

TECHNICAL STANDARDS (SUPPLEMENTING EMIR WITH REGARD TO THE CLEARING OBLIGATION) (EU EXIT) INSTRUMENT 2020

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 is the appropriate regulator for the EU Regulations 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 of the Regulations.
- 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. Commission Delegated Regulation (EU) 2020/447 of 16 December 2019 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of criteria for establishing the arrangements to adequately mitigate counterparty credit risk associated with covered bonds and securitisations, and amending Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178 is amended in accordance with the Annex to this instrument.

Commencement

- G. This instrument comes into force on IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020.

Citation

- H. This instrument may be cited as the Technical Standards (Supplementing EMIR with regard to the Clearing Obligation) (EU Exit) Instrument 2020.

By order of the Board
10 December 2020

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

Annex

COMMISSION DELEGATED REGULATION (EU) 2020/447 of 16 December 2019 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of criteria for establishing the arrangements to adequately mitigate counterparty credit risk associated with covered bonds and securitisations, and amending Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178

~~(Text with EEA relevance)~~

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Article 1

Criteria to determine which arrangements under covered bonds mitigate counterparty credit risk

Arrangements under covered bonds shall be considered to adequately mitigate counterparty credit risk, where OTC derivative contracts concluded by covered bond entities in connection with covered bonds comply with all of the following criteria:

- (a) those contracts are registered or recorded in the cover pool of the covered bond in accordance with ~~national~~ UK legislation on covered bonds;
- (b) those contracts are not terminated in case of resolution or insolvency of the covered bond issuer or the cover pool;
- (c) the counterparty to the OTC derivative contract concluded with covered bond issuers or with cover pools for covered bonds ranks at least pari passu with the covered bond holders, except where the counterparty to the OTC derivative contract concluded with covered bond issuers or with cover pools for covered bonds is the defaulting or the affected party, or waives the pari passu rank;
- (d) the covered bond is subject to a regulatory collateralisation requirement of at least 102 %.

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Article 5

Entry into force

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

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