Delegated Regulation (EU) 2017/566 of 18 May 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 for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions.	Annex B
Commission Delegated Regulation (EU) 2017/568 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 admission of financial instruments to trading on regulated markets.	Annex C
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.	Annex D
Commission Delegated Regulation (EU) 2017/570 of 26 May 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 for the determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading.	Annex E
Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers.	Annex F
Commission Delegated Regulation (EU) 2017/573 of 6 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 on requirements to ensure fair and non-discriminatory co-location services and fee structures.	Annex G
Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks.	Annex H
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.	Annex I
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.	Annex J
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.	Annex K
Commission Delegated Regulation (EU) 2017/584 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of	Annex L

the Council with regard to regulatory technical standards specifying organisational requirements of trading venues.	
Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives.	Annex M
Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business.	Annex N
Commission Implementing Regulation (EU) 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial Instruments.	Annex O
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.	Annex P
Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.	Annex Q
Commission Implementing Regulation (EU) 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services and related notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial Instruments.	Annex R
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.	Annex S

**Revocations**

G. The FCA revokes the following EU Regulations.

(1)
Commission Delegated Regulation (EU) No 2017/586 regarding the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations.
Implementing Regulation (EU) No 2017/980 on standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities.
Implementing Regulation (EU) No 2017/981 on standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation.
Implementing Regulation (EU) No 2017/988 on standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State.
Delegated Regulation (EU) No 2017/1018 specifying information to be notified by investment firms, market operators and credit institutions.
Implementing Regulation (EU) No 2017/1111 on procedures and forms for submitting information on sanctions and measures.
Commission Implementing Regulation (EU) No 2017/1944 regarding standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm.
Commission Implementing Regulation (EU) No 2017/2382 regarding standard forms, templates and procedures for the transmission of information.

**Commencement**

H. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

**Citation**

I. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Directive) (EU Exit) (No 1) Instrument 2019.

By order of the Board  
28 March 2019

In this instrument, underlining indicates new text and striking through indicates deleted text.

## Annex A

**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**

~~(Text with EEA relevance)~~

...

### Article -2

#### **Application**

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014.

### Article -1

#### **Interpretation**

1. Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
2. Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
3. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.
4. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which were relied upon by the United Kingdom immediately before Exit Day to give effect to that EU legislation.

### Article 1

#### **Definitions**

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

1. 'relevant operator' means:
  - (a) an investment firm operating a multilateral trading facility (MTF);
  - (b) an investment firm operating an organised trading facility (OTF);
  - (c) a market operator operating an MTF;
  - (d) a market operator operating an OTF;
2. 'asset classes' means the categories of financial instruments as set out in Section C of Annex I to Directive 2014/65/EU.
3. 'Exit Day' has the meaning given in the European Union (Withdrawal) Act 2018.

## Article 2

### Information to be provided on MTFs and OTFs

1. A relevant operator shall provide ~~its~~ the competent authority with the following information:
  - (a) the asset classes of financial instruments traded on the MTF or OTF;
  - (b) the rules and procedures for making financial instruments available for trading, together with details of the publication arrangements used to make that information available to the public;
  - (c) the rules and procedures to ensure the objective and non-discriminatory access to the trading facilities together with details on the publication arrangements used to make that information available to the public;
  - (d) the measures and procedures to ensure that sufficient information is publicly available to users of the MTF or OTF to form an investment judgement, taking into account both the nature of the users and the classes of financial instruments traded;
  - (e) the systems, procedures and arrangements to ensure compliance with the conditions laid down in UK law corresponding to Articles 48 and 49 of Directive 2014/65/EU;
  - (f) a detailed description of any arrangements to facilitate the provision of liquidity to the system such as market making schemes;
  - (g) the arrangements and procedures to monitor transactions as required by UK law corresponding to Article 31 of Directive 2014/65/EU;
  - (h) the rules and procedures for suspension and removal of financial instruments from trading as required by UK law corresponding to Article 32 of Directive 2014/65/EU;
  - (i) the arrangements to comply with pre-trade and post-trade transparency obligations that apply to the financial instruments traded and the trading functionality of the MTF or OTF; that information shall be accompanied by information on any intention to use waivers under Articles 4 and 9 of Regulation (EU) No 600/2014 and deferred publication under Articles 7 and 11

- of that Regulation;
- (j) the arrangements for the efficient settlement of the transactions effected under its systems and for ensuring that users are aware of their respective responsibilities in this regard;
  - (k) a list of the members or participants of the MTF or OTF which it operates.
2. A relevant operator shall provide ~~its~~ the competent authority with a detailed description of the functioning of its trading system specifying:
    - (a) whether the system represents a voice, electronic or hybrid functionality;
    - (b) in the case of an electronic or hybrid trading system, the nature of any algorithm or program used to determine the matching and execution of trading interests;
    - (c) in the case of a voice trading system, the rules and protocols used to determine the matching and execution of trading interests;
    - (d) a description explaining how the trading system satisfies each element of the definition of an MTF or an OTF.
  3. A relevant operator shall provide ~~its~~ the competent authority with information on how and in what instances the operation of the MTF or OTF will give rise to any potential conflicts between the interests of the MTF or OTF, its operator or its owners and the sound functioning of the MTF or OTF. The relevant operator shall specify the procedures and arrangements to comply with the requirements set out in UK law corresponding to Article 18(4) of Directive 2014/65/EU.
  4. A relevant operator shall provide ~~its~~ the competent authority with the following information on its outsourcing arrangements that relate to the management, operation or oversight of the MTF or OTF:
    - (a) the organisational measures to identify the risks in relation to those outsourced activities and to monitor the outsourced activities;
    - (b) the contractual agreement between the relevant operator and the entity providing the outsourced service in which the nature, scope, objectives, and service level agreements are outlined.
  5. A relevant operator shall provide ~~its~~ the competent authority with information on any links to or participation by a regulated market, MTF, OTF or systematic internaliser owned by the same relevant operator.

### Article 3

#### **Additional information to be provided on MTFs**

In addition to the information set out in Article 2, a relevant operator shall provide ~~its~~ the competent authority with the following information relating to the requirements set out in UK law corresponding to Article 19(3) of Directive 2014/65/EU:

- (a) a description of the arrangements and the systems implemented to manage the risks to which the operator is exposed, to identify all significant risks to its operation and to put in place effective measures to mitigate those risks;
- (b) a description of the arrangements implemented to facilitate the efficient and timely

- finalisation of the transactions executed under the operator's systems;
- (c) having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which the operator is exposed, a description of the financial resources considered sufficient to facilitate its orderly functioning.
- ...

## Article 6

### **Additional information to be provided on OTFs**

In addition to Article 2, a relevant operator operating an OTF shall provide ~~its~~ the competent authority with the following information:

- (a) information on whether another investment firm is engaged to carry out market making on its OTF on an independent basis in accordance with UK law corresponding to Article 20(5) of Directive 2014/65/EU;
- (b) a detailed description of how and under what circumstances it executes orders on the OTF on a discretionary basis in accordance with UK law corresponding to Article 20(6) of Directive 2014/65/EU;
- (c) the rules, procedures and protocols which allow the operator to route the trading interest of a member or participant outside the facilities of the OTF;
- (d) a description of the use of matched principal trading which complies with UK law corresponding to Article 20(7) of Directive 2014/65/EU;
- (e) the rules and procedures to ensure compliance with UK law corresponding to Articles 24, 25, 27 and 28 of Directive 2014/65/EU for transactions concluded on the OTF where those rules are applicable to the relevant operator in relation to an OTF user.
- ...

## Article 8

### **Material changes**

1. A relevant operator shall provide ~~its~~ the competent authority with a description of any material changes to the information previously submitted in accordance with this Regulation which would be relevant to an assessment of that operator's compliance with Directive 2014/65/EU and Regulation (EU) No 600/2014.
2. Where a relevant operator sends new information to ~~its~~ the competent authority to correct, update or clarify information previously submitted in accordance with this Regulation, it does not need to include information which is of a purely minor or technical nature that would not be relevant to an assessment of its compliance with UK law corresponding to Directive 2014/65/EU or Regulation (EU) No 600/2014.
3. An investment firm or market operator authorised to operate an MTF under Directive 2004/39/EC which is operating at the date of application of this Regulation shall, in



addition to paragraph 1 of this Article, provide ~~its~~ the competent authority with a description of any material changes to the information previously submitted to the competent authority in respect of that MTF under that Directive.

Article 9

**Format for providing the description**

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3. A relevant operator shall provide the information required by this Regulation to ~~its~~ the competent authority in an electronic format.

...

~~Article 10~~

~~**Notification to ESMA**~~

~~A competent authority shall notify ESMA of the authorisation of a relevant operator as an MTF or an OTF in electronic format and in the format set out in Table 2 of the Annex.~~

...

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

...

**ANNEX**

**Formats**

...

~~Table 2~~

~~**Information to be sent to ESMA**~~

Notifying competent authority	Name of the relevant operator	Name of the MTF or OTF operated	MIC code	Services provided by MTF or OTF

**Annex B**

**COMMISSION DELEGATED REGULATION (EU) 2017/566 of 18 May 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 for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions**

~~(Text with EEA relevance)~~

...

Article -2

**Application**

This Regulation applies to UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014.

Article -1

**Interpretation**

1. Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
2. Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
3. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

...

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

...

**ANNEX**  
**Counting methodology for orders set out for each type**

<b>Types of order</b>	<b>Number of orders received by the trading venue to be counted when calculating the ratio of unexecuted orders to transactions (each submission, modification, cancellation shall be counted as one single order)</b>	<b>Updates potentially sent by the trading venue not to be counted when calculating the ratio of unexecuted orders to transactions (excluding executions/cancellations by market operations)</b>
Limit	1	0
...		
<p data-bbox="245 800 293 831">Peg</p> <p data-bbox="245 905 626 989">Market peg: an order to the opposite side of the <del>(European)</del> Best Bid and Offer (BBO)</p> <p data-bbox="245 1062 586 1167">Primary peg: an order to the same side of the <del>(European)</del> BBO</p> <p data-bbox="245 1241 602 1325">Midpoint peg: an order to the midpoint of the <del>(European)</del> BBO</p> <p data-bbox="245 1398 618 1482">Alternate peg to the less aggressive of the midpoint or 1 tick</p> <p data-bbox="245 1556 602 1671">Midpoint inside the same side of the Protected BBO</p>	1	potentially unlimited as the order tracks the BBO
...		

