Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No. 0000

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES AND MARKETS

The Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Treasury make these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 1

General provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Equivalence Determinations for Financial Services (Amendment etc.) (EU Exit) Regulations 2020.

(2) These Regulations come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

"the 2000 Act" means the Financial Services and Markets Act 2000(**b**);

(**a**) 2018 c. 16, as amended by the European Union (Withdrawal Agreement) Act 2020 (c. 1), which inserted section 8A and omitted section 8(7)(e).

(**b**) 2000 c. 8, with relevant amendments by the Companies Act 2006 (c. 46), the Financial Services Act 2010 (c. 28), the Financial Services Act 2012 (c. 21), Financial Services (Banking Reform) Act 2013 (c. 33), the Bank of England and Financial Services Act 2016 (c. 14), and S.I. 2007/1093, 2011/1043, 2013/1881 and 2016/1239, and to be amended by S.I. 2019/681.

"the 2019 Regulations" means the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019(**a**);

"administrator" has the same meaning as in the Benchmarks Regulation;

"the Bank" means the Bank of England;

"the Benchmarks Regulation" means Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds;

"cooperation arrangements" means arrangements established in accordance with regulation 3 and Schedule 2;

"CRAR" means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;

"CRR" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;

"CSDR" means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;

"EEA CSD" means a legal person that is established in an EEA state and that operates a securities settlement system similar to that referred to in point (3) of Section A of the Annex to CSDR and provides at least one other core service similar to those listed in Section A of that Annex;

"EEA regulator" means a regulator that is responsible for functions corresponding to those of the UK regulator, for the purposes of cooperation arrangements or regulatory decisions under these Regulations, and includes (where appropriate) authorities such as ESMA and the EFTA Surveillance Authority;

"EFTA Surveillance Authority" means the independent surveillance authority established in accordance with Article 108 of the EEA Agreement;

"EMIR" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

"equivalence direction" means a direction made under regulation 2 of the 2019 Regulations;

"ESMA" means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)(**b**);

"the FCA" means the Financial Conduct Authority as referred to in section 1A of the 2000 Act(**c**);

"MiFIR" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments;

"the Prospectus Regulation" means Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market;

"Regulation (EU) 2018/1644" means Commission Delegated Regulation (EU) 2018/1644 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent;

"regulatory decision" means a decision made under regulation 5 and Schedule 3;

(**a**) S.I. 2019/541, as amended by S.I. 2019/710, 1212, 1234, 1390 and 1416, and S.I. 2020/628.
(**b**) OJ No. L 331, 15.12.2010, p. 84.
(**c**) Section 1A inserted by section 6(1) of the Financial Services Act 2012 (c. 21).

"relevant cooperation arrangements" means, in relation to a regulatory decision under a paragraph of Schedule 3 specified in the third column of Table 1 in Schedule 1, cooperation arrangements established in accordance with the paragraph of Schedule 2 that is specified in the second column of the same row of that Table;

"SFTR" means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse;

"Solvency 2 Regulation" means Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

"SSR" means Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps;

"trade repository" means a legal person that centrally collects and maintains the records of derivatives or the records of securities financing transactions.

(2) The "UK regulator" means—

(a) in relation to cooperation arrangements, either the Bank or the FCA, whichever is mentioned in the paragraph of Schedule 2 that is specified in the second column of Table 1 in Schedule 1 to which the equivalence direction relates;

(b) in relation to a regulatory decision, or an application under regulation 4 for such a decision, either the Bank or the FCA, whichever is mentioned in the paragraph of Schedule 3 that makes provision with respect to that regulatory decision.

(3) "Applicant" and "application", including related terms, are to be interpreted in accordance with regulation 4, unless the contrary intention appears.

(4) Any reference in these Regulations to a specific EU Regulation, or part of an EU Regulation, is to that EU Regulation, or that part of the EU Regulation, as it forms part of retained EU law on or after IP completion day.

