

## **Chapter 28**

# **Commission Delegated Regulation (EU) 2017/588**

## Article 3A Transitional period for publication of average daily number of transactions

(1) For the purposes of this Article, the term ‘transitional period’ has the same meaning as under Article 5(3A) of Regulation 600/2014/EU).

(2) During the transitional period and until the FCA makes a publication under Articles 3, 4 or 5(3) in relation to the financial instrument in question, the average daily number of transactions in respect of a share or depositary receipt for the purposes of retained EU law relating to markets in financial instruments shall be as follows in (a) or (b), subject to (c):

(a) that stated in the most recent information published before IP completion day under Article 4 or 5 (whichever is the most recent) by the competent authority in the European Union (including the FCA) for the relevant instrument under Article 3(1) as it applied in the European Union before IP completion day (including the FCA); or

(b) if no such information was published by that competent authority in the European Union in respect of a financial instrument under those provisions before IP completion day, the average daily number of transactions for that financial instrument shall be that estimated by the FCA, taking into account any previous trading history of that financial instrument and of other financial instruments that are considered to have similar characteristics, and published on IP completion day; and

if information was published before IP completion day under Article 3(1) by the competent authority in the European Union (including the FCA) for the relevant instrument under Article 3(1) as it applied in the European Union before IP completion day, but the information was not required to be used under Article 3(4) before IP completion day, then the average daily number of transactions shall become that stated in such information from the point at which it would have been required to be used under Article 3(4) as it applied in the European Union before IP completion day, provided that the calculations used to produce that information did not exclude trading in the UK for the relevant period.

(3) From IP completion day and during the transitional period, the FCA’s obligations to perform calculations and publish information under Article 3 are modified as follows:

where the FCA publishes information under Article 3(1):

it shall publish what appears to it to be the average daily number of transactions;

it is not required to follow the relevant methodology in Article 3, but where it does not:

- it must have regard to the relevant methodology; and

- it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country; and

it shall ensure publication by five working days after 1 March; and

where the FCA publishes information under Article 3(6) it shall publish what appears to it to be the average daily number of transactions, and it may take into account any information available in relation to trading of the financial instrument in question in the United Kingdom or in any other country.