Trailing stop: Stop order which stop price at which the order is triggered changes in function of the <del>(European)</del> BBO	1	potentially unlimited as the stop limit tracks the BBO
At best limit order where the limit price is equal to the opposite side of the <del>(European)</del> BBO at the time of entry	1	0
...		

## Annex C

**COMMISSION DELEGATED REGULATION (EU) 2017/568 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 admission of financial instruments to trading on regulated markets**

(Text with EEA relevance)

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Article -3

**Definitions**

In this Regulation, 'Exit Day' has the meaning given in the European Union (Withdrawal) Act 2018.

Article -2

**Application**

This Regulation applies to a 'UK RIE' as defined in the Glossary of the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day.

Article -1

**Interpretation**

1. Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
2. Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
3. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which were relied upon by the United Kingdom immediately before Exit Day to give effect to that EU legislation.
4. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

...

## Article 2

**Transferable securities — fair, orderly and efficient trading**

1. When assessing whether a transferable security is capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the information required to be prepared under UK law corresponding to Directive 2003/71/EC or information that is otherwise publicly available such as:
  - (a) historical financial information;
  - (b) information about the issuer;
  - (c) information providing a business overview.
2. In addition to paragraph 1, when assessing whether a share is capable of being traded in a fair, orderly and efficient manner a regulated market shall take into account the distribution of those shares to the public.
3. When assessing whether a transferable security referred to in ~~Article 4(1)(44) of Directive 2014/65/EU~~ Article 2(1)(24) of Regulation 600/2014/EU is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:
  - (a) the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;
  - (b) the price or other value measure of the underlying is reliable and publicly available;
  - (c) there is sufficient information publicly available of a kind needed to value the security;
  - (d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measures of the underlying;
  - (e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about it.

## Article 3

**Transferable securities — official listing**

A transferable security that is officially listed in accordance with UK law corresponding to Directive 2001/34/EC, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

## Article 4

**Units and shares in collective investment undertakings**

1. A regulated market shall, when admitting units or shares of a collective investment undertaking to trading, ensure that those units or shares are permitted to be marketed ~~in the Member State of the regulated market~~ the United Kingdom.

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## Article 5

**Derivatives**

1. When assessing whether a financial instrument referred to in ~~points 4 to 10 of Section C of Annex I to Directive 2014/65/EU~~ paragraphs 4 to 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 are capable of being traded in a fair, orderly and efficient manner, a regulated market shall verify that the following conditions are satisfied:
  - (a) the terms of the contract establishing the financial instrument are clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;
  - (b) the price or other value measure of the underlying is reliable and publicly available;
  - (c) sufficient information of a kind needed to value the derivative is publicly available;
  - (d) the arrangements for determining the settlement price of the contract is such that the price properly reflects the price or other value measures of the underlying;
  - (e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate arrangements to enable market participants to obtain relevant information about that underlying as well as adequate settlement and delivery procedures for the underlying.
2. Point (b) of paragraph 1 of this Article shall not apply to financial instruments referred to in ~~points 5, 6, 7 and 10 of Section C of Annex I to Directive 2014/65/EU~~ paragraphs 5, 6, 7 and 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, where the following conditions are fulfilled:
  - (a) the contract establishing that instrument is likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;
  - (b) the regulated market ensures that appropriate supervisory arrangements are in place to monitor trading and settlement in such financial instruments;



- (c) the regulated market ensures that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those financial instruments.

#### Article 6

##### **Emission allowances**

Any emission allowance referred to in ~~point 11 of Section C of Annex I to Directive 2014/65/EU~~ paragraph 11 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 recognised for compliance with the requirements of Directive 2003/87/EC, is eligible for admission to trading on a regulated market with no further requirements.

#### Article 7

##### **Verification of issuer obligations**

1. Regulated markets shall adopt and publish on their website procedures for verifying compliance by an issuer of a transferable security with its obligations under ~~Union~~ UK law.
2. Regulated markets shall ensure that compliance with the obligations referred to in paragraph 1 is checked effectively in accordance with the nature of the obligation under review taking into account the supervisory tasks performed by ~~relevant competent authorities~~ the competent authority.

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#### Article 8

##### **Facilitation of access to information**

Regulated markets shall have arrangements which are easily accessible, free of charge and published on their website to facilitate access of their members or participants to information which has been made public in accordance with ~~Union~~ UK law.

#### Article 9

##### **Entry into force and application**

...

It shall apply from the date that appears in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

...

## Annex D

**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**

~~(Text with EEA relevance)~~

...

Article -2

**Application**

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014.

Article -1

**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
- (2) Where a term it is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
- (3) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.
- (4) A reference to the ‘Regulated Activities Order’ is to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Article 1

**Connection between a derivative related or referenced to a financial instrument suspended or removed from trading and the original financial instrument**

A market operator of a regulated market and an investment firm or market operator operating a multilateral trading facility (MTF) or an organised trading facility (OTF shall suspend or remove a derivative referred to in ~~points paragraphs~~ 4 to 10 of ~~Section C of Annex I to Directive 2014/65/EU~~ Part 1 of Schedule 2 to the Regulated Activities Order from trading where that derivative is related or referenced to only one financial instrument, and that financial instrument has been suspended or removed from trading.

...

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

...

## Annex E

**COMMISSION DELEGATED REGULATION (EU) 2017/570 of 26 May 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 for the determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading**

(Text with EEA relevance)

...

Article -2

**Definitions**

In this Regulation, ‘Exit Day’ has the meaning given in the European Union (Withdrawal) Act 2018.

Article -1

**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
- (2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
- (3) References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators’ requirements which were relied upon by the United Kingdom immediately before Exit Day to give effect to that EU legislation.
- (4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

Article 1

**Material market in terms of liquidity**

For the purposes of the second subparagraph of UK law corresponding to Article 48(5) of Directive 2014/65/EU, the material market in terms of liquidity shall be considered to be:

- (a) in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments, the trading venue which is the most relevant market in

- terms of liquidity for the instrument as set out in Article 4 of Commission Delegated Regulation (EU) 2017/587;
- (b) in respect of financial instruments other than those set out in point (a) which are admitted to trading on a regulated market, the regulated market where the financial instrument was first admitted to trading;
  - (c) in respect of financial instruments other than those set out in point (a) which are not admitted to trading on a regulated market, the trading venue where the financial instrument was first traded.

## Article 2

### **Entry into force and application**

...

This Regulation shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

...

**Annex F****COMMISSION DELEGATED REGULATION (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers**

(Text with EEA relevance)

...

Article -2**Application**

This Regulation applies to persons.

Article -1**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) or (3) applies;
- (2) Subject to (3), where a term is defined in the Data Reporting Services Regulations 2017, that definition shall apply for the purposes of this Regulation.
- (3) Where a term it is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
- (4) 'Information system' means a device or group of inter-connected or related devices, one or more of which, pursuant to a programme, automatically processes computer data, as well as computer data stored, processed, retrieved or transmitted by that device or group of devices for the purpose of its or their operation, use, protection and maintenance.

'Computer data', for these purposes, means a representation of facts, information or concepts in a form suitable for processing in an information system, including a programme suitable for causing an information system to perform a function.

## CHAPTER I

**AUTHORISATION**

(Article 61(2) of Directive 2014/65/EU)

## Article 1

**Information to the competent authorities authority**

1. An applicant seeking authorisation to provide data reporting services shall submit to the competent authority the information set out in Articles 2, 3 and 4 and the information regarding all the organisational requirements set out in Chapters II and III.
2. A data reporting services provider shall promptly inform the competent authority ~~of its home Member State~~ of any material change to the information provided at the time of the authorisation and thereafter.

## Article 2

**Information on the organisation**

1. An applicant seeking authorisation to provide data reporting services shall include in its application for authorisation a programme of operations referred to in ~~Article 61(2) of Directive 2014/65/EU~~ regulation 7 of the Data Reporting Services Regulations 2017. The programme of operations shall include the following information:
  - (a) information on the organisational structure of the applicant, including an organisational chart and a description of the human, technical and legal resources allocated to its business activities;
  - (b) information on the compliance policies and procedures of the data reporting services provider, including:
    - (i) the name of the person or persons responsible for the approval and maintenance of those policies;
    - (ii) the arrangements to monitor and enforce the compliance policies and procedures;
    - (iii) the measures to be undertaken in the event of a breach which may result in a failure to meet the conditions for initial authorisation;
    - (iv) a description of the procedure for reporting to the competent authority any breach which may result in a failure to meet the conditions for initial authorisation;
  - (c) a list of all outsourced functions and resources allocated to the control of the outsourced functions;
2. A data reporting services provider offering services other than data reporting services shall describe those services in the organisational chart.



...

## Article 4

**Information on the members of the management body**

1. An applicant seeking authorisation to provide data reporting services shall include in its application for authorisation the following information in respect of each member of the management body:
  - (a) name, date and place of birth, personal national identification number or an equivalent thereof, address and contact details;
  - (b) the position for which the person is or will be appointed;
  - (c) a curriculum vitae evidencing sufficient experience and knowledge to adequately perform the responsibilities;
  - (d) criminal records, notably through an official certificate, or, where such a document is not available ~~in the relevant Member State~~, a self-declaration of good repute and the authorisation to the competent authority to inquire whether the member has been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;
  - (e) a self-declaration of good repute and the authorisation to the competent authority to inquire whether the member:
    - (i) has been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government body or is the subject of any such proceedings which are not concluded;
    - (ii) has been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for misconduct or fraud in the management of a business;
    - (iii) has been part of the management body of an undertaking which was subject to an adverse decision or penalty by a regulatory authority or whose registration or authorisation was withdrawn by a regulatory authority;
    - (iv) has been refused the right to carry on activities which require registration or authorisation by a regulatory authority;
    - (v) has been part of the management body of an undertaking which has gone into insolvency or liquidation while the person held such position or within a year after which the person ceased to hold such position;
    - (vi) has been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a professional body;

- (vii) has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;
- (f) An indication of the minimum time that is to be devoted to the performance of the person's functions within the data reporting services provider;
- (g) a declaration of any potential conflicts of interest that may exist or arise in performing the duties and how those conflicts are managed.