PART 2

Cooperation arrangements, regulatory decisions and equivalence directions

Cooperation arrangements between UK regulators and EEA regulators

3.—(1) Subject to paragraphs (2) to (4), where the Treasury have made an equivalence direction that makes a determination set out in a paragraph of Schedule 1 to the 2019 Regulations that is specified in the final column of Table 1 in Schedule 1 in relation to an EEA state, the UK regulator must take such steps as it considers appropriate to establish cooperation arrangements with the EEA regulator—

(a) for the EEA state referred to in the equivalence direction; and

(b) in accordance with the paragraph of Schedule 2 that is specified in the second column of the same row of that Table.

(2) Where the UK regulator considers that existing arrangements with the EEA regulator meet the requirements in the paragraph of Schedule 2 to which paragraph (1)(b) refers, then the UK regulator may consider paragraph (1) to be satisfied.

(3) Paragraph (1) need not be satisfied where the Treasury have made an equivalence direction that makes a determination set out in paragraph 9(8) of Schedule 1 to the 2019 Regulations (in respect of the Prospectus Regulation) and the EEA state referred to in that equivalence direction is a high-risk third country within the meaning of regulation 33(3)(a) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(**a**).

(**a**) S.I. 2017/692, as amended by S.I. 2019/1511.

(4) Paragraph (1) does not apply on or after IP completion day.

Applications for a regulatory decision before IP completion day

4.—(1) Subject to paragraph (2), a person ("the applicant") may make an application ("the application") to the UK regulator under this regulation for a regulatory decision set out in a paragraph of Schedule 3 specified in the third column of Table 1 in Schedule 1.

(2) An application may only be made—

(a) before IP completion day; and

(b) after an equivalence direction has been made that makes a determination set out in the paragraph of Schedule 1 to the 2019 Regulations specified in the final column of the same row of Table 1.

(3) An application under paragraph (1) must—

(a) be made in such manner as the UK regulator may direct;

(b) be accompanied by such other information as that regulator may direct.

(4) The UK regulator must confirm promptly receipt of the application to the applicant.

(5) The UK regulator must determine, and inform the applicant, within a reasonable time whether the application is complete and meets requirements set out in accordance with paragraph (3).

(6) If the UK regulator determines that the application is not complete and does not meet requirements set out in accordance with paragraph (3), that regulator may—

(a) request that the applicant provide further information; and

(b) set such a time period for the provision of further information requested under sub-paragraph (a) as the regulator considers appropriate.

(7) The UK regulator may at any time request that the applicant provide further information relating to the application.

(8) The applicant must notify the UK regulator promptly of any material changes affecting the application.

(9) The applicant may withdraw the application by giving notice to the UK regulator at any time before the application is determined.

Regulatory decisions

5.—(1) Where an application has been made under regulation 4, the UK regulator must decide that application in accordance with the paragraph of Schedule 3 to which the application relates.

(2) Where the decision under paragraph (1) is that the application meets the applicable requirements of regulation 4 and Schedule 3, the UK regulator must issue the regulatory decision to the applicant promptly.

(3) Where the decision under paragraph (1) is that the application does not meet the applicable requirements of regulation 4 and Schedule 3, the UK regulator must notify the applicant promptly and in writing of the reasons for refusal.

(4) The UK regulator must make a decision under paragraph (1) within the period of one year beginning with the first day on which—

(a) the applicant has submitted a complete application; and

(b) relevant cooperation arrangements have been established in relation to the EEA State to which the application relates, where required under the paragraph of Schedule 3 to which the application relates.

(5) A regulatory decision may not have effect before IP completion day.

Application of the 2000 Act to the Bank in relation to its functions under these Regulations

6.—(1) Subject to paragraph (2), the provisions of the 2000 Act referred to in paragraphs (3) to (6) apply in relation to the Bank in accordance with those paragraphs.

