Draft Regulations laid before Parliament under section 429(9) of the Financial Services and Markets Act 2000 (c. 8) and sections 4(9) and 84(5) of the Financial Services and Markets Act 2023 (c. 29), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2025 No.

FINANCIAL SERVICES AND MARKETS

The Markets in Financial Instruments (Miscellaneous Amendments) Regulations 2025

Made - - - - ***

Coming into force in accordance with regulation 1

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17. Saving provision

The Treasury make these Regulations in exercise of the powers conferred by sections 21(10)(**a**), 22(1)(**b**), 286(1)(**c**) and 428(3)(**d**) of, and paragraph 25 of Schedule 2(**e**) to, the Financial Services and Markets Act 2000(**f**) and sections 4(**g**), 83(1) and (2), 84(2) and 86(5) and (6) of the Financial Services and Markets Act 2023(**h**).

In accordance with section 429(9)(**i**) of the Financial Services and Markets Act 2000 and sections 4(9) and 84(5) of the Financial Services and Markets Act 2023(**j**), a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

PART 1
Introductory

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Markets in Financial Instruments (Miscellaneous Amendments) Regulations 2025.

(2) These Regulations come into force on the day on which the revocation by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive(**k**) comes into force.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(4) In these Regulations—

> "the Recognition Requirements Regulations" means the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001(**l**);
>
> "the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**m**).

(**a**) See section 21(15) for the definition of "specified".
(**b**) See section 22(5) for the definition of "specified".
(**c**) Amended by paragraph 2(2) of Schedule 8 to the Financial Services Act 2012 (c. 21) and by S.I. 2017/1064.
(**d**) Amended by section 66(3)(a) of the Financial Services and Markets Act 2023 (c. 29).
(**e**) Paragraph 25 was amended by section 8(2) of the Financial Services Act 2012 and section 27(13)(a) of the Financial Guidance and Claims Act 2018 (c. 10).
(**f**) 2000 c. 8.
(**g**) Amended by S.I. 2023/1424.
(**h**) 2023 c. 29.
(**i**) Inserted by paragraph 16(3) of Schedule 8 to the Financial Services Act 2021 (c. 22); amended by section 8(8)(c) of the Financial Services and Markets Act 2023.
(**j**) For the meaning of "the affirmative procedure", see section 84(3) of the Financial Services and Markets Act 2023.
(**k**) EUR 2017/565.
(**l**) S.I. 2001/995. The title was amended by S.I. 2017/1064.
(**m**) S.I. 2001/544.

PART 2

Amendment of primary legislation

Part 18A of FSMA 2000

2. In Part 18A of FSMA 2000 (suspension and removal of financial instruments from trading)(**a**), after section 313CB(**b**) insert—

"313CBA Significant damage to investors' interests or orderly functioning of market

(1) This section applies for the purposes of sections 313CA(3) and 313CB(3).

(2) The following are circumstances in which a suspension or removal from trading of a financial instrument could cause significant damage to the interests of investors or the orderly functioning of the market—

(a) where it would create a systemic risk undermining financial stability, such as where the need exists to unwind a dominant market position, or where settlement obligations would not be met in a significant volume;

(b) where the continuation of trading on the market is necessary to perform critical post-trade risk management functions when—

(i) as a result of the default of a clearing member there is a need for the liquidation of financial instruments under the default procedures of a central counterparty, and

(ii) a central counterparty would be exposed to unacceptable risks as a result of an inability to calculate margin requirements;

(c) where the financial viability of the issuer would be threatened, such as where it is involved in a corporate transaction or capital raising.

(3) In determining in any other circumstance whether a suspension or removal could cause significant damage to the interests of investors or the orderly functioning of the market, the FCA must have regard (among other things) to the following—

(a) the liquidity of the market concerned, taking account of the fact that the consequences of a suspension or removal are likely to be greater where the market is more liquid;

(b) the nature of the suspension or removal, where actions with a sustained or lasting impact on the ability of investors to trade a financial instrument on trading venues, such as removals, are likely to have a greater impact on investors than other actions;

(c) the knock-on effects of a suspension or removal on sufficiently related derivatives, indices or benchmarks for which the removed or suspended instrument serves as an underlying or constituent;

(d) the effects of a suspension on the interests of market end-users who are not financial counterparties, such as entities trading in financial instruments to hedge commercial risks.

(4) In this section—

(**a**) Defined in section 80(1) of the Financial Services and Markets Act 2023 as the Financial Services Markets Act 2000 (c. 8). Part 18A was inserted by S.I. 2007/126.

(**b**) Sections 313CA and 313CB were inserted by S.I. 2017/701.

"central counterparty" has the same meaning as in Part 18 (see section 313(1))(**a**);

"clearing member", in relation to a central counterparty, means an undertaking which participates in the central counterparty and which is responsible for discharging the financial obligations arising from that participation;

"financial counterparty" has the meaning given in Article 2(8) of Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories(**b**)."

