

**TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS
DIRECTIVE) (EU EXIT) (No 2) INSTRUMENT 2019**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”), being an 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 exercise of the powers conferred by regulation 3 of the Regulations.

Pre-conditions to making

- B. The FCA and the Prudential Regulation Authority (“the PRA”) are the appropriate regulators for the Markets in Financial Instruments Directive EU Regulations specified in Part 4 of the Schedule to the Regulations (“the specified MiFID regulations”).
- C. The FCA proposes to exercise the power in regulation 3 of the Regulations to modify the specified MiFID regulations and proposes that the specified MiFID regulations make separate provision for persons described as follows:
- firms with Part 4A permission within the meaning of Part 4A of the Financial Services and Markets Act 2000, except PRA-authorized firms, being firms within the meaning of section 2B (5) of the Financial Services and Markets Act 2000, in the case of Commission Implementing Regulation (EU) 2017/1945 and Commission Delegated Regulation (EU) 2017/1946; and
 - firms with Part 4A permission within the meaning of Part 4A of the Financial Services and Markets Act 2000 and persons subject to regulation 30 and 32(2) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, in the case of Commission Delegated Regulation (EU) 2017/589.
- D. The FCA has consulted the PRA on a division of responsibility and on the modifications contained in Annexes A to C to this instrument in accordance with regulations 4 and 5 of the Regulations.
- E. The FCA has prepared the instrument in accordance with regulation 6 of the Regulations.
- F. 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

- G. 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.

Division

- H. The following EU regulations, as they have effect in domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018, are each divided into two identical versions of the same, headed “Part 1 (FCA)” and “Part 2 (PRA)” respectively:

Commission Implementing Regulation (EU) 2017/1945

Commission Delegated Regulation (EU) 2017/1946

- I. Immediately before Article 1 in Part 1 (FCA) in those regulations is inserted:

“Article A1

This Part of the Regulation applies to persons that are firms with Part 4A permissions within the meaning of Part 4A of the Financial Services and Markets Act 2000, except PRA-authorized firms, being firms within the meaning of section 2B (5) of the Financial Services and Markets Act 2000.”

- J. Immediately before Article 1 in Part 2 (PRA) is inserted:

“Article A1

This Part of the Regulation applies to PRA-authorized firms.”

- K. The following EU regulation, as it has effect in domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018, is divided into two identical versions of the same, headed “Part 1 (FCA)” and “Part 2 (PRA)” respectively:

Commission Delegated Regulation (EU) 2017/589.

- L. Immediately before Article 1 in Part 1 (FCA) is inserted:

“Article A1

This Part of the Regulation applies to persons that are firms with Part 4A permission within the meaning of Part 4A of the Financial Services and Markets Act 2000 or persons subject to regulation 30 and 32(2) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.”

- M. Immediately before Article 1 in Part 2 (PRA) is inserted:

“Article A1

This Part of the Regulation applies to PRA-authorised persons, within the meaning of section 2B (5) of the Financial Services and Markets Act 2000.”

Modifications

- N. The FCA thereafter amends the following EU Regulations in accordance with Annexes A–C of this instrument.

(1)	(2)
Part 1 (FCA) Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading.	Annex A
Part 1 (FCA) Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council.	Annex B
Part 1 (FCA) Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm.	Annex C

Commencement

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

Citation

- P. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Directive) (EU Exit) (No 2) 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 DELEGATED REGULATION (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading

~~(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

- (1) This Regulation applies to:
 - (a) a MiFID investment firm; and
 - (b) a person to whom regulation 30 or 32(2) of the MiFI Regulations applies.

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) 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) 'Algorithmic trading' and 'direct electronic access' or 'DEA' are defined in regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

- (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.
- (5) References to 'investment firm' are to the persons referred to in Article -2(1) above unless the context indicates otherwise.
- (6) 'MiFID investment firm' and the 'MiFI Regulations' are defined in accordance with the Glossary to the Handbook of rules and guidance published by the FCA immediately after Exit Day.

