

**FCA STANDARDS INSTRUMENT: THE TECHNICAL STANDARDS (BILATERAL MARGINING) INSTRUMENT 2021**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of powers under section 138P (Technical Standards) of the Act.
- B. For the purposes of section 138P of the Act, the power to make regulatory technical standards which the FCA relies on for the purposes of this instrument is conferred on the FCA by Article 11(15) of Regulation (EU) No 648/2012.
- C. Pursuant to section 138P(2)(b) of the Act, the power to make technical standards includes the power to modify, amend or revoke any EU tertiary legislation made by an EU entity under the original EU power which forms part of retained EU law. Delegated Regulation (EU) No 2016/2251 constitutes EU tertiary legislation (as defined in section 20 of the EUWA) for the purposes of section 138P(2)(b) of the Act.
- D. The rule making powers referred to above are specified for the purpose of section 138Q(2) (Standards instruments) of the Act.

**Pre-conditions to making**

- E. The PRA and the Bank of England have been consulted on the changes made by this instrument pursuant to section 138P(4) of the Act.
- F. A draft of this instrument has been approved by the Treasury, as required by section 138R of the Act.
- G. The FCA published a draft of the instrument in accordance with section 138I(1)(b) of the Act, accompanied by the information required by section 138I(2). The FCA had regard to representations made in response to the public consultation.

**Interpretation**

- H. All references to EU regulations in this instrument are to EU law as it forms part of retained EU law.
- I. In this instrument:-
  - “EUWA” means the European Union (Withdrawal) Act 2018.
  - “PRA” means the Prudential Regulation Authority;
  - “retained EU law” has the meaning given it in section 6 of the EUWA; and
  - “the Act” means the Financial Services and Markets Act 2000.

**Modifications**

J. The FCA makes the modifications in the Annex to Delegated Regulation (EU) 2016/2251.

**Commencement**

K. This instrument comes into force on 30 June 2021.

**Citation**

L. This instrument may be cited as FCA Standards Instrument: The Technical Standards (Bilateral Margining) Instrument 2021.

**By order of the FCA Board**

24 June 2021

## ANNEX

## MODIFICATIONS TO COMMISSION DELEGATED REGULATION (EU) 2016/2251

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1. In this Annex, new text is underlined and deleted text is struck through.
  2. Commission Delegated Regulation (EU) 2016/2251 with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, as it forms part of retained EU law, is modified as follows:
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Article 31a**Treatment of physically settled foreign exchange forwards and physically settled foreign exchange swaps**

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that variation margins are not required to be posted or collected for physically settled foreign exchange forward contracts and physically settled foreign exchange swap contracts where:

- (i) one of the counterparties is not an institution as defined in point (3) of Article 4(1) of Regulation (EU) No 575/2013; or
- (ii) would not qualify as such an institution if it were established in the United Kingdom.

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Article 35A

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11. ~~For the specified period that begins on IP completion date and ends on 31 December 2022:~~
  - (a) references to UK UCITS in this Regulation shall be read as if they included references to EEA UCITS (and in relation to EEA UCITS, the reference to Article 132(3) of Regulation (EU) No 575/2013 in Article 5(1)(c) of this Regulation shall be read as a reference to Article 132(3) of Regulation (EU) No 575/2013 as it had effect immediately before IP completion day); ~~and~~
  - (b) ~~references to AIFs managed by AIFMs authorised or registered in accordance with the Alternative Investment Fund Managers Regulations 2013 in Articles 28(3), 29(3) and 39(2) shall be read as if they included references to alternative investment funds managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU.~~
- 11A. For the specified period, references to AIFs managed by AIFMs authorised or registered in accordance with the Alternative Investment Fund Managers Regulations 2013 in Articles 28(3), 29(3) and 39(2) shall be read as if they included references to alternative investment funds managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU.

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*Article 36***Application of 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20**

1. Article 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20 shall apply as follows:
  - (a) from 1 month after 4 January 2017, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 3 000 billion;
  - (b) from 1 September 2017, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 2 250 billion;
  - (c) from 1 September 2018, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 1 500 billion;
  - (d) from 1 September 2019, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 750 billion;
  - (e) from 1 September ~~2021~~ ~~2020~~, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR ~~50~~ ~~8~~-billion;
  - (f) from 1 September 2022, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 8 billion.

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*Article 38***Dates of application for specific contracts**

By way of derogation from Articles 36(1) and 37, in respect of all non-centrally cleared OTC derivatives which are single-stock equity options or index options, the Articles referred to in Articles 36(1) and 37 shall not apply until ~~from 3 years after~~ 4 January ~~2024~~ ~~2017~~.