

Chapter 8

Commission Delegated Regulation (EU) 2017/568

Article 5 Derivatives

(1) When assessing whether a financial instrument referred to in 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 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.