(2) In relation to the functions of the Bank under these Regulations, any reference in the 2000 Act to the PRA that is contained in, or relates to, any of the provisions (however expressed) mentioned below is to be read as a reference to the Bank.

(3) Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.) to 350 (disclosure of information by the Inland Revenue)(**a**) and 353 (removal of other restrictions on disclosure)(**b**), and Regulations made under those sections(**c**), apply in relation to information received by the Bank for the purposes of, or in the discharge of, any of its functions under these Regulations.

(4) Section 398 (misleading FCA or PRA: residual cases)(**d**) applies to information given to the Bank in purported compliance with a requirement imposed by or under these Regulations, as if the Bank is the "regulator" referred to in sub-section (1) of that section.

(5) Section 401 (proceedings for offences)(**e**) applies as if, for the purpose of sub-sections (2)(a) and (3)(a) of that section, the Bank is the "appropriate regulator" in respect of an offence under section 398(1) in relation to these Regulations.

(6) Paragraph 19 (annual report) of Schedule 1ZB(**f**) applies in relation to the recording of decisions made by the Bank exercising its functions under these Regulations and the 2019 Regulations.

Fees

7.—(1) The UK regulator may require applicants to pay such fees in connection with discharging its functions under these Regulations as it considers will enable it to meet its expenses incurred in carrying out those functions or for any incidental purpose.

(2) Any fee owed to the UK regulator under this regulation may be recovered as a debt due to that regulator.

(3) Nothing in this regulation affects the operation of Part 8 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019(**g**).

Effect of applications, equivalence directions and regulatory decisions on or after IP completion day

8.—(1) On or after IP completion day, an equivalence direction made before IP completion day that makes a determination set out in a paragraph of Schedule 1 to the 2019 Regulations specified in the first column of Table 2 in Schedule 4 to these Regulations (for the purposes set out in that paragraph) has effect as if made—

(a) on IP completion day; and

(**a**) Section 348 amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c. 28), paragraph 18 of Schedule 12 to the Financial Services Act 2012 (c. 21), paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c. 33), paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c. 14), and S.I. 2016/1239; section 349 amended by section 964 of the Companies Act 2006 (c. 46), paragraph 19 of Schedule 12 to the Financial Services Act 2012 (c. 21) and S.I. 2007/1093 and 2011/1043, and will be amended by S.I. 2019/681 on IP completion day; section 350 amended by paragraph 20 of Schedule 12 to the Financial Services Act 2012 (c. 21).

(**b**) Section 353 amended by paragraph 23 of Schedule 12 to the Financial Services Act 2012 (c. 21) and S.I. 2013/1881.

(**c**) S.I. 2001/2188 and 3648.

(**d**) Section 398 amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 (c. 21); there are other amendments which are not relevant.

(**e**) Section 401 amended by paragraph 38 of Schedule 9 to the Financial Services Act 2012 (c. 21) and S.I. 2013/1881; there are other amendments which are not relevant.

(**f**) Schedule 1ZB added by Schedule 3 to the Financial Services Act 2012 (c. 21); paragraph 19 amended by sections 5 and 130 of the Financial Services (Banking Reform) Act 2013 (c. 33), paragraph 50 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c. 14).

(**g**) S.I. 2019/632.

(b) under the provision of retained EU law specified in the second column of the same row of that Table.

(2) A regulatory decision made in accordance with a paragraph of Schedule 3 that is specified in the first column of Table 3 in Schedule 4 has effect on or after IP completion day as if made—

(a) under the provision of retained EU law specified in the second column of the same row of that Table; and

(b) on—

(i) IP completion day, if made before IP completion day; or

(ii) the day that the decision is made, if made on or after IP completion day.

(3) On or after IP completion day, an application made by an EEA CSD under regulation 4, for the purposes set out in paragraph 3 of Schedule 3, has effect as if it is an application made under Article 25 of CSDR on IP completion day, for the purposes of Article 69(1) and (2)(a) of CSDR only, where—

(a) the application has not been withdrawn; and

(b) the application has not been determined under regulation 5.