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PART 3

Amendments of secondary legislation

Article 3 of the Regulated Activities Order

3.—(1) Article 3 of the Regulated Activities Order (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) omit the definition of "the Commission Regulation"(**c**);

(b) before the definition of "consumer hire agreement" insert—

""commodity" means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity;";

(c) in the definition of "financial instrument"(**d**), for the words from "Articles 5" to "Part 2 of Schedule 2)" substitute "Part 2 of that Schedule";

(d) in the definition of "investment firm"(**e**)—

(i) in paragraph (a), omit "the Commission Regulation and with";

(ii) in paragraph (b), omit "the Commission Regulation and with";

(e) for the definition of "portfolio management"(**f**) substitute—

""portfolio management" means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;";

(f) in the definition of "qualifying credit institution"(**g**), in paragraph (d), omit "the Commission Regulation and with".

(3) In paragraph (1A)(**h**)—

(a) in sub-paragraph (a), omit "the Commission Regulation and with";

(b) in sub-paragraph (b), omit "the Commission Regulation and with".

(**a**) The definition of "central counterparty" was inserted by S.I. 2013/504.
(**b**) EUR 2012/648: Article 2(8) substituted by S.I. 2019/335.
(**c**) Definition was inserted by S.I. 2006/3384 and amended by S.I. 2017/488.
(**d**) Definition was inserted by S.I. 2006/3384 and amended by S.I. 2017/488 and 2019/632.
(**e**) Definition was inserted by S.I. 2006/3384, substituted by S.I. 2019/632.
(**f**) Definition was inserted by S.I. 2019/632.
(**g**) Definition was inserted by S.I. 2019/632.
(**h**) Subsection (1A) was inserted by S.I. 2019/632.

Article 83 of the Regulated Activities Order

4.—(1) Article 83 of the Regulated Activities Order (options)(**a**) is amended as follows.

(2) In paragraph (1)(e), omit "(read with Articles 5, 6, 7 and 8 of the Commission Regulation)".

(3) In paragraph (2)(d)—

(a) in paragraph (i), omit "(read with Articles 5 and 6 of the Commission Regulation)";

(b) in paragraph (ii), for the words from "Article 7" to "Schedule 2)" substitute "paragraphs 5, 6 and 8 of Part 2 of Schedule 2".

(4) In paragraph (3)(c), omit "(read with Articles 7 and 8 of the Commission Regulation)".

Article 84 of the Regulated Activities Order

5.—(1) Article 84 of the Regulated Activities Order (futures)(**b**) is amended as follows.

(2) In paragraph (1A)(d), omit "(read with Articles 5 and 6 of the Commission Regulation)".

(3) In paragraph (1B)(d), for the words from "Article 7" to "Schedule 2)" substitute "paragraphs 5, 6 and 8 of Part 2 of Schedule 2".

(4) In paragraph (1C)(c), omit "(read with Articles 7 and 8 of the Commission Regulation)".

(5) In paragraph (1CA), for the words from ", relating" to "Part 2 of Schedule 2)" substitute "which relates to currencies and to which paragraph 4 of Part 1 of Schedule 2".

Article 85 of the Regulated Activities Order

6. In article 85 of the Regulated Activities Order (contracts for differences etc)(**c**), in paragraph (4A)(c), omit the words from "read with" to "Part 2 of Schedule 2)".

Schedule 2 to the Regulated Activities Order

7.—(1) Schedule 2 to the Regulated Activities Order (financial instruments and investment services and activities)(**d**) is amended as follows.

(2) For Part 2 substitute—

"PART 2

Provisions supplementing Part 1

Interpretation

1. In this Part of this Schedule "transmission system operator"—

(a) in relation to electricity, means a person who is designated as an electricity transmission system operator under section 10H of the Electricity Act 1989(**e**);

(b) in relation to gas, means a person who is designated as a gas transmission system operator under—

(i) section 8J of the Gas Act 1986(**f**), or

(**a**) Amended by S.I. 2006/3384, 2017/488 and 2019/632.
(**b**) Amended by S.I. 2006/3384, 2017/488 and 2019/632.
(**c**) Amended by S.I. 2006/3384, 2017/488 and 2019/632.
(**d**) Parts 2 and 4 were each substituted by S.I. 2017/488 and amended by S.I. 2018/1403.
(**e**) 1989 c. 29. Section 10H was inserted by S.I. 2011/2704 and amended by S.I. 2019/530.
(**f**) 1986 c. 44. Section 8J was inserted by S.I. 2011/2704 and amended by S.I. 2019/530.

(ii) article 8H of the Gas (Northern Ireland) Order 1996(**a**).

