

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (EU EXIT) (No. 3) INSTRUMENT 2019

Powers exercised

- A. The Prudential Regulatory Authority (the “PRA”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the “Regulations”), having carried out the consultations required by regulation 5 of the Regulations and with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulations 3 of the Regulations.

Pre-conditions to making

- B. The PRA and the FCA are the appropriate regulators for the EU EMIR.
- C. The PRA proposes to exercise the power in regulation 3 of the Regulations to modify the EU EMIR.
- D. The FCA has been consulted on the modifications contained in the Annex to this instrument in accordance with regulation 5 of the Regulations and has consented to the modifications contained in the Annex to this instrument in accordance with regulation 3(2) of the Regulations.
- E. A draft of this instrument has been approved by the Treasury, the Minister having been satisfied that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- F. In this instrument –
- (a) “the Act” means the European Union (Withdrawal) Act 2018;
 - (b) “EU EMIR” means the EU Regulation specified in Part 4 of the Schedule to the Regulations under the heading “European Markets Infrastructure Regulation”;
 - (c) “exit day” has the meaning given in the Act; and
 - (d) “the FCA” means the Financial Conduct Authority.

Modifications

- G. The PRA makes the modifications in the Annex below to the EU EMIR.

Commencement

- H. This instrument comes into force on exit day.

Notes

- I. In the Annex to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- J. This instrument may be cited as the Technical Standards (European Market Infrastructure) (EU Exit) (No. 3) Instrument 2019.

By order of the Prudential Regulation Committee

[DATE]

Annex

RISK-MITIGATION TECHNIQUES FOR OTC DERIVATIVE CONTRACTS NOT CLEARED BY A CENTRAL COUNTERPARTY

1 MODIFICATIONS TO EU REGULATION 2016/2251

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Commission Delegated Regulation (EU) 2016/2251 with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty as it forms part of domestic law by virtue of section 3 of the Act, is modified as follows:

Article 1

Definitions

For the purposes of this Regulation, the following definitions apply:

...

- (4) 'UK UCITS' means UK UCITS as defined in section 237(3) of the Financial Services and Markets Act 2000.

...

Article 4

Eligible collateral

1. A counterparty shall only collect collateral from the following asset classes:

...

- (c) debt securities issued by ~~Member States' central governments or central banks~~ the central government of the United Kingdom or the Bank of England;
- (d) debt securities issued by ~~Member States'~~ United Kingdom regional governments or local authorities whose exposures are treated as exposures to the central government of the United Kingdom ~~that Member State~~ in accordance with Article 115(2) of Regulation (EU) No 575/2013;
- (e) debt securities issued by ~~Member States'~~ United Kingdom public sector entities whose exposures are treated as exposures to the central government, regional government or local authority of the United Kingdom ~~that Member State~~ in accordance with Article 116(4) of Regulation (EU) No 575/2013;
- (f) debt securities issued by United Kingdom ~~Member States'~~ regional governments or local authorities other than those referred to in point (d);
- (g) debt securities issued by United Kingdom ~~Member States'~~ public sector entities other than those referred to in point (e);

...

- (m) debt securities issued by credit institutions or investment firms including bonds ~~referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council~~ admitted to the register of regulated covered

bonds maintained under Regulation 7(1)(b) of the Regulated Covered Bonds Regulations 2008 (SI 2008/346);

...

- (r) shares or units in ~~undertakings for collective investments in transferable securities (UCITS)~~UK UCITS, provided that the conditions set out in Article 5 are met.

...

Article 5

Eligibility criteria for units or shares in UK UCITS

1. For the purposes of point (r) of Article 4(1), a counterparty may only use units or shares in UK UCITS as eligible collateral where all the following conditions are met:
 - (a) the units or shares have a daily public price quote;
 - (b) the UK UCITS are limited to investing in assets that are eligible in accordance with Article 4(1);
 - (c) the UK UCITS meet the criteria laid down in Article 132(3) of Regulation (EU) No 575/2013.

For the purposes of point (b), UK UCITS may use derivative instruments to hedge the risks arising from the assets in which they invest.

Where a UK UCITS invests in shares or units of other UK UCITS, the conditions laid down in the first subparagraph shall also apply to those UK UCITS.