PART 3

Amendments to existing secondary legislation

The Central Securities Depositories (Amendment) (EU Exit) Regulations 2018

9. In regulation 13(j)(i) of the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018(**a**), at the end of the new first sub-paragraph of paragraph 9, after "regimes" insert "and CSDs authorised under the law applicable in the United Kingdom".

The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

10. In regulation 33(1)(b)(ii) of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018(**b**), after "Article" insert "on or".

The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019

11.—(1) The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019(**c**) are amended as follows.

(2) In regulation 54(a), in new paragraph 1 of Article 3, after the definition of "credit score", insert—

> "'EU CRAR' means Regulation (EC) 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies(**d**) as it had effect in the European Union immediately before IP completion day;".

(3) For regulation 55(e) substitute—

> "(e) for paragraph 6 substitute—
>
> "**6.** The credit rating agency endorsing credit ratings issued in a third country is no longer required to verify or demonstrate that the condition laid down in paragraph 3(g) of this Article is fulfilled where—

(**a**) S.I. 2018/1320.

(**b**) S.I. 2018/1403. Regulation 33(1)(b)(ii) was to be amended by regulation 16(15)(a) of S.I. 2019/710. That amendment is being omitted by regulation 13 of these Regulations.

(**c**) S.I. 2019/266, with amendments to be made to regulation 56 by regulation 9 of S.I. 2020/628, which is in turn being amended by regulation 14 of these Regulations.

(**d**) OJ No. L 302, 17.11.2009, p. 1.

(a) the legal and supervisory framework of that third country has been recognised as equivalent to the requirements of this Regulation by the Treasury in accordance with Article 5(6) and the cooperation arrangements referred to in Article 5(7) have been established by the FCA and are operational; or

(b) the legal and supervisory framework of that third country has been recognised as equivalent to the requirements of this Regulation by a decision adopted in accordance with Article 5(6) of EU CRAR before IP completion day that forms part of retained EU law.".".

(4) In regulation 56—

(a) for paragraph (a) substitute—

"(a) in paragraph 1—

(i) for "Union" substitute "United Kingdom";

(ii) for point (b) substitute—

"(b) the legal and supervisory framework of that third country has been recognised as equivalent to the requirements of this Regulation—

(i) by the Treasury in accordance with paragraph 6 of this Article; or

(ii) by a decision adopted by the European Commission in accordance with Article 5(6) of EU CRAR before IP completion day that forms part of retained EU law;";

(iii) in point (c)—

(aa) before "the", insert "where point (b)(i) applies,";

(bb) for "are operational" substitute "have been established by the FCA in accordance with that paragraph and are operational";

(iv) in point (d), for "one or more Member States" substitute "the United Kingdom";";

(b) for paragraph (f), substitute—

"(f) in paragraph 7—

(i) for "ESMA shall establish cooperation agreements" substitute "The FCA must take such steps as it considers appropriate to establish cooperation arrangements";

(ii) for "in accordance with paragraph 6" substitute "by the Treasury in accordance with paragraph 6 of this Article or by a decision adopted by the European Commission in accordance with Article 5(6) of EU CRAR before IP completion day that forms part of retained EU law";

(iii) in point (a), for "ESMA" substitute "the FCA";".

The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019

12.—(1) The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019(**a**) are amended as follows.

(2) In regulation 1(4)(b), after "Schedule 1", insert ", as amended from time to time,".

(3) In paragraph 3(2)(b) of Schedule 1, after "CRAR", insert ", with the exception of Articles 6a, 6b, 8a, 8c and 11a, and points 3(ba), 3a and 3b of Section B of Annex I".

(**a**) S.I. 2019/541, with a relevant amendment to be made by regulation 11 of S.I. 2020/628.