Paragraph 2 of Part 1: "money-market instruments"

2.—(1) In paragraph 2 of Part 1 of this Schedule "money-market instruments" means those classes of instruments which are normally dealt with on the money market, such as treasury bills, certificates of deposit, commercial papers and other instruments with substantively equivalent features, but only where they have the characteristics specified in sub-paragraph (2), and excluding instruments of payment.

(2) Those characteristics are—

(a) they have a value that can be determined at any time,

(b) they are not derivatives, and

(c) they have a maturity at issuance of 397 days or less.

Paragraph 4 of Part 1: exclusion of certain derivative contracts relating to currencies

3.—(1) A derivative contract relating to a currency is not a financial instrument by virtue of the reference in paragraph 4 of Part 1 of this Schedule to "other derivative contracts" if the contract is—

(a) a spot contract as defined in sub-paragraph (2), or

(b) a means of payment that meets all the following conditions—

(i) it must be settled physically otherwise than by reason of a default or other termination event,

(ii) at least one of the parties is a person who is not a financial counterparty as defined in Article 2(8) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade depositories,

(iii) it is entered into in order to facilitate payment for identifiable goods, services or direct investment, and

(iv) it is not traded on a trading venue.

(2) For the purposes of sub-paragraph (1), a spot contract is a contract for the exchange of one currency against another currency, under the terms of which delivery is scheduled to be made within whichever of the following periods is applicable—

(a) where the contract for the exchange of those currencies is used for the main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, the period generally accepted in the market for the settlement of that transferable security or a unit in a collective investment undertaking as the standard delivery period or 5 trading days, whichever is shorter;

(b) in any other case—

(i) 2 trading days in respect of any pair of the major currencies specified in sub-paragraph (4), or

(ii) where at least one of the pair of currencies is not a major currency specified in sub-paragraph (4), the longer of 2 trading days or the period generally accepted in the market for that currency pair as the standard delivery period.

(**a**) S.I. 1996/275 (N.I. 2). Article 8H was inserted by S.R. 2011/155 and amended by S.I. 2019/530.

(3) A contract is not to be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the currency is to be postponed and not to be performed within the period set out in sub-paragraph (2).

(4) The major currencies for the purposes of sub-paragraph (2) are the US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish złoty and Romanian leu.

(5) For the purposes of sub-paragraph (2), a trading day means any day of normal trading in the jurisdiction of both the currencies that are exchanged under the contract for the exchange of those currencies and in the jurisdiction of a third currency where any of the following conditions are met—

(a) the exchange of those currencies involves converting them through that third currency for the purposes of liquidity;

(b) the standard delivery period for the exchange of those currencies references the jurisdiction of that third currency.

Paragraphs 6 and 7 of Part 1: wholesale energy products that must be physically settled

4.—(1) This paragraph has effect for the purposes of paragraphs 6 and 7 of Part 1 of this Schedule.

(2) A wholesale energy product must be physically settled where it satisfies all the following conditions—

(a) it contains provisions which ensure that parties to the wholesale energy product have proportionate arrangements in place to be able to make or take delivery of the commodity concerned;

(b) it establishes unconditional, unrestricted and enforceable obligations of the parties to the wholesale energy product to deliver and take delivery of the commodity concerned;

(c) it does not allow either party to replace physical delivery with cash settlement;

(d) the obligations under the wholesale energy product cannot be offset against obligations from other contracts between the parties concerned, without prejudice to the rights of the parties to the wholesale energy product to net their cash payment obligations.

(3) For the purposes of sub-paragraph (2)(a), a balancing agreement with the transmission system operator in the area of electricity and gas is to be considered a proportionate arrangement where the parties to the agreement have to ensure physical delivery of electricity or gas.

(4) For the purposes of sub-paragraph (2)(d), operational netting in power and gas markets is not to be considered as the offsetting of obligations under a contract against obligations from other contracts.

(5) In sub-paragraph (4), "operational netting" means any nomination of quantities of power and gas to be fed into a gridwork, upon being so required by the rules or requests of a transmission system operator for an entity performing an equivalent function to a transmission system operator at the national level, where the nomination of quantities is not at the discretion of the parties to the contract.

(6) The existence of force majeure or bona fide inability to settle provisions does not prevent a contract from being considered as "physically settled", and in this sub-paragraph—

(a) "force majeure" includes any exceptional event or set of circumstances which—

(i) is outside the control of the parties to the contract,

(ii) the parties to the contract could not have reasonably foreseen or avoided by the exercise of appropriate and reasonable due diligence, and

(iii) prevents one or both parties to the contract from fulfilling their contractual obligations;

(b) "bona fide inability to settle" includes any event or set of circumstances, not qualifying as force majeure as referred to in paragraph (a), which are objectively and expressly defined in the contractual terms, as a ground for one or both of the parties to the contract, acting in good faith, not to fulfil their contractual obligations.

(7) The existence of a default clause providing that a party is entitled to financial compensation in the case of non-performance, or defective performance, of the contract does not prevent the contract from being considered as "physically settled".