2. By way of derogation from point (b) of paragraph 1, where a UK UCITS or any of its underlying UK UCITS do not only invest in assets that are eligible in accordance with Article 4(1), only the value of the unit or share of the UK UCITS that represents investment in eligible assets may be used as eligible collateral pursuant to paragraph 1 of this Article.

The first subparagraph shall apply to any underlying UK UCITS of a UK UCITS that has underlying UK UCITS of its own.

3. Where non-eligible assets of a UK UCITS can have a negative value, the value of the unit or share of the UK UCITS that may be used as eligible collateral pursuant to paragraph 1 shall be determined by deducting the maximum negative value of the non-eligible assets from the value of eligible assets.

Article 6

Credit quality assessment

1. The collecting counterparty shall assess the credit quality of assets belonging to the asset classes referred to in points (c), (d) and (e) of Article 4(1) that are either not denominated or not funded in the issuer's domestic currency and in points (f), (g), (j) to (n) and (p) of Article 4(1) using one of the following methodologies:

...

- (b) the internal ratings referred to in paragraph 3 of the posting counterparty, where that counterparty is established in the United Kingdom~~Union~~ or in a

third country where the posting counterparty is subject to consolidated supervision assessed ~~equivalent to that governed by the Prudential Regulation Authority or the Financial Conduct Authority: Union law in accordance with Article 127 of Directive 2013/36/EU.~~

- (i) prior to exit day, as equivalent to that governed by Union law in accordance with Article 127 of Directive 2013/36/EU; or
- (ii) on or after exit day, as equivalent to that governed by the law of the United Kingdom in accordance with regulation 21 of the Capital Requirements Regulations 2013;

...

Article 8

Concentration limits for initial margin

1. Where collateral is collected as initial margin in accordance with Article 13, the following limits shall apply for each collecting counterparty:

...

The limits laid down in the first subparagraph shall also apply to shares or units in UK UCITS where the UK UCITS primarily invests in the asset classes referred to in that subparagraph.

...

3. The counterparties referred to in paragraph 2 shall be one of the following:
 - (a) institutions identified as G-SIIs in accordance with Part 4 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 Article 131 of Directive 2013/36/EU;
 - (b) institutions identified as O-SIIs in accordance with Part 5 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014 Article 131 of Directive 2013/36/EU;

...

Article 19

Collateral management and segregation

1. The procedures referred to in Article 2(2)(c) shall include the following:

...

- (e) that cash collected as initial margin is maintained in cash accounts at central banks or credit institutions which fulfil all of the following conditions:
 - (i) they are ~~authorised credit institutions which are in accordance with Directive 2013/36/EU~~ CRR firms (within the definition in Article 4(1)(2A) of the Capital Requirements Regulation) or are authorised in a third country whose supervisory and regulatory arrangements have

been found to be equivalent in accordance with Article 142(2) of Regulation (EU) No 575/2013;

...

Article 23

CCPs authorised as credit institutions

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that no collateral is exchanged in relation to non-centrally cleared OTC derivative contracts entered into with CCPs that are authorised by the Prudential Regulation Authority as credit institutions having permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits~~in accordance with Directive 2013/36/EU.~~

Article 24

Non-financial counterparties and third-country counterparties

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that no collateral is exchanged in relation to non-centrally cleared OTC derivative contracts entered into with non-financial counterparties that do not meet the conditions of Article 10(1)(b) of Regulation (EU) No 648/2012, or with non-financial entities established in a third country that would not meet the conditions of Article 10(1)(b) of Regulation (EU) No 648/2012 if they were established in the ~~Union~~United Kingdom.

...

Article 28

Threshold based on notional amount

...

3. ~~UK UCITS authorised in accordance with Directive 2009/65/EC and AIFs (as defined in regulation 3 of the Alternative Investment Fund Managers Regulation 2013) alternative investment funds managed by AIFMs (as defined in regulation 4 of the Alternative Investment Fund Managers Regulation 2013) authorised or registered in accordance with the Alternative Investment Fund Managers Regulations 2013 alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council~~ shall be considered distinct entities and treated separately when applying the thresholds referred to in paragraph 1 where the following conditions are met:

...