The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

13. Omit regulation 16(15)(a) of the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019(**a**).

The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020

14. In regulation 9(4) of the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020(**b**), in new regulation 96, in new Article 38(2)—

(a) at the end of paragraph (a), omit "and";

(b) in paragraph (b), for "purposes." substitute "purposes; and";

(c) after paragraph (b), insert—

"(c) amend or revoke any decision to which Article 5(1)(b)(ii) refers.".

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

SCHEDULE 1

Regulation 2

Equivalence directions and relevant cooperation arrangements

Table 1

Equivalence directions and relevant cooperation arrangements

Retained EU law Regulation to which the equivalence direction relates	*Applicable paragraph of Schedule 2 to these Regulations*	*Applicable paragraph of Schedule 3 to these Regulations*	*Applicable paragraph of Schedule 1 to the 2019 Regulations*
Benchmarks Regulation	paragraph 1	paragraph 1	paragraph 1(1) or (2)
CRAR	paragraph 2	paragraph 2	paragraph 3
CSDR	paragraph 3	paragraph 3	paragraph 3A
EMIR	paragraph 4	paragraph 4	paragraph 4A
MiFIR	paragraph 5	paragraph 5	paragraph 8
Prospectus Regulation	paragraph 6	N/A	paragraph 9(8)
SFTR	paragraph 7	paragraph 6	paragraph 10(1)

(**a**) S.I. 2019/710.
(**b**) S.I. 2020/628.

SCHEDULE 2

Regulation 3

Cooperation arrangements before IP completion day

Cooperation arrangements for the purposes of Article 30(4) of the Benchmarks Regulation

1. For the purposes of Article 30(4) of the Benchmarks Regulation, cooperation arrangements must specify, at least, the following—

(a) a mechanism for the exchange of information between the FCA and the EEA regulator for an EEA state, including access to all relevant information regarding the administrator authorised in that EEA state that is requested by the FCA;

(b) a mechanism for prompt notification to the FCA where the EEA regulator deems that the administrator authorised in that EEA state that it is supervising is in breach of the conditions of its authorisation or other national legislation in that EEA state; and

(c) procedures concerning the coordination of supervisory activities, including on-site inspections.

Cooperation arrangements for the purposes of Article 5(7) of CRAR

2. For the purposes of Article 5(7) of CRAR, cooperation arrangements must specify, at least, the following—

(a) a mechanism for the exchange of information between the FCA and the EEA regulator for an EEA state; and

(b) procedures concerning the coordination of supervisory activities.

Cooperation arrangements for the purposes of Article 25(10) of CSDR

3.—(1) For the purposes of Article 25(10) of CSDR, cooperation arrangements must specify, at least, the following—

(a) a mechanism for the exchange of information between the Bank and the EEA regulator for an EEA state, including access to all information regarding EEA CSDs authorised in that EEA state that is requested by the Bank and access to information relating to the matters referred to in sub-paragraph (2);

(b) a mechanism for prompt notification of the Bank where the EEA regulator for that EEA state considers an EEA CSD authorised in that EEA state has infringed or is infringing the conditions of its authorisation or of other applicable law; and

(c) procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

(2) The matters referred to in sub-paragraph (1)(a) are requests by the Bank that the EEA regulator—

(a) report on the activities in the United Kingdom of an EEA CSD authorised in that EEA state, including for the purpose of collecting statistics; or

(b) communicate, within an appropriate timeframe, the identity of the issuers and participants in the securities settlement systems operated by an EEA CSD authorised in that EEA state which provide services in the United Kingdom and any other relevant information concerning the activities of that EEA CSD in the United Kingdom.

Cooperation arrangements for the purposes of Article 75(3) of EMIR

4. For the purposes of Article 75(3) of EMIR, cooperation arrangements must specify, at least, the following—

(a) a mechanism for the exchange of information between the FCA and the EEA regulator for an EEA state; and

(b) procedures concerning the coordination of supervisory activities.