(8) The delivery methods for a contract that is to be considered as "physically settled" must include at least—

(a) physical delivery of the commodity concerned itself,

(b) delivery of a document transferring ownership of the commodity concerned or the relevant quantities of the commodity concerned, or

(c) other methods of bringing about the transfer of ownership of the relevant quantity of the commodity concerned without physically delivering it, including notification, scheduling or nomination to the operator of an energy supply network, that entitles the recipient to the relevant quantity of the commodity concerned.

Paragraph 7 of Part 1: treatment of certain derivative financial instruments

5.—(1) This paragraph has effect for the purposes of paragraph 7 of Part 1 of this Schedule, except in the case of—

(a) a spot contract as defined in sub-paragraph (3), or

(b) a contract which is for commercial purposes as provided by paragraph 6 of this Part of this Schedule.

(2) A contract is to be considered as having the characteristics of other derivative financial instruments where it satisfies both the following conditions—

(a) it meets one of the following criteria—

(i) it is traded on a trading venue other than a UK trading venue ("an overseas trading venue"),

(ii) it is expressly stated to be traded on, or is subject to the rules of, a UK regulated market, a UK MTF, a UK OTF or an overseas trading venue, or

(iii) it is equivalent to a contract traded on a UK regulated market, a UK MTF, a UK OTF or an overseas trading venue, with regards to the price, the lot, the delivery date and other contractual terms;

(b) it is standardised so that the price, the lot and the delivery date are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

(3) For the purposes of sub-paragraph (1)(a), a spot contract is a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods—

(a) 2 trading days;

(b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

(4) A contract is not to be considered a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the commodity, asset or right is to be postponed and not to be performed within the period referred to in sub-paragraph (3).

Paragraphs 7 and 10 of Part 1: exclusion of certain energy contracts

6.—(1) Where both the conditions in sub-paragraph (2) are met, a contract is to be treated—

(a) for the purposes of paragraph 7 of Part 1 of this Schedule, and of paragraph 5(1)(b) of this Part of this Schedule, as being for commercial purposes, and

(b) for the purposes of paragraphs 7 and 10 of Part 1 of this Schedule, as not having the characteristics of other derivative financial instruments.

(2) Those conditions are—

(a) that the contract is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network, and

(b) that it is necessary to keep in balance the supplies and uses of energy at a given time, including the case when the reserve capacity contracted by an electricity transmission system operator is being transferred from one prequalified balancing service provider to another prequalified balancing service provider with the consent of the relevant transmission system operator.

(3) In sub-paragraph (2)(b), "balancing service provider" has the meaning given in Article 2 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity(**a**).

Paragraph 10 of Part 1: further derivative contracts included

7. In addition to the derivative contracts expressly referred to in paragraph 10 of Part 1 of this Schedule, a derivative contract is a "financial instrument" by virtue of that paragraph where it meets the criteria set out in that paragraph and in paragraph 8 of this Part and relates to any of the following—

(a) telecommunications bandwidth;

(b) commodity storage capacity;

(c) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to cross-zonal electricity transmission capacities when the contract is, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;

(**a**) EUR 2019/943: Article 2 was substituted by S.I. 2020/1006.

(d) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except where the contract is already with the scope of paragraph 4 of Part 1 of this Schedule;

(e) a geological, environmental or other physical variable, except where the contract relates to any emission allowances referred to in paragraph 11 of Part 1 of this Schedule;

(f) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;

(g) an index or measure related to the price or value of, or volume of transactions in, any asset, right, service or obligation;

(h) an index or measure based on actuarial statistics.

Paragraph 10 of Part 1: treatment of certain derivative contracts

8. For the purposes of paragraph 10 of Part 1 of this Schedule, a derivative contract relating to an underlying referred to in that Part or in paragraph 7 of this Part is to be considered to have the characteristics of other derivative financial instruments where one of the following conditions is satisfied—

(a) it is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;

(b) it is traded on a regulated market, an MTF, or an OTF;

(c) the conditions in paragraph 5(2) of this Part are satisfied in relation to the contract.".

(3) In Part 4—

(a) for the main heading to the Part substitute "Investment advice";

(b) omit the sub-headings "Article 9" and "Investment advice".

Schedule 3 to the Regulated Activities Order

8.—(1) Schedule 3 to the Regulated Activities Order (exemptions from the definition of "investment firm")(**a**) is amended as follows.

(2) In paragraph 3, for "paragraph 1(p)" substitute "paragraph 1(o)".

(3) After paragraph 6 insert—

"PART 3

Direct electronic access and high-frequency algorithmic trading technique

"Direct electronic access"

7.—(1) This paragraph applies for the purposes of the exemption in paragraph 1(e).

(2) "Direct electronic access" means an arrangement where a member or participant or client of a trading venue permits a person to use its trading code so the person can electronically transmit orders relating to a financial instrument directly to the trading venue, including—

(**a**) Substituted by S.I. 2018/1403.