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SECTION 2

Post-deployment management

Article 9

Annual self-assessment and validation

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall annually perform a self-assessment and validation process and on the basis of that process issue a validation report. In the course of that process the investment firm shall review, evaluate and validate the following:
 - (a) its algorithmic trading systems, trading algorithms and algorithmic trading strategies;
 - (b) its governance, accountability and approval framework;
 - (c) its business continuity arrangement;
 - (d) its overall compliance with UK law corresponding to Article 17 of Directive 2014/65/EU, having regard to the nature, scale and complexity of its business.

The self-assessment shall also include at least an analysis of compliance with the criteria set out in Annex I to this Regulation.

2. The risk management function of the investment firm, referred to in Article 23(2) of Commission Delegated Regulation (EU) 2017/565, shall draw up the validation report and, for that purpose, involve staff with the necessary technical knowledge. The risk management function shall inform the compliance function of any deficiencies identified in the validation report.
3. The validation report shall be audited by the firm's internal audit function, where such function exists, and be subject to approval by the investment firm's senior management.
4. An investment firm shall remedy any deficiencies identified in the validation report.
5. Where an investment firm has not established a risk management function referred to in Article 23(2) of Delegated Regulation (EU) 2017/565, the requirements set out in relation to the risk management function in this Regulation shall apply to any

other function established by the investment firm in accordance with Article 23(2) of ~~Delegated Regulation (EU) 2017/565~~ that Regulation.

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

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ANNEX I

Criteria to be considered in the investment firm's self-assessment as referred to in Article 9(1)

1. When considering the nature of its business, an investment firm shall consider the following, where applicable:
 - (a) the regulatory status of the firm and, where applicable, of its DEA clients, including the regulatory requirements to which it is subject as an investment firm as a result of UK law corresponding to ~~under~~ Directive 2014/65/EU, and other relevant regulatory requirements;

ANNEX II

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Table 3
Information relating to outgoing and executed orders

N.	Field/Content	Description	Format
1	Buy-Sell indicator	Indicates whether the order is to buy or to sell, as determined in the description of field 8 of table 2.	‘BUYI’ — buy ‘SELL’ — sell
2	The trading capacity	<p>Indicates whether the order submission results from the member, participant or client of the trading venue is carrying out matched principal trading under <u>UK law corresponding to Article 4(38) of Directive 2014/65/EU</u>, or is dealing on its own account under Article 4(6) of Directive 2014/65/EU <u>as defined by article 2(1)(5) of Regulation 600/2014/EU</u>.</p> <p>Where the order submission does not result from the member, participant or client of the trading venue carrying out matched principal trading or dealing on its own account, the field shall indicate that the transaction was carried out under any other capacity.</p>	‘DEAL’ — Dealing on own account ‘MTCH’ — Matched principal ‘AOTC’ — Any other capacity
3	Liquidity provision activity	Indicates whether an order is submitted to a trading venue as part of a market making strategy pursuant to <u>UK law corresponding to Articles 17 and 48 of Directive 2014/65/EU</u> , or is submitted as part of another activity in accordance with Article 3 of Commission Delegated Regulation (EU) 2017/575.	‘true’ ‘false’

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26	New order, order modification, order cancellation, order rejections, partial or full execution	New order: receipt of a new order by the operator of the trading venue.	'NEWO' — New order
		Triggered: an order which becomes executable or, as the case may be, non-executable upon the realisation of a pre-determined condition.	'TRIG' — Triggered
		Replaced by the member, participant or client of the trading venue: where a member, participant or client of the trading venue decides upon its own initiative to change any characteristic of the order it has previously entered into the order book.	'REME' — Replaced by the member or participant or client of the trading venue.
		Replaced by market operations (automatic): where any characteristic of an order is changed by the trading venue operator's IT systems. This includes where a peg order's or a trailing stop order's current characteristics are changed to reflect how the order is located within the order book.	'REMA' — Replaced by market operations (automatic).
		Replaced by market operations (human intervention): where any characteristic of an order is changed by a trading venue operator's staff. This includes the situation where a member, participant or client of the trading venue has IT issues and needs its orders to be cancelled urgently.	'REMH' — Replaced by market operations (human intervention).
		Change of status at the initiative of the member, participant or client of the trading venue. This includes activation and deactivation.	'CHME' — Change of status at the initiative of the member/participant/client of the trading venue.
		Change of status due to market operations.	'CHMO' — Change of status due to market operations.