## Article 6

### **Organisational requirements regarding outsourcing**

...

6. Where a data reporting services provider outsources any critical function, it shall provide the competent authority ~~of its home Member State~~ with:
  - (a) the identification of the third party service provider;
  - (b) the organisational measures and policies with respect to outsourcing and the risks posed by it as specified in paragraph 4;
  - (c) internal or external reports on the outsourced activities.

For the purpose of the first sub paragraph 6, a function shall be regarded as critical if a defect or failure in its performance would materially impair the continuing compliance of the data reporting services provider with the conditions and obligations of its authorisation or its other obligations under ~~Directive 2014/65/EU~~ the Data Reporting Services Regulations 2017.

## Article 7

### **Business continuity and back-up facilities**

1. A data reporting services provider shall use systems and facilities that are appropriate and robust enough to ensure continuity and regularity in the performance of the services provided referred to in ~~Directive 2014/65/EU~~ the Data Reporting Services Regulations 2017.

...

5. A data reporting services provider shall publish on its website and promptly inform the competent authority ~~of its home Member State~~ and its clients of any service interruptions or connection disruptions as well as the time estimated to resume a regular service.

6. ~~In the case of ARMs, the notifications referred to in paragraph 5 shall also be made to any competent authority to whom the ARM submits transaction reports.~~

## Article 8

### Testing and capacity

...

3. A data reporting services provider shall promptly notify the competent authority ~~of its home Member State~~ of any planned significant changes to the IT system prior to their implementation.
4. ~~In the case of ARMs, the notifications referred to in paragraph 3 shall also be made to any competent authority to whom the ARM submits transaction reports.~~

...

## Article 9

### Security

1. A data reporting services provider shall set up and maintain procedures and arrangements for physical and electronic security designed to:
- protect its IT systems from misuse or unauthorised access;
  - minimise the risks of attacks against ~~the information systems as defined in Article 2(a) of Directive 2013/40/EU of the European Parliament and of the Council;~~
  - prevent unauthorised disclosure of confidential information;
  - ensure the security and integrity of the data.
2. Where an investment firm ('reporting firm') uses a third party ('submitting firm') to submit information to an ARM on its behalf, an ARM shall have procedures and arrangements in place to ensure that the submitting firm does not have access to any other information about or submitted by the reporting firm to the ARM which may have been sent by the reporting firm directly to the ARM or via another submitting firm.
3. A data reporting services provider shall set up and maintain measures and arrangements to promptly identify and manage the risks identified in paragraph 1.
4. In respect of breaches in the physical and electronic security measures referred to in paragraphs 1, 2 and 3, a data reporting services provider shall promptly notify:
- the competent authority ~~of its home Member State~~ and provide an incident report, indicating the nature of the incident, the measures adopted to cope with the incident and the initiatives taken to prevent similar incidents;

- (b) its clients that have been affected by the security breach.
- 5. ~~In the case of ARMs, the notification referred to in paragraph 4(a) shall also be made to any other competent authorities to whom the ARM submits transaction reports.~~

Article 10

**Management of incomplete or potentially erroneous information by APAs and CTPs**

...

Article 11

**Management of incomplete or potentially erroneous information by ARMs**

...

- 4. An ARM shall perform periodic reconciliations at the request of the competent authority ~~of its home Member State or the competent authority to whom the ARM submits transaction reports~~ between the information that the ARM receives from its client or generates on the client's behalf for transaction reporting purposes and data samples of the information provided by the competent authority.

...

- 8. An ARM shall promptly notify the client of the details of the error or omission and provide an updated transaction report to the client. An ARM shall also promptly notify the competent authority ~~of its home Member State and the competent authority to whom the ARM reported the transaction report~~ about the error or omission.

Article 12

**Connectivity of ARMs**

- 1. An ARM shall have in place policies, arrangements and technical capabilities to comply with the technical specification for the submission of transaction reports required by the competent authority ~~of its home Member State and by other competent authorities to whom the ARM sends transaction reports.~~

...

CHAPTER III

**PUBLICATION ARRANGEMENTS**

(Article 64(1) and (2) and Article 65(1) of Directive 2014/65/EU)

#### Article 14

#### **Machine readability**

1. APAs and CTPs shall publish the information which has to be made public in accordance with ~~Articles 64(1) and 65(1) of Directive 2014/65/EU~~ regulations 14(1) and 15(1) of the Data Reporting Services Regulations 2017 in a machine readable way.
- ~~2. CTPs shall publish the information which has to be made in accordance with Article 65(2) of Directive 2014/65/EU in a machine readable way.~~

...

#### Article 20

#### **Details to be published by the CTP**

A CTP shall make public:

- (a) for transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments, the details of a transaction specified in Table 2 of Annex I to Delegated Regulation (EU) 2017/587 and use the appropriate flags listed in Table 3 of Annex I to Delegated Regulation (EU) 2017/587;
- ~~(b) for transactions executed in respect of bonds, structured finance products, emission allowances and derivatives the details of a transaction specified in Table 1 of Annex II to Delegated Regulation (EU) 2017/583 and use the appropriate flags listed in Table 2 of Annex II to Delegated Regulation (EU) 2017/583.~~

#### Article 21

#### **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.

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU. ~~However, Articles 14(2) and 20(b) shall apply from the first day of the ninth month following the date of application of Directive 2014/65/EU.~~

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

...

## Annex G

**COMMISSION DELEGATED REGULATION (EU) 2017/573 of 6 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 on requirements to ensure fair and non-discriminatory co-location services and fee structures**

~~(Text with EEA relevance)~~

...

### Article -3

#### **Definitions**

In this Regulation, 'Exit Day' has the meaning given in the European Union (Withdrawal) Act 2018.

### Article -2

#### **Application**

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU.

### Article -1

#### **Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
- (2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
- (3) References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which were relied upon by the United Kingdom immediately before Exit Day to give effect to that EU legislation.
- (4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

...

## Article 3

**Fair and non-discriminatory fees**

1. Trading venues shall charge the same fee and provide the same conditions to all users of the same type of services based on objective criteria. Trading venues shall only establish different fee structures for the same type of services where those fee structures are based on non-discriminatory, measurable and objective criteria relating to:
  - (a) the total volume traded, the numbers of trades or cumulated trading fees;
  - (b) the services or packages of services provided by the trading venue;
  - (c) the scope or field of use demanded;
  - (d) the provision of liquidity in accordance with UK law corresponding to Article 48(2) of Directive 2014/65/EU or in a capacity of being a market maker as defined in Article 4(1)(7) of Directive 2014/65/EU 2(1)(6) of Regulation 600/2014/EU;

...

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

...

## Annex H

**COMMISSION DELEGATED REGULATION (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks**

~~(Text with EEA relevance)~~

...

Article -2**Application**

This Regulation applies to:

- (1) Operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU; and
- (2) UK trading venue members or participants.

Article -1**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) or (3) apply.
- (2) Where a term it is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
- (3) 'Algorithmic trading' is defined in regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.
- (4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

...

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

...



## Annex I

**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**

**(Text with EEA relevance)**

...

Article -3

**Definitions**

In this Regulation, ‘Exit Day’ has the meaning given in the European Union (Withdrawal) Act 2018.

Article -2

**Application**

This Regulation applies to a MiFID investment firm and a UK RIE.

Article -1

**Interpretation**

1. Where a term is defined in article 4 of Directive 2014/65/EU, the same definition applies for this Regulation except that:
  - (a) where it is defined in article 2 Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition applies; and
  - (b) ‘limit order’ is defined as ‘an order to buy or sell a financial instrument, as specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 [SI 2001/544], at its specified price limit or better and for a specified size’.
2. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.

3. 'MiFID investment firm' and 'UK RIE' are defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day.

Article 1

**Subject matter**

Subject to the 'Application' and 'Interpretation' provisions above, this Regulation lays down the specific content, the format and the periodicity of the data to be published by execution venues relating to the quality of execution of transactions. It shall apply to trading venues, systematic internalisers, market makers, or other liquidity providers.

...

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

...

**Annex J****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**

~~(Text with EEA relevance)~~

...

Article -3

**Definitions**

In this Regulation, ‘Exit Day’ has the meaning given in the European Union (Withdrawal) Act 2018.

Article -2

**Application**

This Regulation applies to a MiFID investment firm and a UK RIE.

Article -1

**Interpretation**

- (1) Where a term is defined in article 4 of Directive 2014/65/EU, the same definition applies for this Regulation except where it is defined in article 2 Regulation 600/2014/EU, as amended by Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, in which case that definition applies.
- (2) Article 2(1)(62) and (63) of Regulation 600/2014/EU applies for the purposes of this Regulation.
- (3) References to ‘tick size bands’ are to those in Commission Delegated Regulation 2017/588, as amended at Exit Day.
- (4) ‘MiFID investment firm’ and ‘UK RIE’ are defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority, immediately after Exit Day.

...

## Article 3

**Information on the top five execution venues and quality of execution obtained**

...

3. Investment firms shall publish for each class of financial instruments, a summary of the analysis and conclusions they draw from their detailed monitoring of the quality of execution obtained on the execution venues where they executed all client orders in the previous year. The information shall include:
- (a) an explanation of the relative importance the firm gave to the execution factors of price, costs, speed, likelihood of execution or any other consideration including qualitative factors when assessing the quality of execution;
  - (b) a description of any close links, conflicts of interests, and common ownerships with respect to any execution venues used to execute orders;
  - (c) a description of any specific arrangements with any execution venues regarding payments made or received, discounts, rebates or non-monetary benefits received;
  - (d) an explanation of the factors that led to a change in the list of execution venues listed in the firm's execution policy, if such a change occurred;
  - (e) an explanation of how order execution differs according to client categorisation, where the firm treats categories of clients differently and where it may affect the order execution arrangements;
  - (f) an explanation of whether other criteria were given precedence over immediate price and cost when executing retail client orders and how these other criteria were instrumental in delivering the best possible result in terms of the total consideration to the client;
  - (g) an explanation of how the investment firm has used any data or tools relating to the quality of execution, including any data published under Delegated Regulation (EU) 2017/575;
  - (h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider authorised in accordance with the Data Reporting Services Regulations 2017 established under Article 65 of Directive 2014/65/EU.