Article 29

Threshold based on initial margin amounts

...

3. ~~UK UCITS authorised in accordance with Directive 2009/65/EC and AIFs (as defined in regulation 3 of the Alternative Investment Fund Managers Regulation 2013) alternative investment funds~~ managed by AIFMs (as defined in regulation 4 of the

Alternative Investment Fund Managers Regulation 2013) authorised or registered in accordance with the Alternative Investment Fund Managers Regulations 2013 ~~alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU~~ shall be considered distinct entities and treated separately when applying the thresholds referred to in paragraph 1 where the following conditions are met:

...

Article 31

Treatment of derivatives with counterparties in third countries where legal enforceability of netting agreements or collateral protection cannot be ensured

1. By way of derogation from Article 2(2), counterparties established in the ~~Union~~ United Kingdom may provide in their risk management procedures that variation and initial margins are not required to be posted for non-centrally cleared OTC derivative contracts concluded with counterparties established in a third country for which any of the following apply:

...

For the purposes of the first subparagraph, counterparties established in the United Kingdom ~~Union~~ shall collect margin on a gross basis.

2. By way of derogation from Article 2(2), counterparties established in the United Kingdom ~~Union~~ may provide in their risk management procedures that variation and initial margins are not required to be posted or collected for contracts concluded with counterparties established in a third country where all of the following conditions apply:

...

CHAPTER III

INTRAGROUP DERIVATIVE CONTRACTS

SECTION 1

Procedures for counterparties ~~competent authorities~~ and the Financial Conduct Authority when applying exemptions for intragroup derivative contracts

Article 32

Procedures for counterparties and ~~relevant competent authorities~~ the Financial Conduct Authority

1. The application or notification from a counterparty to the ~~competent authority~~ Financial Conduct Authority pursuant to paragraphs ~~68~~ to ~~109~~ of Article 11 of Regulation (EU) No 648/2012 shall be deemed to have been received when the Financial Conduct Authority ~~competent authority~~ receives all of the following information:
 - (a) all the information necessary to assess whether the conditions specified in paragraphs ~~6, 7, 8, or 9~~ or 10, respectively, of Article 11 of Regulation (EU) No 648/2012 have been fulfilled;

- (b) the information and documents referred to in Article 18(2) of Commission Delegated Regulation (EU) No 149/2013.
2. Where ~~a competent authority~~ the Financial Conduct Authority determines that further information is required in order to assess whether the conditions referred to in paragraph 1(a) are fulfilled, it shall submit a written request for information to the counterparty.
- ~~3. A decision by a competent authority under Article 11(6) of Regulation (EU) No 648/2012 shall be communicated to the counterparty within 3 months of receipt of all the information referred to in paragraph 1.~~
4. Where ~~the Financial Conduct Authority a competent authority~~ reaches a positive decision under paragraphs ~~6, 8, or 10~~ of Article 11 of Regulation (EU) No 648/2012, it shall communicate that positive decision to the counterparty in writing, specifying at least the following:
- (a) whether the exemption is a full exemption or a partial exemption;
- (b) in the case of a partial exemption, a clear identification of the limitations of the exemption.
5. Where ~~the Financial Conduct Authority a competent authority~~ reaches a negative decision under paragraphs ~~6, 8, or 10~~ of Article 11 of Regulation (EU) No 648/2012 or objects to a notification under paragraphs ~~7 or 9~~ of Article 11 of that Regulation, it shall communicate that negative decision or objection to the counterparty in writing, specifying at least the following:
- (a) the conditions of paragraphs ~~6, 7, 8, or 9 or 10~~, respectively, of Article 11 of Regulation (EU) No 648/2012 that are not fulfilled;
- (b) a summary of the reasons for considering that such conditions are not fulfilled.
- ~~6. [] Where one of the competent authorities notified under Article 11(7) of Regulation (EU) No 648/2012 considers that the conditions referred to in points (a) or (b) of the first subparagraph of Article 11(7) of that Regulation are not fulfilled, it shall notify the other competent authority within 2 months of receipt of the notification.~~
- ...
8. A decision by ~~a competent authority~~ the Financial Conduct Authority under Article 11(8) of Regulation (EU) No 648/2012 shall be communicated to the counterparty established in the United Kingdom ~~Union~~ within 3 months of receipt of all the information referred to in paragraph 1.
- ~~9. A decision by the competent authority of a financial counterparty referred to Article 11(10) of Regulation (EU) No 648/2012 shall be communicated to the competent authority of the non-financial counterparty within 2 months from the receipt of the all the information referred to in paragraph 1 and to the counterparties within 3 months of receipt of that information~~
10. Counterparties that have submitted a notification or received a positive decision according to paragraphs ~~6, 7, 8, or 9 or 10~~, respectively, of Article 11 of Regulation (EU) No 648/2012 shall immediately notify the Financial Conduct Authority ~~relevant competent authority~~ of any change that may affect the fulfilment of the conditions set out in those paragraphs, as applicable. The Financial Conduct Authority ~~relevant competent authority~~ may object to the application for the exemption or withdraw its