	Cancelled at the initiative of the member, participant or client of the trading venue.	‘CAME’ — Cancelled at the initiative of the member or participant or client of the trading venue.
	Cancelled by market operations. This includes a protection mechanism provided for investment firms engaging in algorithmic trading to pursue a market making strategy as laid down in <u>UK law corresponding to</u> Articles 17 and 48 of Directive 2014/65/EU.	‘CAMO’ -Cancelled by market operations.
	Rejected order: an order received but rejected by the operator of the trading venue.	‘REMO’ — Rejected order
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Annex B**COMMISSION IMPLEMENTING REGULATION (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council**

~~(Text with EEA relevance)~~

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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 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. 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

Designation of a contact point

Competent authorities shall designate a contact point for handling all information received from applicants seeking authorisation as an investment firm in accordance with the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU. The contact details on the designated contact point shall be made public and regularly updated on the competent authorities' websites.

Article 2

Submission of the application

1. An applicant seeking authorisation as an investment firm in accordance with the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall submit to the competent authority its application by filling in the template set out in Annex I.
2. The applicant shall notify the competent authority of the information on all members of its management body by filling in the template set out in Annex II.

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Article 6

Communication of the decision

1. The competent authority shall inform the applicant of its decision to grant or not the authorisation in paper form, by electronic means or both, within the 6-month period referred to in the United Kingdom's legislation corresponding to Article 7(3) of Directive 2014/65/EU.

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

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Annex C

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

~~(Text with EEA relevance)~~

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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) 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 the ‘Regulated Activities Order’ are to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

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Article 13

Reduced information requirements

1. By way of derogation from Article 2, where the proposed acquirer is an entity authorised and supervised within the ~~Union~~ United Kingdom and the target entity meets the criteria set out in paragraph 2, the proposed acquirer shall submit the following information to the competent authority of the target entity:

- (a) where the proposed acquirer is a natural person:
 - (1) the information set out in Article 3(1);
 - (2) the information set out in points (c) to (g) of Article 4;
 - (3) the information set out in Articles 6, 7 and 9;
 - (4) the information set out in Article 8(1);
 - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 %, a document on strategy as set out in Article 10;
 - (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20% and 50%, a document on strategy as set out in Article 11;
- (b) where the proposed acquirer is a legal person:
 - (1) the information set out in Article 3(2)
 - (2) the information set out in points (c) to (j) of Article 5(1) and, where relevant, the information set out in Article 5(3);
 - (3) the information set out in Articles 6, 7 and 9;
 - (4) the information set out in Article 8(1);
 - (5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 %, a document on strategy as set out in Article 10;
 - (6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20% and 50%, a document on strategy as set out in Article 11;
- (c) where the proposed acquirer is a trust:

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2. The target entity referred to in paragraph 1 shall meet the following criteria:

- (a) it does not hold assets of its clients;
- (b) it is not authorised for the investment services and activities ‘Dealing on own account’ or ‘Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis’ referred to in ~~points (3) and (6) of Section A of Annex I of Directive 2004/39/EC~~ Part 3 of Schedule 2 to the Regulated Activities Order;
- (c) where it is authorised for the investment service of ‘Portfolio management’ as referred to in ~~point (4) of Section A of Annex I of Directive 2004/39/EC~~ Part 3 of Schedule 2 to the Regulated Activities Order, the assets under management by the firm are below [EUR 500 million].

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