...

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

...

## Annex K

**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 (Text with EEA relevance)**

~~(Text with EEA relevance)~~

...

Article -3

**Definitions**

In this Regulation, ‘Exit Day’ has the meaning given in the European Union (Withdrawal) Act 2018.

Article -2

**Application**

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU.

Article -1

**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
- (2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
- (3) References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators’ requirements which were relied upon by the United Kingdom immediately before Exit Day to give effect to that EU legislation.
- (4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

...

## Article 2

**Content of market making agreements**

1. The content of a binding written agreement referred to in UK law corresponding to Article 17(3)(b) and Article 48(2) of Directive 2014/65/EU shall include at least:
  - (a) the financial instrument or instruments covered by the agreement;
  - (b) the minimum obligations to be met by the investment firm in terms of presence, size and spread that shall require at least posting firm, simultaneous two-way quotes of comparable size and competitive prices in at least one financial instrument on the trading venue for at least 50% of daily trading hours of during which continuous trading takes place excluding opening and closing auctions and calculated for each trading day;
  - (c) where appropriate, the terms of the applicable market making scheme;
  - (d) the obligations of the investment firm in relation to the resumption of trading after volatility interruptions;
  - (e) the surveillance, compliance and audit obligations of the investment firm enabling it to monitor its market making activity;
  - (f) the obligation to flag firm quotes submitted to the trading venue under the market making agreement in order to distinguish those quotes from other order flows;
  - (g) the obligation to maintain records of firm quotes and transactions relating to the market making activities of the investment firm, which are clearly distinguished from other trading activities and to make those records available to the trading venue and the competent authority upon request.
2. Trading venues shall continuously monitor the effective compliance of the relevant investment firms with the market making agreements.

## Article 3

**Exceptional circumstances**

The obligation for investment firms to provide liquidity on a regular and predictable basis laid down in UK law corresponding to Article 17(3)(a) of Directive 2014/65/EU shall not apply in any of the following exceptional circumstances:

- (a) a situation of extreme volatility triggering volatility mechanisms for the majority of financial instruments or underlyings of financial instruments traded on a trading segment within the trading venue in relation to which the obligation to sign a market making agreement applies;
- (b) war, industrial action, civil unrest or cyber sabotage;
- (c) disorderly trading conditions where the maintenance of fair, orderly and transparent execution of trades is compromised, and evidence of any of the following is provided:

- (i) the performance of the trading venue's system being significantly affected by delays and interruptions;
  - (ii) multiple erroneous orders or transactions;
  - (iii) the capacity of a trading venue to provide services becoming insufficient;
- (d) where the investment firm's ability to maintain prudent risk management practices is prevented by any of the following:
- (i) technological issues, including problems with a data feed or other system that is essential to carry out a market making strategy;
  - (ii) risk management issues in relation to regulatory capital, margining and access to clearing,
  - (iii) the inability to hedge a position due to a short selling ban;
- (e) for non-equity instruments, during the suspension period referred to in Article 9(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council.

...

## Article 5

### **Obligation for trading venues to have market making schemes in place**

1. Trading venues shall not be required to have market making scheme as referred to in the UK law corresponding to Article 48(2)(b) of Directive 2014/65/EU in place except for any of the following classes of financial instruments traded through a continuous auction order book trading system:
  - (a) shares and exchange traded funds for which there is a liquid market as defined in accordance with Article 2(1)(17) of Regulation (EU) No 600/2014 and as specified in Commission Delegated Regulation (EU) 2017/567;
  - (b) options and futures directly related to the financial instruments set out in point (a);
  - (c) equity index futures and equity index options for which there is a liquid market as specified in accordance with point (c) of Article 9(1) and point (c) of Article 11(1) of Regulation (EU) No 600/2014 and Commission Delegated Regulation (EU) 2017/583.
2. For the purposes of paragraph 1, a continuous auction order book trading system means a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with buy orders on the basis of the best available price on a continuous basis.

...

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

...

## Annex L

**COMMISSION DELEGATED REGULATION (EU) 2017/584 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of trading venues**

~~(Text with EEA relevance)~~

...

Article -3

**Definitions**

In this Regulation, ‘Exit Day’ has the meaning given in the European Union (Withdrawal) Act 2018.

Article -2

**Application**

This Regulation applies to operators of UK trading venues, as defined by article 2(1)(16A) of Regulation 600/2014/EU.

Article -1

**Interpretation**

1. Where a term is defined in Directive 2014/65/EU, that definition shall apply for the purposes of this Regulation except:
  - (i) where it is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, in which case that definition shall apply for the purposes of this Regulation;
  - (ii) in the case of ‘algorithmic trading’ and ‘direct electronic access’ or ‘DEA’ which are as defined in regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
  - (iii) in the case of the definition of ‘senior management’, where the definition in the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day shall apply.



2. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which were relied upon by the United Kingdom immediately before Exit Day to give effect to that EU legislation.
3. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

## CHAPTER I

### **GENERAL ORGANISATIONAL REQUIREMENTS FOR TRADING VENUES ENABLING OR ALLOWING ALGORITHMIC TRADING THROUGH THEIR SYSTEMS**

#### Article 1

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

(Article 48 of Directive 2014/65/EU)

1. This Regulation lays down detailed rules for the organisational requirements of the systems of the trading venues allowing or enabling algorithmic trading, in relation to their resilience and capacity, requirements on trading venues to ensure appropriate testing of algorithms and requirements in relation to the controls concerning DEA pursuant to the UK law corresponding to Article 48(12)(a), (b) and (g) of Directive 2014/65/EU.
2. For the purposes of this Regulation, it is considered that a trading venue allows or enables algorithmic trading where order submission and order matching is facilitated by electronic means.
3. For the purposes of this Regulation, any arrangements or systems that allow or enable algorithmic trading shall be considered 'algorithmic trading systems'.

#### Article 2

##### **Self-assessments of compliance with Article 48 of Directive 2014/65/EU**

(Article 48 of Directive 2014/65/EU)

1. Before the deployment of a trading system and at least once a year, trading venues shall carry out a self-assessment of their compliance with the UK law corresponding to Article 48 of Directive 2014/65/EU, taking into account the nature, scale and complexity of their business. The self-assessment shall include an analysis of all parameters set out in the Annex to this Regulation.
2. Trading venues shall keep a record of their self-assessment for at least five years.

...

## Article 6

**Outsourcing and procurement**

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues outsourcing all or part of their operational functions in relation to the systems allowing or enabling algorithmic trading shall ensure that:
  - (a) the outsourcing agreement exclusively relates to operational functions and does not alter the responsibilities of the senior management and the management body;
  - (b) the relationship and obligations of the trading venue towards its members, competent authorities, or any third parties, such as clients of data feed services are not altered;
  - (c) they meet the requirements that they must comply with in order to be authorised in accordance with the UK law corresponding to Title III of Directive 2014/65/EU.

...

5. Trading venues shall report to the competent ~~authorities~~ authority their intention to outsource operational functions in the following cases:
  - (a) where the service provider provides the same service to other trading venues;
  - (b) where critical operational functions necessary for business continuation would be outsourced, in which case the trading venues shall request a prior authorisation from the competent authority.
6. For the purposes of point (b) in paragraph 5, critical operational functions shall include those functions necessary to comply with the obligations referred to in the UK law corresponding to Article 47(1)(b), (c) and (e) of Directive 2014/65/EU.
7. Trading venues shall inform the competent authority ~~authorities~~ of any outsourcing agreements not subject to prior authorisation requirement immediately after the signature of the agreement.

...

## Article 21

**Pre-determination of the conditions to provide direct electronic access**

(Article 48(7) of Directive 2014/65/EU)

Trading venues permitting DEA through their systems shall set out and publish the rules and conditions pursuant to which their members may provide DEA to their own clients. Those rules and conditions shall at least cover the specific requirements set out in Article 22 of Commission Delegated Regulation (EU) 2017/589.

## Article 22

**Specific requirements for trading venues permitting sponsored access**

(Article 48(7) of Directive 2014/65/EU)

1. Trading venues shall make the provision of sponsored access subject to their authorisation and shall require that firms having sponsored access are subject to at least the same controls as those referred to in Article 18(3)(b).
2. Trading venues shall ensure that sponsored access providers are at all times exclusively entitled to set or modify the parameters that apply to the controls referred to in paragraph 1 over the order flow of their sponsored access clients.
3. Trading venues shall be able to suspend or withdraw the provision of sponsored access to clients having infringed the UK law corresponding to Directive 2014/65/EU, Regulations of the European Parliament and of the Council (EU) No 600/2014 and (EU) No 596/2014 or the trading venue's internal rules.

## Article 23

**Security and limits to access**

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall have in place procedures and arrangements for physical and electronic security designed to protect their systems from misuse or unauthorised access and to ensure the integrity of the data that is part of or passes through their systems, including arrangements that allow the prevention or minimisation of the risks of attacks against the information systems as defined in the UK law corresponding to Article 2(a) of Directive 2013/40/EU of the European Parliament and of the Council.

...

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

...

**Annex M****COMMISSION DELEGATED REGULATION (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives**

(Text with EEA relevance)

...

Article -3**Definitions**

In this Regulation, 'Exit Day' has the meaning given in the European Union (Withdrawal) Act 2018.

Article -2**Application**

This Regulation applies to:

- (1) a person to whom a position limit imposed under regulation 16 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 may apply;
- (2) a non-financial entity; and
- (3) where applicable, the Financial Conduct Authority as competent authority.

Article -1**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
- (2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.

- (3) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.
- (4) A reference to the ‘Regulated Activities Order’ is to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- (5) A reference to a ‘CRD credit institution’, ‘UK UCITS’, ‘UK-adopted IFRS’ and an ‘occupational pension scheme’ is to the definition in the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day.

...