Cooperation arrangements for the purposes of Article 47(2) of MiFIR

5. For the purposes of Article 47(2) of MiFIR, cooperation arrangements must specify, at least, the following—

(a) a mechanism for the exchange of information between the FCA and the EEA regulator for an EEA state, including access to all information regarding the non-United Kingdom firms authorised in that EEA state that is requested by the FCA;

(b) a mechanism for prompt notification to the FCA where the EEA regulator considers that a firm that it is supervising, and that the FCA has registered in the register provided for in Article 48 of MiFIR, has infringed or is infringing the conditions of its authorisation or any other law to which it is obliged to adhere; and

(c) procedures concerning the coordination of supervisory activities including, where appropriate, on-site inspections.

Cooperation arrangements for the purposes of Article 30(1) of the Prospectus Regulation

6. For the purposes of Article 30(1) of the Prospectus Regulation, cooperation arrangements must, at least—

(a) concern the exchange of information between the FCA and the EEA regulator for an EEA state and the enforcement of obligations arising under the Prospectus Regulation; and

(b) ensure an efficient exchange of information that allows the FCA to carry out its duties under the Prospectus Regulation.

Cooperation arrangements for the purposes of Article 19(5)(b) of SFTR

7. For the purposes of Article 19(5)(b) of SFTR, cooperation arrangements must specify, at least, the following—

(a) a mechanism for the exchange of information between the FCA and the EEA regulator for an EEA state; and

(b) procedures concerning the coordination of supervisory activities.

SCHEDULE 3

Regulation 2

Regulatory decisions

Regulatory decisions for EEA benchmarks for the purposes of Article 30(1) of the Benchmarks Regulation

1.—(1) The FCA may include, in the FCA register, a benchmark or a combination of benchmarks provided by an administrator located in an EEA state, for the purposes of Article 30(1) of the Benchmarks Regulation, where the following conditions are met—

(a) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 1(1) or (2) of Schedule 1 to the 2019 Regulations;

(b) the administrator is authorised or registered, and is subject to supervision, in that EEA state;

(c) the FCA is notified by the administrator of—

(i) its consent that its actual or prospective benchmarks may be used by supervised entities in the United Kingdom;

(ii) the list of the benchmarks for which they have given consent to be used in the United Kingdom; and

(iii) the authority responsible for its supervision in that EEA state; and

(d) relevant cooperation arrangements have been established in relation to that EEA state.

(2) In this paragraph, "FCA register" means the register of administrators and benchmarks established and maintained by the FCA in accordance with Article 36(1) of the Benchmarks Regulation.

Regulatory decisions for credit rating agencies for the purposes of Article 5(2) and (4) of CRAR

2.—(1) A credit rating agency established in an EEA state may be certified by the FCA for the purposes of Article 5(2) of CRAR, provided that—

(a) the credit rating agency is authorised or registered in and is subject to supervision in that EEA state;

(b) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 3 of Schedule 1 to the 2019 Regulations;

(c) relevant cooperation arrangements have been established in relation to that EEA state; and

(d) the credit ratings issued by the credit rating agency and its credit rating activities are not of systemic importance to the financial stability or integrity of the financial markets of the United Kingdom.

(2) A credit rating agency established in that EEA state may be granted exemption for the purposes of Article 5(4) of CRAR—

(a) on a case-by-case basis from complying with some or all of the requirements set out in Section A of Annex I and Article 7(4) of CRAR if the credit rating agency demonstrates that the requirements are not proportionate in view of the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings;

(b) from the requirement of physical presence in the United Kingdom where such a requirement would be too burdensome and disproportionate in view of the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings.

(3) When assessing an application under regulation 4 for an exemption referred to in sub-paragraph (2), the FCA must consider the size of the credit rating agency established in that EEA state, having regard to the nature, scale and complexity of its business and the nature and range of its issuing of credit ratings, as well as the impact of the credit ratings issued by the credit rating agency on the financial stability and integrity of the financial markets of the United Kingdom.