(a) arrangements which involve the use by a person of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access), and

(b) arrangements where such an infrastructure is not used by a person (sponsored access).

(3) A person is to be considered not capable of electronically transmitting orders relating to a financial instrument directly to a trading venue where either or both of the following apply—

(a) that person cannot exercise discretion regarding—

(i) the exact fraction of a second of order entry, and

(ii) the lifetime of the order within that timeframe;

(b) the electronic transmission of orders takes place through arrangements for optimisation of order execution processes that determine the parameters of the order other than the trading venue where the order should be submitted, unless these arrangements are embedded into that person's systems and not into those of—

(i) the member or participant of a regulated market or of an multilateral trading facility, or

(ii) a client of an organised trading facility.

"High-frequency algorithmic trading"

8.—(1) This paragraph applies for the purposes of the exemptions in paragraph 1(e), (f) and (k).

(2) "Algorithmic trading" means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions.

(3) A system is to be considered as having limited or no human intervention where, for any order or quote generation process or any process to optimise order-execution, an automated system makes decisions at any of the stages of initiating, generating, routing or executing orders or quotes according to pre-determined parameters.

(4) A "high-frequency algorithmic trading technique" is an algorithmic trading technique characterised by—

(a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry—

(i) co-location,

(ii) proximity hosting, or

(iii) high-speed direct electronic access,

(b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders, and

(c) high message intraday rates which constitute orders, quotes or cancellations.

High message intraday rate

9.—(1) For the purposes of paragraph 8(4)(c), a high message intraday rate consists of the submission on average of either of the following—

(a) at least 2 messages per second with respect to any single financial instrument traded on a trading venue;

(b) at least 4 messages per second with respect to all financial instruments traded on a trading venue.

(2) Sub-paragraphs (3) to (7) have effect for the purposes of the calculation in sub-paragraph (1).

(3) The following are to be included in the calculation—

(a) messages concerning financial instruments for which there is a liquid market in accordance with Article 2(1)(17) of the markets in financial instruments regulation;

(b) messages introduced for the purpose of a market-making strategy that satisfies the criteria in sub-paragraph (4).

(4) A market-making strategy satisfies the criteria in this sub-paragraph where the strategy—

(a) is pursued by an investment firm as a member or participant in one or more trading venues when dealing on own account, and

(b) involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.

(5) Messages introduced for the purpose of dealing on own account are to be included in the calculation.

(6) Messages introduced through trading techniques other than those relying on dealing on own account are to be included in the calculation where the firm's execution technique is structured in such a way as to avoid the execution taking place on own account.

(7) For the calculation of a high message intraday rate in relation to direct electronic access providers, messages submitted by their clients with direct electronic access (as defined in paragraph 7) are to be excluded from the calculations.

Interpretation

10. Any expression used in this Part of this Schedule which is used in the markets in financial instruments regulation has the same meaning as in the regulation."

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Regulation 3 of the Recognition Requirements Regulations

9.—(1) Regulation 3 of the Recognition Requirements Regulations (interpretation) is amended as follows.

(2) In paragraph (1), in the definition of "high-frequency algorithmic trading technique"(**a**), in paragraph (c), after "high message intraday rates" insert "(see regulation 3A)".

(3) After paragraph (3) insert—

(**a**) Inserted by S.I. 2017/701 and amended by S.I. 2019/662.

"(4) For the purposes of the definition of "algorithmic trading" in paragraph (1)(**a**), a system is to be considered as having limited or no human intervention where, for any order or quote generation process or any process to optimise order-execution, an automated system makes decisions at any of the stages of initiating, generating, routing or executing orders or quotes according to pre-determined parameters.

(5) For the purposes of the definition of "direct electronic access" in paragraph (1)(**b**), a person is to be considered not capable of electronically transmitting orders relating to a financial instrument directly to a trading venue where either or both of the following apply—

(a) that person cannot exercise discretion regarding—

(i) the exact fraction of a second of order entry, and

(ii) the lifetime of the order within that timeframe;

(b) the electronic transmission of orders takes place through arrangements for optimisation of order execution processes that determine the parameters of the order other than the trading venue where the order should be submitted, unless these arrangements are embedded into that person's systems and not into those of—

(i) the member or participant of a regulated market or of a multilateral trading facility, or

(ii) a client of an organised trading facility.".

New regulation 3A for the Recognition Requirements Regulations

10. After regulation 3 of the Recognition Requirements Regulations insert—

"High message intraday rate

3A.—(1) For the purposes of the definition of "high-frequency algorithmic trading technique" in regulation 3(1), a high message intraday rate consists of the submission on average of either of the following—

(a) at least 2 messages per second with respect to any single financial instrument traded on a trading venue;

(b) at least 4 messages per second with respect to all financial instruments traded on a trading venue.