## Article 2 Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘non-financial entity’ means a natural or legal person other than:
- (a) an investment firm authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2014/65/EC,
  - (b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council or a CRD credit institution,
  - (c) an insurance undertaking authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Council Directive 73/239/EEC,
  - (d) an assurance undertaking authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2002/83/EC of the European Parliament and of the Council,
  - (e) a reinsurance undertaking authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2005/68/EC of the European Parliament and of the Council,
  - (f) a UCITS or UK UCITS and, where relevant, its management company, authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2009/65/EC of the European Parliament and of the Council,
  - (g) an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council or corresponding UK law, including an occupational pension scheme,
  - (h) an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council or authorised as such by means of a Part 4A permission under the

Financial Services and Markets Act 2000 or registered as such pursuant to the Alternative Fund Managers Regulations 2013,

- (i) a CCP authorised in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the Financial Services and Markets Act 2000,
- (j) a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the Financial Services and Markets Act 2000.

A third-country entity is a non-financial entity if it would not require authorisation under any of the aforementioned legislation if it was based in the ~~Union~~ United Kingdom and subject to ~~Union~~ UK law.

- (2) 'spot month contract' means the commodity derivative contract in relation to a particular underlying commodity whose maturity is the next to expire in accordance with the rules set by the trading venue.
- (3) 'other months' contract' means any commodity derivative contract that is not a spot month contract.

## CHAPTER II

### METHOD FOR CALCULATING THE SIZE OF THE NET POSITION OF A PERSON

#### Article 3

#### **Aggregation and netting of positions in a commodity derivative**

(Article 57(1) of Directive 2014/65/EU)

- 1. The net position of a person in a commodity derivative shall be the aggregation of its positions held in that commodity derivative traded on a trading venue, ~~in commodity derivatives considered the same commodity derivative to that commodity derivative in accordance with paragraph 1 of Article 5,~~ and in economically equivalent OTC contracts pursuant to Article 6.

...

#### ~~Article 5~~

#### ~~**Same commodity derivatives and significant volumes**~~

~~(Article 57(6) of Directive 2014/65/EU)~~

- ~~1. A commodity derivative traded on a trading venue shall be considered the same commodity derivative as a commodity derivative traded on another trading venue where the following conditions are met:~~

- (a) ~~both commodity derivatives have identical contractual specifications, terms and conditions, excluding post trade risk management arrangements;~~
  - (b) ~~both commodity derivatives form a single fungible pool of open interest or, in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, of securities in issue by which the positions held in a commodity derivative traded on one trading venue may be closed out against the positions held in the commodity derivative traded on the other trading venue.~~
2. ~~A commodity derivative shall be considered to be traded in a significant volume on a trading venue when the trading in the commodity derivative on that trading venue over a consecutive three month period:~~
- (a) ~~exceeds an average daily open interest of 10,000 lots in the spot and other months' combined; or~~
  - (b) ~~in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, when the number of units traded multiplied by the price exceeds an average daily amount of 1 million EUR.~~
3. ~~The trading venue where the largest volume of trading in the same commodity derivative takes place shall be the trading venue that over one year has:~~
- (a) ~~the largest average daily open interest; or~~
  - (b) ~~in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, the highest average daily amount.~~

#### Article 6

### **OTC contracts economically equivalent to commodity derivatives traded on trading venues**

(Article 57(1) of Directive 2014/65/EU)

An OTC derivative shall be considered economically equivalent to a commodity derivative traded on a trading venue where it has identical contractual specifications, terms and conditions, excluding different lot size specifications, delivery dates diverging by less than one calendar day and different post trade risk management arrangements.

#### Article 7

### **Positions qualifying as reducing risks directly related to commercial activities**

(Article 57(1) of Directive 2014/65/EU)

1. A position held by a non-financial entity in commodity derivatives traded on trading venues or in economically equivalent OTC contracts pursuant to Article 6 qualifies as reducing risks directly relating to the commercial activities of that non-financial entity where by itself, or in combination with other derivatives in accordance with paragraph 2 ('position in a portfolio of commodity derivatives'), the position meets one of the following criteria:

...

- (b) it qualifies as a hedging contract pursuant to ~~International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council~~ UK-adopted IFRS.

...

## Article 8

### **Application for the exemption from position limits**

(Article 57(1) of Directive 2014/65/EU)

1. A non-financial entity holding a qualifying position in a commodity derivative shall apply for the exemption referred to in ~~the second subparagraph of paragraph 1 of Article 57 of Directive 2014/65/EU to the competent authority which sets the position limit for that commodity derivative~~ regulation 17 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.
2. The person referred to in paragraph 1 shall submit to the competent authority the following information which demonstrates how the position reduces risks directly relating to the non-financial entity's commercial activity:
  - (a) a description of the nature and value of the non-financial entity's commercial activities in the commodity to which the commodity derivative for which an exemption is sought is relevant;
  - (b) a description of the nature and value of the non-financial entity's activities in the trading of and positions held in the relevant commodity derivatives traded on trading venues and in their economically equivalent OTC contracts;
  - (c) a description of the nature and size of the exposures and risks in the commodity which the non-financial entity has or expects to have as a result of its commercial activities and which are or would be mitigated by the use of commodity derivatives;
  - (d) an explanation of how the non-financial entity's use of commodity derivatives directly reduces its exposure and risks in its commercial activities.
3. The competent authority shall approve or reject the application within 21 calendar days after it has received the application and shall notify the non-financial entity of its approval or rejection of the exemption.
4. The non-financial entity shall notify the competent authority if there is a significant change to the nature or value of the non-financial entity's commercial activities or its trading activities in commodity derivatives and the change is relevant to the information set out in point (b) of paragraph 2 and shall submit a new application for the exemption if it intends to continue to use it.



CHAPTER III  
**METHODOLOGY FOR THE COMPETENT AUTHORITIES AUTHORITY TO  
**CALCULATE POSITION LIMITS****

SECTION 1

**Determination of baseline figures**

Article 9

**Methodology for determining the baseline figure for spot month limits**

(Article 57(4) of Directive 2014/65/EU)

1. ~~Competent authorities~~ The competent authority shall determine a baseline figure for the spot month position limit in a commodity derivative by calculating 25% of the deliverable supply for that commodity derivative.
2. The baseline figure shall be specified in lots which shall be the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity.
3. Where a the competent authority establishes different position limits for different times within the spot month period, those position limits shall decrease on an incremental basis towards the maturity of the commodity derivative and shall take into account the position management arrangements of the trading venue.
4. By way of derogation to paragraph 1, the competent ~~authorities~~ authority shall determine the baseline figure for the spot month position limit for any derivative contract with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot and other months' contracts exceeding 50,000 lots over a consecutive three month period by calculating 20% of the deliverable supply in that commodity derivative.

Article 10

**Deliverable supply**

(Article 57(3) of Directive 2014/65/EU)

1. ~~Competent authorities~~ The competent authority shall calculate the deliverable supply for a commodity derivative by identifying the quantity of the underlying commodity that can be used to fulfil the delivery requirements of the commodity derivative.
2. ~~Competent authorities~~ The competent authority shall determine the deliverable supply for a commodity derivative referred to in paragraph 1 by reference to the average monthly amount of the underlying commodity available for delivery over the one year period immediately preceding the determination.
3. In order to identify the quantity of the underlying commodity meeting the conditions of paragraph 1, the competent ~~authorities~~ authority shall take into account the following criteria:

- (a) the storage arrangements for the underlying commodity;
- (b) the factors that may affect the supply of the underlying commodity.

#### Article 11

##### **Methodology for determining the baseline figure for other months' limits**

(Article 57(4) of Directive 2014/65/EU)

1. ~~Competent authorities~~ The competent authority shall determine a baseline figure for the other months' position limit in a commodity derivative by calculating 25% of the open interest in that commodity derivative.
2. The baseline figure shall be specified in lots which shall be the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity.

#### Article 12

##### **Open interest**

(Article 57(3) of Directive 2014/65/EU)

~~Competent authorities~~ The competent authority shall calculate the open interest in a commodity derivative by aggregating the number of lots of that commodity derivative that are outstanding on trading venues at a point in time.

#### Article 13

##### **Methodology for determining the baseline figure in respect of certain contracts**

(Article 57(4) of Directive 2014/65/EU)

1. By way of derogation to Article 9, ~~the competent authorities~~ authority shall determine the baseline figure for the spot month position limits for cash settled spot month contracts which are under ~~C(10) of Annex I to Directive 2014/65/EU~~ paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order and which have no measurable deliverable supply of their underlying commodities by calculating 25% of the open interest in those commodity derivative contracts
2. By way of derogation to Articles 9 and 11, ~~the competent authorities~~ authority shall determine the baseline figure for the position limits for commodity derivatives defined under ~~Article 4(1)(44) of Directive 2014/65/EU~~ Article 2(1)(24) of Regulation 600/2014/EU by calculating 25% of the number of securities issued. The baseline figure shall be specified in number of securities.
3. By way of derogation to Articles 9 and 11, where a commodity derivative provides that the underlying is delivered constantly over a specified period of time, the baseline figures calculated pursuant to Articles 9 and 11 shall apply to related commodity

derivatives for the same underlying to the extent that their delivery periods overlap. The baseline figure shall be specified in units of the underlying.

## SECTION II

### Factors relevant for the calculation of position limits

#### Article 14

##### Assessment of factors

(Article 57(3) of Directive 2014/65/EU)

~~Competent authorities~~ The competent authority shall set the spot month and other months' position limits for a commodity derivative by taking the baseline figure determined in accordance with Articles 9, 11 and 13 and adjusting it according to the potential impact of the factors referred to in Articles 16 to 20 on the integrity of the market for that derivative and for its underlying commodity to a limit:

- (a) between 5% and 35%; or
- (b) between 25% and 35%, for any derivative contract with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot and other months' contracts exceeding 50,000 lots over a consecutive three month period.