Regulatory decisions for EEA CSDs for the purposes of Article 25(4) of CSDR

3.—(1) An EEA CSD authorised in an EEA state that intends to provide, on or after IP completion day, the core services referred to in points (1) and (2) of Section A of the Annex to CSDR in relation to financial instruments constituted under the law applicable within the United Kingdom or to set up a branch in the United Kingdom is subject to the procedure referred to in sub-paragraphs (2) to (4) of this paragraph.

(2) After consulting the authority referred to in sub-paragraph (3), the Bank may recognise an EEA CSD authorised in an EEA state for the purposes of Article 25(4) of CSDR that has applied for recognition to provide the services referred to in sub-paragraph (1), where the following conditions are met—

(a) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 3A of Schedule 1 to the 2019 Regulations;

(b) the EEA CSD is subject to effective authorisation, supervision and oversight or, if the securities settlement system is operated by a central bank, oversight, ensuring full compliance with the prudential requirements applicable in that EEA state;

(c) relevant cooperation arrangements have been established in relation to that EEA state; and

(d) where relevant, the EEA CSD has taken the necessary measures to allow its users to comply with the relevant law applicable within the United Kingdom or any part of the United Kingdom and the adequacy of those measures has been confirmed by the Bank.

(3) When assessing whether the conditions referred to in sub-paragraph (2) are met, the Bank must consult the EEA regulator entrusted with the authorisation, supervision and oversight of EEA CSDs in that EEA state.

(4) A regulatory decision in accordance with this paragraph—

(a) may be granted only for services listed in the Annex to CSDR; and

(b) must specify the services the EEA CSD is recognised to provide or perform.

Regulatory decisions for trade repositories for the purposes of Article 77(2) of EMIR

4. The FCA may grant recognition to a trade repository established in an EEA state for the purposes of Article 77(2) of EMIR only if—

(a) the trade repository is authorised and subject to supervision in that EEA state;

(b) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 4A of Schedule 1 to the 2019 Regulations; and

(c) relevant cooperation arrangements have been established in relation to that EEA state.

Regulatory decisions for the purposes of Article 46(2) of MiFIR

5. The FCA may register a firm established in an EEA state that has applied in relation to the provision of investment services or the performance of activities listed in Article 46(1) of MiFIR in the United Kingdom, for the purposes of Article 46(2) of MiFIR, only where the following conditions are met—

(a) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 8 of Schedule 1 to the 2019 Regulations;

(b) the firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in the United Kingdom and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that EEA state; and

(c) relevant cooperation arrangements have been established in relation to that EEA state.

Regulatory decisions for the purposes of Article 19(4) of SFTR

6. The FCA may recognise a trade repository established in an EEA state for the purposes of Article 19(4) of SFTR only where the following conditions are met—

(a) the trade repository is authorised and subject to effective supervision in that EEA state;

(b) an equivalence direction has been made that makes a determination in relation to that EEA state for the purposes set out in paragraph 10(1) of Schedule 1 to the 2019 Regulations; and

(c) relevant cooperation arrangements have been established in relation to that EEA state.