positive decision following any change in circumstances that could affect the fulfilment of those conditions.

11. Where a negative decision or objection is communicated by the Financial Conduct Authority~~a competent authority~~, the relevant counterparty may only submit another application or notification where there has been a material change in the circumstances that formed the basis of the Financial Conduct Authority's~~competent authority's~~ decision or objection.

Article 33

Applicable criteria on the legal impediment to the prompt transfer of own funds and repayment of liabilities

A legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties as referred to in paragraphs 5, and 8 to 9~~10~~ of Article 11 of Regulation (EU) No 648/2012 shall be deemed to exist where there are actual or foreseen restrictions of a legal nature including any of the following:

...

- (c) any of the conditions on the early intervention, recovery and resolution as referred to in the Banking Act 2009 or the Bank Recovery and Resolution (No. 2) Order 2014~~Directive 2014/59/EU of the European Parliament and of the Council~~ are met, as a result of which the competent authority foresees an impediment to the prompt transfer of own funds or repayment of liabilities;

...

Article 34

Applicable criteria on the practical impediments to the prompt transfer of own funds and repayment of liabilities

A practical impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties as referred to in paragraphs 5, and 8 to 9~~10~~ of Article 11 of Regulation (EU) No 648/2012 shall be deemed to exist where there are restrictions of a practical nature, including any of the following:

...

Article 35A

Application of Articles 4(1), 6, 7, 8, point (e) of Article 19(1), Articles 22, 23, 28, 29, 30, 39 and Annexes I, II and III.

1. Article 4(1)(c) shall, for the specified period, be read as if the reference to “the central government of the United Kingdom or the Bank of England” included a reference to “Member States’ central governments or central banks”.
2. Article 4(1)(d) shall, for the specified period, be read as if the reference to “United Kingdom regional governments or local authorities” included a reference to “Member States’ regional governments or local authorities” and as if the reference to “the United Kingdom” included a reference to “that Member State”.