#### Article 15

##### New and illiquid contracts

(Article 57(3)(g) of Directive 2014/65/EU)

1. By way of derogation to Article 14,
  - (a) for commodity derivatives traded on a trading venue with a total combined open interest in spot and other months' contracts not exceeding 10,000 lots over a consecutive three month period, ~~the competent authorities~~ authority shall set the limit of positions held in those commodity derivatives at 2,500 lots;
  - (b) for commodity derivatives traded on a trading venue with a total combined open interest in spot and other months' contracts in excess of 10,000 but not exceeding 20,000 lots over a consecutive three month period, ~~the competent authorities~~ authority shall set the spot and other months' position limit between 5% and 40%;
  - (c) for commodity derivatives as defined in ~~Article 4(1)(44) of Directive 2014/65/EU~~ Article 2(1)(24) of Regulation 600/2014/EU with a total number of securities in issue not exceeding 10 million over a consecutive three month period, the competent authority shall set the limit of positions held in those commodity derivatives at 2.5 million securities;
  - (d) for commodity derivatives as defined in ~~Article 4(1)(44) of Directive 2014/65/EU~~ Article 2(1)(24) of Regulation 600/2014/EU with a total number of securities in issue in excess of 10 million but not exceeding 20 million over

a consecutive three month period, the competent authority shall set the spot and other months' position limit between 5% and 40%.

2. The trading venue shall notify the competent authority when the total open interest of any such commodity derivative reaches any of the amounts of lots or number of securities in issue mentioned in the previous paragraph over a consecutive three month period. ~~Competent authorities~~ The competent authority shall review the position limit upon receiving such notifications.

#### Article 16

##### **The maturity of the commodity derivatives contracts**

(Article 57(3)(a) of Directive 2014/65/EU)

1. For spot month position limits, if the commodity derivative has a short maturity, the competent authority shall adjust the position limit downwards.
2. For other months' position limits, where the commodity derivative has a large number of separate expiries, the competent ~~authorities~~ authority shall adjust the position limit upwards.

#### Article 17

##### **Deliverable supply in the underlying commodity**

(Article 57(3)(b) of Directive 2014/65/EU)

Where the deliverable supply in the underlying commodity can be restricted or controlled or if the level of deliverable supply is low relative to the amount required for orderly settlement the competent authority shall adjust the position limit downwards. ~~Competent authorities~~ The competent authority shall assess the extent to which this deliverable supply is used also as the deliverable supply for other commodity derivatives.

#### Article 18

##### **The overall open interest**

(Article 57(3)(c) of Directive 2014/65/EU)

1. Where there is a large volume of overall open interest, the competent authority shall adjust the position limit downwards.
2. Where the open interest is significantly higher than the deliverable supply, the competent authority shall adjust the position limit downwards.
3. Where the open interest is significantly lower than the deliverable supply, the competent authority shall adjust the position limit upwards.

## Article 19

**The number of market participants**

(Article 57(3)(e) of Directive 2014/65/EU)

1. Where the daily average number of market participants holding a position in the commodity derivative over a period of one year is high the competent authority shall adjust the position limit downwards.
2. By way of derogation to Article 14, ~~the competent authorities~~ authority shall set the spot month and other months' position limit between 5% and 50% if:
  - (a) the average number of market participants holding a position in the commodity derivative in the period leading up to the setting of the position limit is lower than 10; or
  - (b) the number of investment firms acting as a market maker in accordance with ~~Article 4(1)(7) of Directive 2014/65/EU~~ Article 2(1)(6) of Regulation 600/2014/EU in the commodity derivative at the time the position limit is set or reviewed is lower than 3.

For the purposes of the first subparagraph, ~~the competent authorities~~ authority may establish different position limits for different times within the spot month period, the other months' period or for both periods.

## Article 20

**Characteristics of the underlying commodity market**

(Article 57(3)(f) of Directive 2014/65/EU)

1. ~~Competent authorities~~ The competent authority shall take into account how the characteristics of the underlying market impact on the functioning and trading of the commodity derivative and on the size of the positions held by market participants, including having regard to the ease and speed of access which market participants have to the underlying commodity.
2. The assessment of the underlying commodity market referred to in paragraph 1 shall take into account:
  - (a) whether there are restrictions on the supply of the commodity, including the perishability of the deliverable commodity;
  - (b) the method of transportation and delivery of the physical commodity, including the following:
    - (i) whether the commodity can be delivered to specified delivery points only;
    - (ii) the capacity constraints of specified delivery points.
  - (c) the structure, organisation and the operation of the market, including the seasonality present in extractive and agricultural commodity markets whereby physical supply fluctuates over the calendar year;

- (d) the composition and role of market participants in the underlying commodity market, including consideration of the number of market participants which provide specific services that enable the functioning of the underlying commodity market such as risk management, delivery, storage, or settlement services;
- (e) macroeconomic or other related factors that influence the operation of the underlying commodity market including the delivery, storage, and settlement of the commodity;
- (f) the characteristics, physical properties and lifecycles of the underlying commodity.

#### Article 21

##### **Volatility of the relevant markets**

(Article 57(3)(d)) of Directive 2014/65/EU)

After having applied the factors referred to in Articles 16 to 20 which are relevant to set the position limit for each contract in commodity derivatives referred to in ~~Article 57(4) of Directive 2014/65/EU~~ regulation 16 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, the competent authorities authority shall further adjust that position limit where the following conditions are met:

- (a) there is excessive volatility in the price of commodity derivative or in the underlying commodity;
- (b) a further adjustment of the position limit would effectively reduce the excessive volatility in the price of that commodity derivative or in the underlying commodity.

...

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

...

## Annex N

**COMMISSION DELEGATED REGULATION (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business**

~~(Text with EEA relevance)~~

...

Article -2

**Application**

This Regulation applies to persons.

Article -1

**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) applies.
- (2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
- (3) Article 2(1)(62) of Regulation 600/2014/EU shall not apply for the purposes of this Regulation.
- (4) References in this Regulation to ‘the Union’ are to be interpreted as if the United Kingdom continues to be a Member State.
- (5) ‘CRD credit institution’ is defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority, immediately after Exit Day.

Article 1

**Application of thresholds**

The activities of persons referred to in points (i) and (ii) of Article 2(1)(j) of Directive 2014/65/EU An ‘article 2.1(j) activity’, as referred to in article 72J(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 shall be considered to be ancillary to

the main business of the group if those activities meet the conditions set out in Article 2 and constitute a minority of activities at group level in accordance with Article 3.

## Article 2

### Overall market threshold

1. The size of the activities referred to in Article 1 calculated in accordance with paragraph 2 divided by the overall market trading activity calculated in accordance with paragraph 3 shall, in each of the following asset classes, account for less than the following values:
  - (a) 4% in relation to derivatives on metals;
  - (b) 3% in relation to derivatives on oil and oil products;
  - (c) 10% in relation to derivatives on coal;
  - (d) 3% in relation to derivatives on gas;
  - (e) 6% in relation to derivatives on power;
  - (f) 4% in relation to derivatives on agricultural products;
  - (g) 15% in relation to derivatives on other commodities, including freight and commodities referred to in ~~Section C 10 of Annex I to Directive 2014/65/EU~~ paragraph 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - (h) 20% in relation to emission allowances or derivatives thereof.
2. The size of the activities referred to in Article 1 undertaken in the Union by a person within a group in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts within the relevant asset class to which that person is a party.
 

The aggregation referred to in the first subparagraph shall not include contracts resulting from transactions referred to in points (a), (b) and (c) of the fifth subparagraph of Article 2(4) of Directive 2014/65/EU or contracts where the person within the group that is a party to any of them is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU of the European Parliament and of the Council or in accordance with Part 4A of the Financial Services and Markets Act 2000 to provide investment services or perform investment activities or accept deposits (as a CRD credit institution).
3. The overall market trading activity in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts that are not traded on a trading venue within the relevant asset class to which any person located in the Union is a party and of any other contract within that asset class that is traded on a trading venue located in the Union during the relevant annual accounting period referred to in Article 4(2).
4. The aggregate values referred to in paragraphs 2 and 3 shall be denominated in EUR.



## Article 3

**Main business threshold**

1. The activities referred to in Article 1 shall be considered to constitute a minority of activities at group level where they comply with any of the following conditions:
  - (a) the size of those activities calculated in accordance with the first subparagraph of paragraph 3 does not account for more than 10% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3;
  - (b) the estimated capital employed for carrying out those activities calculated in accordance with paragraphs 5 to 7 does not account for more than 10% of the capital employed at group level for carrying out the main business calculated in accordance with paragraph 9.
2. The following derogations from paragraph 1(a) shall apply:
  - (a) where the size of the activities referred to in Article 1 calculated in accordance with the first subparagraph of paragraph 3 accounts for more than 10% but less than 50% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 50% of the threshold established by Article 2(1) for each relevant asset class;
  - (b) where the size of the trading activities calculated in accordance with the first subparagraph of paragraph 3 accounts for equal to or more than 50% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 20% of the threshold established by Article 2(1) for each relevant asset class.
3. The size of the activities referred to in Article 1 undertaken by a person within a group shall be calculated by aggregating the size of the activities undertaken by that person with respect to all of the asset classes referred to in Article 2(1) in accordance with the same calculation criteria as that referred to in Article 2(2).

The total size of the trading activity of the group shall be calculated by aggregating the gross notional value of all contracts in commodity derivatives, emission allowances and derivatives thereof to which persons within that group are a party to.

4. The aggregation referred to in the first subparagraph of paragraph 3 shall not include contracts where the person within the group that is a party to any of those contracts is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU or as such in accordance with Part 4A of the Financial Services and Markets Act 2000 to provide investment services or perform investment activities or accept deposits (as a CRD credit institution).

5. The estimated capital employed for carrying out the activities referred to in Article 1 shall be the sum of the following:
  - (a) 15% of each net position, long or short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof;
  - (b) 3% of the gross position, long plus short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof.
6. For the purposes of paragraph 5, point (a), the net position in a commodity derivative, an emission allowance or derivative thereof shall be determined by netting long and short positions:
  - (a) in each type of commodity derivative contract with a particular commodity as underlying in order to calculate the net position per type of contract with that commodity as underlying;
  - (b) in an emission allowance contract in order to calculate the net position in that emission allowances contract; or
  - (c) in each type of emission allowance derivative contract in order to calculate the net position per type of emission allowance derivative contract.

For the purposes of paragraph 5, point (a), net positions in different types of contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying can be netted against each other.

7. For the purposes of paragraph 5, point (b), the gross position in a commodity derivative, an emission allowance or a derivative contract thereof, shall be determined by computing the sum of the absolute values of the net positions per type of contract with a particular commodity as the underlying, per emission allowance contract or per type of contract with a particular emission allowance as the underlying.

For the purposes of paragraph 5, point (b), net positions in different types of derivative contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying cannot be netted against each other.