SCHEDULE 4

Regulation 8

Equivalence directions and regulatory decisions on or after IP completion day

Table 2

Effect of equivalence directions on or after IP completion day

Applicable paragraph of Schedule 1 to the 2019 Regulations	*Applicable provision of retained EU law*
paragraph 1(1)	Article 30(2) of the Benchmarks Regulation
paragraph 1(2)	Article 30(3) of the Benchmarks Regulation
paragraph 2	the particular provision or provisions of CRR that the equivalence direction makes a determination for the purposes of
paragraph 3	Article 5(6) of CRAR
paragraph 3A	Article 25(9) of CSDR
paragraph 4(1)	Article 2A(2) of EMIR
paragraph 4(2)	Article 13(2) of EMIR
paragraph 4A	Article 75(1) of EMIR
paragraph 4B	Article 76a(2) of EMIR
paragraph 5(1)	Article 23(1) of, and paragraph 8 of Schedule 3 to, MiFIR
paragraph 5(2)	Article 28 of MiFIR
paragraph 6	Article 33 of MiFIR
paragraph 7	Article 38(3) of MiFIR
paragraph 8	Article 47(1) of MiFIR
paragraph 9(8)	Article 29(3) of the Prospectus Regulation
paragraph 10(1)	Article 19(1) of SFTR
paragraph 10(3)	Article 21(1) of SFTR
paragraph 11	Article 17(2) of SSR
paragraph 12	the particular provision or provisions of the Solvency 2 Regulation that the equivalence direction makes a determination for the purposes of

Table 3

Effect of regulatory decisions on or after IP completion day

Paragraph of Schedule 3 in accordance with which the regulatory decision made	*Provision of retained EU law the decision is to have effect as if made under*
paragraph 1	Article 30(1) of the Benchmarks Regulation
paragraph 2(1)	Article 5(2) of CRAR
paragraph 2(2)	Article 5(4) of CRAR
paragraph 3	Article 25(4) of CSDR
paragraph 4	Article 77(2) of EMIR
paragraph 5	Article 46(2) of MiFIR
paragraph 6	Article 19(4) of SFTR

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of, and paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) ("the Act") to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (in particular, the deficiencies under paragraphs (a), (b), (c), (d) and (g) of section 8(2)).

Part 2 provides for the UK regulators (the Financial Conduct Authority and the Bank of England) to establish before IP completion day (as defined in section 1A(6) of the Act) "cooperation arrangements" (as defined in regulation 2) with EEA regulators where HM Treasury makes an equivalence direction in relation to an EEA state under regulation 2 of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/541, as amended) ("the 2019 Regulations").

This Part also allows the UK regulators to accept applications from EEA financial services providers for "regulatory decisions" (as defined in regulation 2) set out in Schedule 3 (for the purposes set out in that Schedule) before IP completion day. The Regulations then provide for decisions to be made by the UK regulators relating to those applications.

Entering into cooperation arrangements and making regulatory decisions follow the making of "equivalence directions" under regulation 2 of the 2019 Regulations. The relationship between equivalence directions that make a determination set out in a paragraph of Schedule 1 to the 2019 Regulations (for the purposes set out in that paragraph) and the applicable paragraphs of Schedules 2 and 3 to these Regulations is set out in the Table in Schedule 1.

Regulation 8 provides that an equivalence direction made under the 2019 Regulations has effect, on or after IP completion day, as if made on IP completion day under the corresponding provision of retained EU law. Regulation 8 also provides that a regulatory decision made under these Regulations has effect, on or after IP completion day, as if made under the corresponding provision of retained EU law. The relationship between provisions in the 2019 Regulations and these Regulations, under which equivalence directions and regulatory decisions may be made, and the corresponding provisions in retained EU law are set out in the Tables in Schedule 4.

Part 3 makes amendments necessary to remedy deficiencies in retained EU law. Regulation 9 amends the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1320) to clarify the application of Article 25 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories.

Regulation 10 makes an amendment to the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403) and regulation 13 omits amendments to be made to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments by the Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710), to reflect changes made by regulation 8 of these Regulations.

Regulations 11 and 14 amend the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/266) and the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/628). They make provision for the FCA to establish cooperation arrangements with the relevant regulatory authority for another state where HM Treasury has made an equivalence determination in respect of that state under Article 5 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, and for equivalence determinations made by the European Commission prior to IP completion day which form part of retained EU law after IP completion day.

Regulation 12 amends the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/541), to ensure that the appropriate version of retained EU law is referred to within those Regulations.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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