3. Article 4(1)(e) shall, for the specified period, be read as if the reference to “United Kingdom public sector entities” included a reference to “Member States’ public sector entities” and as if the reference to “the United Kingdom” included a reference to “that Member State”.
4. Article 4(1)(f) shall, for the specified period, be read as if the reference to “United Kingdom regional governments or local authorities” included a reference to “Member States’ regional governments or local authorities”.
5. Article 4(1)(g) shall, for the specified period, be read as if the reference to “United Kingdom public sector entities” included a reference to “Member States’ public sector entities”.
6. For the purposes of Article 6(1)(b) a posting counterparty either:-
 - (a) established in the EEA; or
 - (b) established in a third country other than a country in the EEA where the posting counterparty is subject to consolidated supervision which, prior to exit day, has been assessed by an EEA competent authority other than the Prudential Regulation Authority or the Financial Conduct Authority as equivalent to that governed by Union law in accordance with Article 127 of Directive 2013/36/EU,
is, for the specified period, deemed to be established in the United Kingdom.
7. Article 6(1)(c) shall, for a period of one year beginning on exit day, be read as if the reference to “a credit quality assessment issued by a recognised External Credit Assessment Institution (ECAI) as defined in Article 4(98) of Regulation (EU) 575/2013” included a reference to “a credit quality assessment that was issued or endorsed and not withdrawn immediately before exit day by a recognised External Credit Assessment Institution (ECAI) as defined in Article 4(98) of Regulation (EU) 575/2013 (as it had effect immediately before exit day)” and, unless the context otherwise requires, related references in this Regulation to Regulation (EU) 575/2013, “ECAI”, “credit quality assessments”, “credit assessment” and “credit quality steps” shall be read accordingly.
8. Article 8(3) shall, for the specified period, be read as if, in addition to (a) to (c), it included institutions identified as G-SIIs or O-SIIs by EU competent authorities in accordance with Article 131 of Directive 2013/36/EU.
9. A credit institution authorised in accordance with Directive 2013/36/EU is, for the specified period, deemed to fall within Article 19(1)(e)(i).
10. For the specified period, the derogation provided for in Article 23 may also be applied by counterparties to EEA CCPs that are authorised as credit institutions in accordance with Directive 2013/36/EU.
11. For the specified period-
 - (a) references to UK UCITS in this Regulation shall be read as if they included references to EEA UCITS (and in relation to EEA UCITS, the reference to Article 132(3) of Regulation (EU) No 575/2013 in Article 5(1)(c) of this Regulation shall be read as a reference to Article 132(3) of Regulation (EU) No 575/2013 as it had effect immediately before exit day); and
 - (b) references to AIFs managed by AIFMs authorised or registered in accordance with the Alternative Investment Fund Managers Regulations 2013 in Articles 28(3), 29(3) and 39(2) shall be read as if they included references to alternative

investment funds managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU.

12. In Article 30, the reference to Article 129 of Regulation (EU) 575/2013 shall, for the specified period, be read as a reference to that Article as it had effect immediately before exit day.
13. The specified period is the period that begins on exit day and ends on 30 June 2020.
14. In this Article –
“EEA UCITS” has the meaning it has in section 237(3) of the Financial Services and Markets Act 2000.

Article 36

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

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

[Note: Articles 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20 do not form part of domestic law on and after exit day by virtue of section 3 of the Act where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 750 billion and below EUR 1500 billion.]

- (e) ~~from 1 September 2020, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 8 billion.~~

[Note: Articles 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20 do not form part of domestic law on and after exit day by virtue of section 3 of the Act where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 8 billion and below EUR 750 billion.]

2. ~~By way of derogation from paragraph 1, where the conditions of paragraph 3 of this Article are met, Article 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20 shall apply as follows:~~
- ~~(a) 3 years after the date of entry into force of this Regulation where no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;~~
 - ~~(b) the later of the following dates where an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country:
 - ~~(i) 4 months after the date of entry into force of the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;~~
 - ~~(ii) the applicable date determined pursuant to paragraph 1.~~~~
3. ~~The derogation referred to in paragraph 2 shall only apply where counterparties to a non-centrally cleared OTC derivative contract meet all of the following conditions:~~
- ~~(a) one counterparty is established in a third country and the other counterparty is established in the Union;~~
 - ~~(b) the counterparty established in a third country is either a financial counterparty or a non-financial counterparty;~~
 - ~~(c) the counterparty established in the Union is one of the following:
 - ~~(i) a financial counterparty, a non-financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the third-country counterparty referred to in point (a) is a financial counterparty;~~
 - ~~(ii) either a financial counterparty or a non-financial counterparty and the third-country counterparty referred to in point (a) is a non-financial counterparty;~~~~
 - ~~(d) both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;~~
 - ~~(e) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;~~
 - ~~(f) the requirements of Chapter III are met.~~

Article 37

Application of Articles 9(1), 10 and 12

1. Articles 9(1), 10 and 12, shall apply as follows:
- ~~(a) from 1 month after the date of entry into force of this Regulation~~4 January 2017 for counterparties both of which have, or belong to groups each of which

