

**TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS
REGULATION) (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.

Pre-conditions to making

- B. The FCA and the Bank of England are the appropriate regulators for the Markets in Financial Instruments Regulation EU Regulations specified in Part 5 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 of the Regulations and regulations 28 and 29 of Regulation 600/2014/EU as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.
- 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.

Modifications

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

(1)	(2)
Commission Delegated Regulation (EU) 2017/581 of 24 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties.	Annex A

Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.	Annex B
Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements.	Annex C

Commencement

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

Citation

- H. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Regulation) (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) 2017/581 of 24 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties

(Text with EEA relevance)

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Article -1

Interpretation

1. Where a term is defined in article 2 of Regulation 600/2014/EU, that definition shall apply for the purposes of this Regulation save where the context requires otherwise.
2. References to ‘trading venue’ are to the defined term in article 2(1)(16) of Regulation 600/2014/EU
3. References in this Regulation to Regulation 600/2014/EU shall mean Regulation 600/2014/EU as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

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Article 7

Denial of access by a trading venue based on other factors creating significant undue risks

A trading venue may deny an access request on grounds of significant undue risks in any of the following cases:

- (a) threat to the economic viability of the trading venue or its ability to meet minimum capital requirements under Article 47(1)(f) of Directive 2014/65/EU of the European Parliament and of the Council paragraph 1 of the Schedule to the Financial Services and Markets Act (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001;
- (b) incompatibility of trading venue rules and CCP rules that the trading venue cannot remedy in cooperation with the CCP.

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CHAPTER II

CONDITIONS UNDER WHICH ACCESS MUST BE PERMITTED

Article 9

Conditions under which access must be permitted

1. The parties shall agree on their respective rights and obligations arising from the access granted, including the applicable law governing their relationships. The terms of the access agreement shall:
 - (a) be clearly defined, transparent, valid and enforceable;
 - (b) where two or more CCPs have access to the trading venue specify the way in which transactions on the trading venue will be allocated to the CCP that is party to the agreement;
 - (c) contain clear rules concerning the moment of entry of transfer orders, construed pursuant to ~~Directive 98/26/EC of the European Parliament and of the Council~~ the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, into relevant systems and the moment of irrevocability;

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Article 13

Netting of economically equivalent contracts

A CCP shall apply to economically equivalent contracts referred to in Article 12(1) of this Regulation the same netting procedures irrespective of where the contracts were traded, provided that any netting procedure it applies is valid and enforceable in accordance with ~~Directive 98/26/EC~~ the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 and applicable insolvency law.

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~~Article 16~~~~**Notification procedure from the competent authority to ESMA and the CCP college**~~

~~Relevant competent authorities shall notify ESMA and the CCP college of every decision to approve a transitional arrangement in accordance with Article 35(5) of Regulation (EU) No 600/2014 in writing without undue delay and no later than one month from the decision, using Form 2 set out in the Annex to this Regulation.~~

Article 17

~~Notification procedure from the trading venue to its competent authority regarding the initial transitional period~~

~~Where a trading venue does not wish to be bound by Article 36 of Regulation (EU) No 600/2014, it shall submit a notification to its competent authority and ESMA in written form, using Forms 3.1 and 3.2 set out in the Annex to this Regulation.~~

Article 18

Notification procedure from the trading venue to its competent authority regarding an extension of the transitional period

Where a trading venue wishes to continue not to be bound by Article 36 of Regulation (EU) No 600/2014 for a further thirty months, it shall submit a notification to ~~its competent authority and ESMA~~ the FCA in written form, using Forms 4.1 and 4.2 set out in the Annex to this Regulation.

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Article 20

Approval and verification method by ~~ESMA~~ the competent authority

- ~~1. For the purposes of verification in accordance with Article 36(6)(d) of Regulation (EU) No 600/2014, the trading venue shall submit to ESMA on request all facts and figures on which the calculation is based.~~
2. For the purposes of verification in accordance with Article 36(6)(d) of Regulation 600/2014/EU, when ~~When~~ verifying the submitted annual notional amount figures, ESMA the competent authority shall also consider relevant post-trade data and annual statistics.
- ~~3. ESMA shall approve or reject the opt out within three months of the reception of all relevant information for the notification in accordance with either Article 16 or 17, including the information specified in Article 19.~~

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

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ANNEX

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Form 2

Notification referred to in Article 16

Name of the CCP	Relevant contact details	Date of approval decision	Dates of beginning and end of transitional period	Name(s) of trading venue(s) connected by close links	Jurisdiction(s) of trading venue(s) connected by close links
			Beginning: End:	1. 2. 3. ...	1. 2. 3. ...

Form 3.1

General notification referred to in Article 17

Name of the trading venue	Relevant contact details	Name(s) and jurisdiction(s) of trading venues in the same group based in the Union	Name(s) and jurisdiction(s) of CCP(s) connected by close links
		1. 2. 3. ...	1. 2. 3. ...

Form 4.1

General notification referred to in Article 18

Name of the trading venue	Relevant contact details	Name(s) and jurisdiction(s) of trading venues in the same group based in the Union <u>UK</u>	Name(s) and jurisdiction(s) of CCP(s) connected by close links
		1. 2. 3. ...	1. 2. 3. ...

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Annex B

COMMISSION DELEGATED REGULATION (EU) 2017/582 of 29 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing

~~(Text with EEA relevance)~~

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Article -1

Interpretation

1. References in this Regulation to Regulation 600/2014/EU shall mean Regulation 600/2014/EU as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.
2. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation 600/2014/EU that definition applies.
3. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this 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 C

COMMISSION DELEGATED REGULATION (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements

~~(Text with EEA relevance)~~

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Article – 2

Application

This Regulation applies in accordance with Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

Article -1

Interpretation

1. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation 600/2014/EU that definition applies.
2. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.

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Article 2

Requirements for the provision of indirect clearing services by clients

1. A client may only provide indirect clearing services to indirect clients provided that all of the following conditions are fulfilled:
 - (a) the client is an authorised credit institution or investment firm or an entity established in a third country that would be considered to be a credit institution or investment firm if that entity were established in the ~~Union~~ United Kingdom;
 - (b) the client provides indirect clearing services on reasonable commercial terms and publicly discloses the general terms and conditions under which it provides those services;

- (c) the clearing member has agreed to the general terms and conditions referred to in point (b) of this paragraph.

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Article 7

Requirements for the provision of indirect clearing services by second indirect clients

1. A second indirect client may only provide indirect clearing services to third indirect clients provided that all of the following conditions are met:
 - (a) the indirect client and the second indirect client are authorised credit institutions or investment firms or entities established in a third country that would be considered to be a credit institution or an investment firm if those entities were established in the ~~Union~~ United Kingdom;

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

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