(2) Paragraphs (3) to (7) have effect for the purposes of the calculation in paragraph (1).

(3) The following are to be included in the calculation—

(a) messages concerning financial instruments for which there is a liquid market in accordance with Article 2(1)(17) of the markets in financial instruments regulation;

(b) messages introduced for the purpose of a market-making strategy that satisfies the criteria in paragraph (4).

(4) A market-making strategy satisfies the criteria in this paragraph where the strategy—

(a) is pursued by an investment firm as a member or participant in one or more trading venues when dealing on own account, and

(b) involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading

(**a**) Definition of "algorithmic trading" was inserted by S.I. 2017/701 and substituted by S.I. 2019/662.
(**b**) Definition of "direct electronic access" was inserted by S.I. 2017/701 and substituted by S.I. 2019/662.

venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.

(5) Messages introduced for the purpose of dealing on own account are to be included in the calculation.

(6) Messages introduced through trading techniques other than those relying on dealing on own account are to be included in the calculation where the firm's execution technique is structured in such a way as to avoid the execution taking place on own account.

(7) For the calculation of a high message intraday rate in relation to direct electronic access providers, messages submitted by their clients with direct electronic access are to be excluded from the calculations.

(8) In this regulation "dealing on own account" means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments.".

Schedule to the Recognition Requirements Regulations

11.—(1) In the Schedule to the Recognition Requirements Regulations, Part 1 (recognition requirements for investment exchanges) is amended as follows.

(2) In paragraph 7BB (position reporting)(**a**), in sub-paragraph (2)(a), for the words from "article 83" to "that Directive" substitute "rules made by the FCA under regulation 11(**b**)".

(3) After paragraph 7E(**c**) insert—

"Significant damage to investors' interests or orderly functioning of financial markets

7F.—(1) This paragraph applies for the purposes of paragraph 7E(1).

(2) The following are circumstances in which a suspension or removal from trading of a financial instrument would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets—

(a) where it would create a systemic risk undermining financial stability, such as where the need exists to unwind a dominant market position, or where settlement obligations would not be met in a significant volume;

(b) where the continuation of trading on the trading venue is necessary to perform critical post-trade risk management functions when—

(i) as a result of the default of a clearing member there is a need for the liquidation of financial instruments under the default procedures of a central counterparty, and

(ii) a central counterparty would be exposed to unacceptable risks as a result of an inability to calculate margin requirements;

(c) where the financial viability of the issuer would be threatened, such as where it is involved in a corporate transaction or capital raising.

(3) In determining in any other circumstance whether a suspension or removal would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets, the exchange must have regard (among other things) to the following—

(**a**) Paragraph 7BB was inserted by S.I. 2017/701 and amended by S.I. 2019/662.
(**b**) Regulation 11 was inserted by S.I. 2017/701.
(**c**) Paragraph 7E was inserted by S.I. 2006/3386 and amended by S.I. 2017/701.

(a) the liquidity of the market concerned, taking account of the fact that the consequences of a suspension or removal are likely to be greater where the market is more liquid;

(b) the nature of the suspension or removal where actions with a sustained or lasting impact on the ability of investors to trade a financial instrument on trading venues, such as removals, are likely to have a greater impact on investors than other actions;

(c) the knock-on effects of a suspension or removal on sufficiently related derivatives, indices or benchmarks for which the removed or suspended instrument serves as an underlying or constituent;

(d) the effects of a suspension on the interests of market end-users who are not financial counterparties, such as entities trading in financial instruments to hedge commercial risks.

(4) In this paragraph—

"clearing member", in relation to a central counterparty, means an undertaking which participates in the central counterparty and which is responsible for discharging the financial obligations arising from that participation;

"financial counterparty" has the meaning given in Article 2(8) of Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

"issuer", in relation to a financial instrument, means the person who issued the instrument.".

(4) In paragraph 9F (specific requirements for organised trading facilities: execution of orders)(**a**), omit sub-paragraph (6)(b).

(5) In paragraph 9I (provision of data reporting services)(**b**), omit sub-paragraph (d).

Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

12.—(1) In Schedule 1 to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(**c**), Part 2 (controlled investments) is amended as follows.

(2) In paragraph 21 (options)(**d**)—

(a) in sub-paragraph (1)(e), for "(read with Articles 5, 6, 7 and 8 of the Commission Regulation)" substitute "to the Regulated Activities Order (referred to in the following provisions of this paragraph as "Schedule 2")";

(b) in sub-paragraph (2)(d)—

(i) in paragraph (i), omit "(read with Articles 5 and 6 of the Commission Regulation)";

(ii) in paragraph (ii) for "Article 7 of the Commission Regulation" substitute "paragraphs 5, 6 and 8 of Part 2 of Schedule 2";

(c) in sub-paragraph (3)(c), omit "(read with Articles 7 and 8 of the Commission Regulation)".