- has, an aggregate average notional amount of non-centrally cleared OTC derivatives above EUR 3 000 billion;
- (b) ~~from the date that is the latest of 1 March 2017 or 1 month following the date of its entry into force of this Regulation~~ for other counterparties.
2. By way of derogation from paragraph 1 in respect of contracts for foreign exchange forwards referred to in point (a) of Article 27, Articles 9(1), 10 and 12 shall apply on ~~one of the following dates, whichever is earlier:~~
- (a) ~~31 December 2018, where the Regulation referred to in point (b) does not yet apply;~~
- (b) ~~the date of entry into application of the Commission Delegated Regulation (EU) 2017/565 3 January 2018 specifying some technical elements related to the definition of financial instruments with regard to physically settled foreign exchange forwards or the date determined pursuant to paragraph 1, whichever is later.~~
3. ~~By way of derogation from paragraph 1, where the conditions of paragraph 4 of this Article are met, Articles 9(1), 10 and 12 shall apply as follows:~~
- (a) ~~3 years after the date of entry into force of this Regulation where no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;~~
- (b) ~~the later of the following dates where an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country:~~
- (i) ~~four months after the date of entry into force of the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;~~
- (ii) ~~the applicable date determined pursuant to paragraph 1.~~
4. ~~The derogation referred to in paragraph 3 shall only apply where counterparties to a non-centrally cleared OTC derivative contract meet all of the following conditions:~~
- (a) ~~one counterparty is established in a third country and the other counterparty is established in the Union;~~
- (b) ~~the counterparty established in a third country is either a financial counterparty or a non-financial counterparty;~~
- (c) ~~the counterparty established in the Union is one of the following:~~
- (i) ~~a financial counterparty, a non-financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the third country counterparty referred to in point (a) is a financial counterparty;~~
- (ii) ~~either a financial counterparty or a non-financial counterparty and the third country counterparty referred to in point (a) is a non-financial counterparty;~~

- (d) ~~both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;~~
- (e) ~~both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;~~
- (f) ~~the requirements of Chapter III are met.~~

Article 38

Dates of application for specific contracts

1. By way of derogation from Articles 36(1) and 37, in respect of all non-centrally OTC derivatives which are single-stock equity options or index options, the Articles referred to in paragraph Articles 36(1) and 37 shall not ~~apply from 3 years after the date of entry into force of this Regulation.~~

[Note: Articles 36(1) and 37 do not form part of domestic law on and after exit day by virtue of section 3 of the Act in respect of all non-centrally OTC derivatives which are single-stock equity options or index options.]

2. ~~By way of derogation from Articles 36(1) and 37, where a counterparty established in the Union enters into a non-cleared OTC derivative contract with another counterparty which belongs to the same group, the Articles referred to in Articles 36(1) and 37 shall apply from the dates specified in accordance with those Articles, or 4 July 2017, whichever is the later.~~

Article 39

Calculation of aggregate average notional amount

1. For the purposes of Articles 36 and 37, the aggregate average notional amount referred to shall be calculated as the average of the total gross notional amount that meets all of the following conditions:
 - (a) ~~that are recorded on the last business day of March, April and May of 2016 with respect to counterparties referred to in point (a) of Article 36(1);~~
 - (b) that are recorded on the last business day of March, April and May of the year referred to in each of the points in Article 36(1);

...

2. For the purpose of paragraph 1, UK UCITS authorised in accordance with Directive 2009/65/EC and AIFs (as defined in regulation 3 of the Alternative Investment Fund Managers Regulation 2013) alternative investment funds managed by AIFMs (as defined in regulation 4 of the Alternative Investment Fund Managers Regulation 2013) authorised or registered in accordance with the Alternative Investment Fund Managers Regulations 2013 ~~alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU~~ shall be considered distinct entities and treated separately, where the following conditions are met:

...

Article 40

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

ANNEX II

Methodology to adjust the value of collateral for the purposes of Article 21

...

Table 2

Haircuts for short term credit quality assessments

Credit quality step with which the credit assessment of a short term debt security is associated	Haircuts for debt securities issued by entities described in Article 4(1) (c) and (j) in (%)	Haircuts for debt securities issued by entities described in Article 4(1) (m) in (%)	Haircuts for securitisation positions and meeting the criteria in Article 4(1) (o) in (%)
1	0,5	1	2
2-3 or below	1	2	4

...

2. For eligible units in UK UCITS the haircut is the weighted average of the haircuts that would apply to the assets in which the fund is invested.

...