8. The calculation of the estimated capital shall not include positions resulting from transactions referred to in points (a), (b) and (c) of subparagraph 5 of Article 2(4) of Directive 2014/65/EU.
9. The capital employed for carrying out the main business of a group shall be the sum of the total assets of the group minus its short-term debt as recorded in its consolidated financial statements of the group at the end of the relevant annual calculation period. For the purposes of the first sentence, short-term debt means debt with a maturity of less than 12 months.
10. The values resulting from the calculations referred to in this Article shall be denominated in EUR.

...

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

...

## Annex O

**COMMISSION IMPLEMENTING REGULATION (EU) 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments**

~~(Text with EEA relevance)~~

...

Article -2

**Application**

This Regulation applies to operators of ‘UK trading venues’ as defined by article 2(1)(16A) of Regulation 600/2014/EU.

Article -1

**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
- (2) Where it is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
- (3) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

Article 1

**Reporting deadlines**

Market operators and investment firms operating trading venues ~~referred to in Article 58(1) of Directive 2014/65/EU~~ shall send ~~ESMA~~ the competent authority the weekly report referred to in point (a) of that Article regarding the aggregate positions held at the close of business of each week no later than Wednesday 17.30 CET of the following week.

Where either Monday, Tuesday or Wednesday of the week in which that report is to be submitted is not a working day for the market operator or investment firm referred to in the first paragraph, that market operator or investment firm shall submit the report as soon as possible and no later than Thursday 17.30 CET of that week.

...

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

...

**Annex P****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**

~~(Text with EEA relevance)~~

...

Article -3**Definitions**

In this Regulation, 'Exit Day' has the meaning given in the European Union (Withdrawal) Act 2018.

Article -2**Application**

This Regulation applies to:

- (1) Operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014; and
- (2) MiFID investment firms, as defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority, immediately after Exit Day.

Article -1**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
- (2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.

- (3) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

## Article 1

### Scope

This Regulation sets down the format and timing for the following communications and publications:

- (a) publication by a market operator operating a regulated market or by an investment firm or a market operator operating an MTF or an OTF of its decision to suspend or remove a financial instrument and, where relevant, related derivatives from trading or to lift a suspension;
- (b) communication of the decisions referred to in point (a) to the ~~relevant~~ competent authority;
- (c) publication by a competent authority of its decision to suspend trading or remove from trading a financial instrument and, where relevant, related derivatives or to lift a suspension;
- (d) ~~communication by a competent authority to ESMA and other competent authorities of the decision to suspend trading or to remove from trading a financial instrument and, where relevant, related derivatives or to lift a suspension;~~
- (e) ~~communication by a notified competent authority to ESMA and other competent authorities of its decision on whether to follow a decision as referred to in point (d).~~

## Article 2

### Definition of the term ‘trading venue operator’

For the purposes of this Regulation, ‘trading venue operator’ means any of the following:

- (a) a market operator operating a regulated market, an MTF or an OTF;
- (b) an investment firm operating an MTF or an OTF.

...

## Article 4

### Timing of the publications and communications by trading venue operators

1. Trading venue operators shall publish the decisions referred to in point (a) of Article 1 immediately.

2. Trading venue operators shall not publish the decisions referred to in point (a) of Article 1 by other means prior to their publication in accordance with Article 3(1).
3. Trading venue operators shall communicate the decisions referred to in point (a) of Article 1 to the ~~relevant~~ competent authority simultaneously with its publication or immediately thereafter.

#### Article 5

##### **Format of the publications and communications by competent authorities**

1. ~~Competent authorities~~ The competent authority shall publish the decision referred to in point (c) of Article 1 on a website in the format set out in Table 3 of the Annex.
2. ~~Competent authorities shall communicate the decisions referred to in points (d) and (e) of Article 1 in a standard machine-readable format using the formats set out in Tables 3 and 4 of the Annex, respectively.~~

#### Article 6

##### **Timing of the publications and communications by competent authorities**

1. ~~Competent authorities~~ The competent authority shall publish the decision referred to in point (c) of Article 1 immediately.
2. ~~Competent authorities shall communicate the decision referred to in point (d) of Article 1 simultaneously with its publication or immediately thereafter.~~
3. ~~A notified competent authority shall communicate the decision referred to in point (e) of Article 1 without undue delay upon receipt of the communication referred to in point (d) of Article 1.~~

...

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

...

## ANNEX

Table 3

**Format of the publication and communication by the Competent Authorities Authority of the decision to suspend or remove a financial instrument and related derivatives from trading and to lift a suspension of a financial instrument and related derivatives**

FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Competent authority	Field to be populated with the acronym of the competent authority doing the publication / communication.	{ALPHANUM-10}
<del>Member State of the competent authority</del>	<del>Field to be populated with the country-code of the Member State of the competent authority doing the publication / communication.</del>	<del>{COUNTRYCODE_2}</del>
Trading venue operator as initiator of the action	Field to be populated with: — true, if the initiator of the action is a trading venue operator; or — false, if the initiator of the action is not a trading venue operator but a competent authority.	‘True’ — Trading venue initiator ‘False’ — Not a trading venue initiator
...		

Table 4

**Format of the communication to ESMA and other competent authorities by competent authorities of their decisions on whether to follow a suspension, a removal or a lifting of a suspension**

FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Competent authority	Field to be populated with the acronym of the competent authority that communicated the original action.	{ALPHANUM-10}



<del>Member State of the competent authority</del>	<del>Field to be populated with the country code of the Member State of the competent authority that communicated the original action.</del>	<del>{COUNTRYCODE_2}</del>
<del>Competent authority initiating the current action</del>	<del>Field to be populated with the acronym of the competent authority following or not following the original action.</del>	<del>{ALPHANUM 10}</del>
<del>Member State of the competent authority initiating the current action</del>	<del>Field to be populated with the country code of the Member State of the competent authority following or not following the original action.</del>	<del>{COUNTRYCODE_2}</del>
<del>Original action type</del>	<del>Field to be populated with the type of the original action.</del>	<del>Suspension, removal, lifting of a suspension.</del>
<del>Decision to follow, if applicable</del>	<del>Field to be populated, if applicable, with: — true if the action is followed; or — false if the action is not followed.</del>	<del>‘True’ — Action is followed ‘False’ — Action is not followed</del>
<del>Reasons for the decision not to follow a removal, suspension or lifting thereof, if applicable</del>	<del>Field to be populated with the reasons for the decision not to follow a removal, suspension or lifting thereof, if applicable.</del>	<del>{ALPHANUM 350}</del>
<del>Date and time of the communication</del>	<del>Field to be populated with the date and time of the communication of the current action.</del>	<del>{DATE_TIME_FORMAT}</del>
<del>Effective from</del>	<del>Field to be populated with the date and time from which the current action is effective.</del>	<del>{DATE_TIME_FORMAT}</del>
<del>Effective to</del>	<del>Field to be populated with the date and time until which the current action is effective.</del>	<del>{DATE_TIME_FORMAT}</del>
<del>Ongoing</del>	<del>Field to be populated with ‘true’ if the action is ongoing, or ‘false’ otherwise.</del>	<del>‘True’ — Action is ongoing ‘False’ — Action is not ongoing</del>

<del>Trading venue(s)</del>	<del>Field to be populated with the MIC or MICs of the trading venues(s) or segments thereof to which the current action relates.</del>	<del>{MIC} If multiple MICs have to be provided, this field shall be populated with multiple MICs separated by comma.</del>
<del>Issuer name</del>	<del>Field to be populated with the name of the issuer of the instrument to which the action relates.</del>	<del>{ALPHANUM 350}</del>
<del>Issuer</del>	<del>Field to be populated with the LEI of the issuer of the instrument to which the action relates.</del>	<del>{LEI}</del>
<del>Instrument identifier</del>	<del>Field to be populated with the ISIN of the instrument.</del>	<del>{ISIN}</del>
<del>Instrument full name</del>	<del>Field to be populated with the name of the instrument.</del>	<del>{ALPHANUM 350}</del>
<del>Related derivatives</del>	<del>Field to be populated with the ISINs of the related derivatives as specified in Delegated Regulation (EU) 2017/569, to which the action also relates.</del>	<del>{ISIN} If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.</del>
<del>Other related instruments</del>	<del>Field to be populated with the ISINs of the related derivatives affected by the action.</del>	<del>{ISIN} If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.</del>
<del>Comments</del>	<del>Field to be populated with comments.</del>	<del>{ALPHANUM 350}</del>

**Annex Q****COMMISSION IMPLEMENTING REGULATION (EU) 2017/1093 of 20 June 2017  
laying down implementing technical standards with regard to the format of position  
reports by investment firms and market operators**

~~(Text with EEA relevance)~~

...

Article -3**Definitions**

In this Regulation, ‘Exit Day’ has the meaning given in the European Union (Withdrawal) Act 2018.

Article -2**Application**

This Regulation applies to:

- (1) Operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU; and
- (2) MiFID investment firms, as defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day.

Article -1**Interpretation**

1. Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.
2. Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
3. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

## Article 1

**Weekly reports**

1. Investment firms or market operators operating a trading venue shall prepare the weekly report referred to in Article 58(1)(a) of Directive 2014/65/EU chapter 10 of the Market Conduct sourcebook published by the Financial Conduct Authority immediately after Exit Day, separately for each commodity derivative, emission allowance or derivative thereof that is traded on that trading venue, in accordance with the format set out in the tables of Annex I to this Regulation.
2. The reports referred to in paragraph 1 shall contain the aggregate of all positions held by the different persons in each of the categories set out in Table 1 to Annex I in an individual commodity derivative, emission allowance or derivative thereof that is traded on that trading venue.

## Article 2

**Daily reports**

1. Investment firms shall provide the competent authority with the breakdown of their positions as referred to in Article 58(2) of Directive 2014/65/EU the direction in chapter 10.4.8 of the Market Conduct sourcebook published by the Financial Conduct Authority immediately after Exit Day by means of a daily position report in the format set out in the tables to Annex II to this Regulation.
2. The report referred to in paragraph 1 shall contain all positions across all maturities of all contracts.

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

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## Annex R

**COMMISSION IMPLEMENTING REGULATION (EU) 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments**

~~(Text with EEA relevance)~~

...