(3) In paragraph 22 (futures)(**e**)—

(**a**) Paragraph 9F was inserted by S.I. 2017/701 and amended by S.I. 2019/662. There are other amendments but none is relevant.
(**b**) Paragraph 9I was inserted by S.I. 2017/701 and amended by S.I. 2019/662 and 2024/107.
(**c**) S.I. 2005/1529.
(**d**) Paragraph 21 was amended by S.I. 2006/3384, 2017/488 and 2019/632.
(**e**) Paragraph 22 was amended by S.I. 2006/3384, 2017/488 and 2019/632.

(a) in sub-paragraph (1A)(d), for "(read with Articles 5 and 6 of the Commission Regulation)" substitute "to the Regulated Activities Order (referred to in the following provisions of this paragraph as "Schedule 2")";

(b) in sub-paragraph (1B)(d), for "Article 7 of the Commission Regulation" substitute "paragraphs 5, 6 and 8 of Part 2 of Schedule 2";

(c) in sub-paragraph (1C)(c), omit "(read with Articles 7 and 8 of the Commission Regulation)";

(d) in sub-paragraph (1CA), for the words from ", relating" to "Regulation" substitute "which relates to currencies and to which paragraph 4 of Part 1 of Schedule 2".

(4) In paragraph 23 (contracts for differences etc)(**a**)—

(a) in sub-paragraph (3)(b), after "Schedule 2" insert "to the Regulated Activities Order (referred to in the following provisions of this paragraph as "Schedule 2")";

(b) in sub-paragraph (4A)(c), omit "read with Articles 5 to 8 and 10 of the Commission Regulation".

(5) In paragraph 28 (interpretation)(**b**), omit the definition of "Commission Regulation".

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

13.—(1) The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(**c**) are amended as follows.

(2) In regulation 2 (interpretation)(**d**)—

(a) in paragraph (1)—

(i) in the definition of "high-frequency algorithmic trading technique", in paragraph (c), after "high message intraday rates" insert "(see regulation 2B)";

(ii) after the definition of "multilateral trading facility" insert—

""OTF" has the meaning given in Article 2.1.15 of the markets in financial instruments regulation;";

(b) after paragraph (1) insert—

"(1A) For the purposes of the definition of "algorithmic trading" in paragraph (1), a system is to be considered as having limited or no human intervention where, for any order or quote generation process or any process to optimise order-execution, an automated system makes decisions at any of the stages of initiating, generating, routing or executing orders or quotes according to pre-determined parameters.

(1B) For the purposes of the definition of "direct electronic access" in paragraph (1), a person is to be considered not capable of electronically transmitting orders relating to a financial instrument directly to a trading venue where either or both of the following apply—

(a) that person cannot exercise discretion regarding—

(i) the exact fraction of a second of order entry, and

(ii) the lifetime of the order within that timeframe;

(**a**) Paragraph 23 was amended by S.I. 2006/3384, 2017/488 and 2019/632.
(**b**) Definition of "Commission Regulation" inserted by S.I. 2006/3384.
(**c**) S.I. 2017/701.
(**d**) Amended by S.I. 2018/1403.

(b) the electronic transmission of orders takes place through arrangements for optimisation of order execution processes that determine the parameters of the order other than the trading venue where the order should be submitted, unless these arrangements are embedded into that person's systems and not into those of—

(i) the member or participant of a regulated market or of an MTF, or

(ii) a client of an OTF.".

(3) After regulation 2A(**a**) insert—

"High message intraday rate

2B.—(1) For the purposes of the definition of "high-frequency algorithmic trading technique" in regulation 2(1), a high message intraday rate consists of the submission on average of either of the following—

(a) at least 2 messages per second with respect to any single financial instrument traded on a trading venue;

(b) at least 4 messages per second with respect to all financial instruments traded on a trading venue.

(2) Paragraphs (3) to (7) have effect for the purposes of the calculation in paragraph (1).

(3) The following are to be included in the calculation—

(a) messages concerning financial instruments for which there is a liquid market in accordance with Article 2(1)(17) of the markets in financial instruments regulation;

(b) messages introduced for the purpose of a market-making strategy that satisfies the criteria in paragraph (4).

(4) A market-making strategy satisfies the criteria in this paragraph where the strategy—

(a) is pursued by the investment firm as a member or participant in one or more trading venues when dealing on own account, and

(b) involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.

(5) Messages introduced for the purpose of dealing on own account are to be included in the calculation.

(6) Messages introduced through trading techniques other than those relying on dealing on own account are to be included in the calculation where the firm's execution technique is structured in such a way as to avoid the execution taking place on own account.

(7) For the calculation of a high message intraday rate in relation to direct electronic access providers, messages submitted by their clients with direct electronic access are to be excluded from the calculations.

(8) In this regulation "dealing on own account" means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments.".

(**a**) Inserted by S.I. 2018/1403.

PART 4

Amendments of assimilated direct legislation

Regulation (EC) No 1060/2009

14. In Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies(**a**), in Article 3(1) (definitions), for the definition of "financial instrument" substitute—

> ""financial instrument" means any instrument listed in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;".

Regulation (EU) No 600/2014

15.—(1) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012(**b**) is amended as follows.

(2) In Article 4 (waivers for equity instruments)(**c**), as it has effect until the coming into force of paragraph 3 of Schedule 2 to the Financial Services and Markets Act 2023, in paragraph 3(c), omit the words from "Commission Delegated Regulation" to "that directive,".

(3) In Article 15 (execution of client orders)(**d**)—

(a) in paragraph 2, omit "Articles 64 to 66 of Regulation (EU) 2017/565,";

(b) in paragraph 4, omit ", and Articles 67 to 70 of Regulation (EU) 2017/565".

(4) In Article 17 (access to quotes)(**e**), in paragraph 2, omit ", and Articles 67 to 70 of Regulation (EU) 2017/565".

(5) In Schedule 2 (Directive 2014/65/EU - EU Regulations made under Title II)(**f**), omit paragraph 2.

Commission Delegated Regulation (EU) 2017/567

16. In Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions(**g**), in Article 15 (orders considerably exceeding the norm), in paragraph 2, for "Article 23 of Commission Delegated Regulation (EU) 2017/565," substitute "rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000,".

(**a**) EUR 2009/1060; Article 3(1) was substituted by S.I. 2019/266.
(**b**) EUR 2014/600.
(**c**) Article 4 was amended by S.I. 2018/1403 and 2023/1410.
(**d**) Article 15 was amended by S.I. 2018/1403.
(**e**) Article 17 was amended by S.I. 2018/1403.
(**f**) Schedule 2 was inserted by S.I. 2018/1403.
(**g**) EUR 2017/567.

PART 5

Saving provision

Saving provision

17.—(1) The amendments made by these Regulations have no effect in relation to a PISCES operator in relation to the operation of a PISCES until the earlier of—

(a) 5th June 2030;

(b) the date on which any rules applicable to PISCES operators made by the Financial Conduct Authority under FSMA 2000 in replacement of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive come into force.

(2) For the purposes of paragraph (1), "PISCES" and "PISCES operator" each has the meaning given in regulation 2 of the Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System Sandbox) Regulations 2025(**a**).

[Name]
[Name]

[Date] Two of the Lords Commissioners of His Majesty's Treasury

(**a**) S.I. 2025/583.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in connection with the revocation by section 1(1) of, and Part 3 of Schedule 1 to, the Financial Services and Markets Act 2023 (c. 29) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ("the Commission Delegated Regulation").

These Regulations restate with modifications the following provisions of the Commission Delegated Regulation—

- Article 2(6), which defines "commodity" (see regulation 3(2)(b) of these Regulations);
- Articles 5, 7, 8, 10 and 11, which contain supplementary provisions relating to the list of financial instruments in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) ("the Regulated Activities Order") (see the new Part 2 substituted in Schedule 2 to that Order by regulation 7(2) of these Regulations);
- Article 18, which relates to the meaning of "algorithmic trading" in the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701) (see the amendment made by regulation 13(2)(b) of these Regulations);
- Article 19(1) to (4), which relate to the meaning of "a high message intraday rate" for the purposes of certain definitions of "high-frequency algorithmic trading" (see the amendments made by regulations 10 and 13(3) of these Regulations);
- Article 20, which relates to the cases in which a person is to be regarded as having "direct electronic access" to a trading venue (see the amendment made by 13(2)(b) of these Regulations);
- Article 80, which relates to circumstances constituting significant damage to investors' interests and the orderly functioning of the market, so far as that Article relates to the Financial Conduct Authority or a recognised investment exchange (see the amendments made by regulations 2 and 11 of these Regulations).

These Regulations contain related amendments dealing with the interpretation of provisions about algorithmic trading in Schedule 3 to the Regulated Activities Order and in the Recognition Requirements Regulations (see the amendments made by paragraphs 8(3) and 9(3) of these Regulations).

These Regulations also contain—

- amendments consequential on the restatement of those provisions in amendments made by these Regulations,
- amendments consequential on the revocation of provisions of the Commission Delegated Regulation that are to be replaced by rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 (c. 8), and
- in regulation 8(2), an amendment correcting a cross-reference in text that was inserted in Schedule 3 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403).

The consequential amendments include (in Part 4) amendments of assimilated direct legislation that remains in force but is also to be revoked by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023.

Regulation 17 makes saving provision in relation to PISCES operators governed by the Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System

Sandbox) Regulations 2025 (S.I. 2025/583) to exclude them from the application of the amendments made by these 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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ISBN 978-0-34-827355-7

£8.14

http://www.legislation.gov.uk/id/ukdsi/2025/9780348273557