Article -2

**Application**

This Regulation applies to persons.

Article -1

**Interpretation**

- (1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) or (3) applies.
- (2) Subject to (3), where a term is defined in the Data Reporting Services Regulations 2017, that definition shall apply for the purposes of this Regulation.
- (3) Where a term it is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.

Article 1

**Designation of a contact point**

~~Competent authorities~~ The competent authority shall designate a contact point for handling all information received from applicants seeking authorisation as a data reporting services provider. The contact details of the designated contact point shall be made public and regularly updated on the competent ~~authorities' websites~~ authority's website.

## Article 2

**Provision of information and notification to the competent authority**

1. An applicant for authorisation to provide data reporting services under the ~~provisions of Title V of Directive 2014/65/EU~~ Data Reporting Services Regulations 2017 shall provide the competent authority with all information in accordance with ~~Article 61(2) of Directive 2014/65/EU~~ regulation 7 of the Data Reporting Services Regulations 2017 by filling in the application form set out in Annex I.
2. The applicant shall notify the competent authority with information of all members of its management body by filling in the notification form set out in Annex II.
3. The applicant shall clearly identify in its submission which specific requirement under the provisions of it refers to and in which document attached to its submission that information is provided.
4. The applicant shall indicate in its submission whether any specific requirement under the provisions of ~~Title V of Directive 2014/65/EU~~ the Data Reporting Services Regulations 2017 or Commission Delegated Regulation (EU) 2017/571 is not applicable to the data reporting service that it is applying for.
5. ~~Competent authorities~~ The competent authority shall indicate on ~~their websites~~ its website whether duly completed application forms, notifications and any related additional information are to be submitted on paper, electronically, or both.

...

## Article 7

**Entry into force and application**

...

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

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## Annex S

### 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

(Text with EEA relevance)

...

#### Article -1

#### **Interpretation**

1. Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) applies.
2. Where a term it is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
3. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which were relied upon by the United Kingdom immediately before Exit Day to give effect to that EU legislation.

#### Article 1

#### **General information**

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall submit to the competent authority an application that includes the following general information:

- (a) its name (including its legal name and any other trading name to be used); legal structure (including information on whether it will be a legal person or, where allowed by national legislation, a natural person), address of the head office and, for existing companies, registered office; contact details; its national identification number, where available; as well as:
  - (i) for domestic branches: information on where the branches will operate;
  - (ii) for domestic tied agents: details on its intention to use tied agents;
- (b) the list of investment services and activities, ancillary services and financial instruments to be provided, and whether clients' financial instruments and funds will be held (even on a temporary basis).

- (c) copies of corporate documents and evidence of registration with the national register of companies, where applicable.

## Article 2

### **Information on capital**

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall provide to the competent authority information and, where available, evidence on the sources of capital available to it. The information shall include:

- (a) details on the use of private financial resources including the origin and availability of those funds;
- (b) details on access to capital sources and financial markets including details of financial instruments issued or to be issued;
- (c) any relevant agreements and contracts regarding the capital raised;
- (d) information on the use or expected use of borrowed funds including the name of relevant lenders and details of the facilities granted or expected to be granted, including maturities, terms, pledges and guarantees, along with information on the origin of the borrowed funds (or funds expected to be borrowed) where the lender is not a supervised financial institution;
- (e) details on the means of transferring financial resources to the firm including the network used to transfer such funds.

For the purposes of point (b), information on types of capital raised shall refer, where relevant, to the types of capital specified under Regulation (EU) No 575/2013, specifically whether the capital comprises Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.

## Article 3

### **Information on shareholders**

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its shareholders:

- (a) the list of persons with a direct or indirect qualifying holding in the investment firm, and the amount of these holdings and, for indirect holdings, the name of the person through which the stake is held and the name of the final holder;
- (b) for persons with a qualifying holding (direct or indirect) in the investment firm the documentation required from proposed acquirers for the acquisition and increases in qualifying holdings in investment firms in accordance with Articles 3, 4 and 5 of Commission Delegated Regulation 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;



- (c) for corporate shareholders that are members of a group, an organisational chart of the group indicating the main activities of each firm within the group, identification of any regulated entities within the group and the names of the relevant supervisory authorities as well as the relationship between the financial entities of the group and other non-financial group entities.
- (d) For the purposes of point (b), where the holder of a qualifying holding is not a natural person, the documentation shall also relate to all members of the management body and the general manager, or any other person performing equivalent duties.

#### Article 4

##### **Information on the management body and persons who direct the business**

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall provide to the competent authority the following information:

- (a) in respect of members of the management body and persons effectively directing the business and their related powers and any proxies:
  - (i) personal details comprising the person's name, date and place of birth, personal national identification number, where available, address and contact details;
  - (ii) the position for which the person is/will be appointed;
  - (iii) a curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought; for positions held in the previous 10 years, when describing those activities, details shall be included on all delegated powers and internal decision-making powers held and the areas of operations under control;
  - (iv) documentation relating to person's reputation and experience, in particular a list of reference persons including contact information, letters of recommendation;
  - (v) criminal records and information on criminal investigations and proceedings relevant civil and administrative cases, and disciplinary actions opened against them (including disqualification as a company director, bankruptcy, insolvency and similar procedures), notably through an official certificate (if and so far as it is available from the relevant ~~Member State or~~ third country), or through another equivalent document; for ongoing investigations, the information may be provided through a declaration of honour;

...

## Article 5

**Financial information**

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its financial situation:

- (a) forecast information at an individual and, where applicable, at consolidated group and sub-consolidated levels, including:
  - (i) forecast accounting plans for the first three business years including:
    - forecast balance sheets;
    - forecast profit and loss accounts or income statements;
  - (ii) planning assumptions for the above forecasts as well as explanations of the figures, including expected number and type of customers, expected volume of transactions/orders, expected assets under management;
  - (iii) where applicable, forecast calculations of the firm's capital requirements and liquidity requirements under Regulation (EU) No 575/2013 of the European Parliament and of the Council and forecast solvency ratio for the first year;
- (b) for companies that are already active, statutory financial statements, at an individual and, where applicable, at consolidated group and sub-consolidated levels for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:
  - (i) the balance sheet;
  - (ii) the profit and loss accounts or income statements;
  - (iii) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the company financial statements and, where applicable, a report by the company's auditor of the last three years or since the beginning of the activity;
- (c) an analysis of the scope of consolidated supervision under Regulation (EU) No 575/2013, including details on which group entities will be included in the scope of consolidated supervision requirements post-authorisation and at which level within the group these requirements will apply on a full or sub-consolidated basis.

## Article 6

**Information on the organisation of the firm**

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its organisation:

- (a) a programme of initial operations for the following three years, including information on planned regulated and unregulated activities detailed information on the

geographical distribution and activities to be carried out by the investment firm.  
Relevant information in the programme of operations shall include:

- (i) the domicile of prospective customers and targeted investors;
  - (ii) the marketing and promotional activity and arrangements, including languages of the offering and promotional documents; identification of the ~~Member States~~ country where advertisements are most visible and frequent; type of promotional documents (in order to assess where effective marketing will be mostly developed);
  - (iii) the identity of direct marketers, financial investment advisers and distributors, geographical localisation of their activity;
- (b) details of the firm's auditors, when available at time of application for authorisation;
- (c) the organisational structure and internal control systems of the company, comprising:
- (i) the personal details of the heads of internal functions (management and supervisory), including a detailed curriculum vitae, stating relevant education and professional training, professional experience;
  - (ii) the description of the resources (in particular human and technical) allocated to the various planned activities;
  - (iii) in relation to holding client financial instruments and funds, information, specifying any client asset safeguarding arrangements (in particular, where financial instruments and funds are held in a custodian, the name of the custodian, and related contracts);
  - (iv) an explanation of how the firm will satisfy its prudential and conduct requirements.
- (d) information on the status of the application undertaken by the investment firm to become a member of the investor compensation scheme of the ~~Home Member State~~ UK or evidence of membership to the investor compensation scheme, where available;

...

## Article 7

### General requirements

1. The information to be provided to the competent authority ~~of the home Member State~~, as set out in Articles 1 and 6, shall refer to both the head office of the firm and its branches and tied agents.
2. The information to be provided to the competent authority ~~of the home Member State~~, as set out in Articles 2 to 5, shall refer to the head office of the firm.

...

## Article 9

**Requirements applicable to shareholders and members with qualifying holdings**

The competent authority shall verify that the request of an applicant for authorisation as an investment firm, in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU, offers sufficient guarantees for a sound and prudent management of the entity by assessing the suitability of proposed shareholders and members with qualifying holdings, having regard to the likely influence on the investment firm of each proposed shareholder or member with qualifying holdings, against all of the following criteria:

- (a) the reputation and experience of any person who will direct the business of the investment firm;
- (b) the reputation of the proposed shareholders and members with qualifying holdings;
- (c) the financial soundness of the proposed shareholders and members with qualifying holding, in particular in relation to the type of business pursued and envisaged in the investment firm;
- (d) whether the investment firm will be able to comply and continue to comply with the prudential requirements set out in the United Kingdom's legislation implementing Article 15 of Directive 2014/65/EU and, where applicable, the United Kingdom's legislation implementing Directives 2002/87/EC and 2013/36/EU of the European Parliament and of the Council and in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, ~~effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;~~
- (e) whether there are reasonable grounds to suspect that, in connection with the authorisation of the investment firm, money laundering or terrorist financing within the meaning of the United Kingdom's legislation corresponding to Article 1 of Directive 2005/60/EC of the European Parliament and of the Council (3) is being or has been committed or attempted, or that the authorisation of the investment firm could increase the risk thereof.

## Article 10

**Effective exercise of supervisory functions**

A group structure within which the investment firm will operate shall be considered to be an obstacle to the exercise of the supervisory function of the competent authority for the purposes of the United Kingdom's legislation corresponding to Article 10(1) and (2) of Directive 2014/65/EU in any of the following cases:

- (a) it is complex and not sufficiently transparent;
- (b) it has a geographical location of group entities;
- (c) it includes activities performed by the group entities that may prevent the competent authority to effectively appraise the suitability of the shareholders or members with qualifying holdings or the influence of close links with the investment firm.

...

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

...