

Appendix 4: Draft Technical Standards (European Market Infrastructure) (EU Exit) (No.4) Instrument (update to BTS 2016/2251)

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (EU EXIT) (No. 4) INSTRUMENT [YEAR]

Powers exercised

- A. The Prudential Regulation Authority ("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 consultations pursuant to regulation 5 of the Regulations and with the approval of the Treasury, makes the instrument in exercise of the powers conferred by regulation 3 of the Regulations.

History

- B. The PRA made the Technical Standards (European Market Infrastructure) (EU Exit) (No. 3) Instrument 2019 on 9 April 2019. This made modifications to the EU EMIR.

Pre-conditions to making

- C. The PRA and the FCA are the appropriate regulators for the EU EMIR.
- D. The PRA proposes to exercise the power in regulation 3 of the Regulations to modify the EU EMIR.
- E. 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.
- F. A draft of this instrument has been approved by the Treasury, the Minister considering 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

- G. 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", as it forms part of domestic law by virtue of section 3 of the Act;
 - (c) "exit day" has the meaning given in the Act; and
 - (d) "the FCA" means the Financial Conduct Authority.

Modifications

- H. The PRA makes the modifications in the Annex below to the Technical Standards (European Market Infrastructure) (EU Exit) (No. 3) Instrument 2019.

Commencement

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

Highlighted text

- J. In the Annex to this instrument, modifications to the Technical Standards (European Market Infrastructure) (EU Exit) (No. 3) Instrument 2019 are highlighted for the convenience of readers. This highlighting does not form part of the legislative text.

Citation

- K. This instrument may be cited as Technical Standards (European Market Infrastructure) (EU Exit) (No. 4) Instrument [year].

By order of the Prudential Regulation Committee

[Date]

Annex

1 MODIFICATIONS TO THE ANNEX TO THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (EU EXIT) (NO. 3) INSTRUMENT 2019

- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Relevant provisions of the Annex to the Technical Standards (European Market Infrastructure) (EU Exit) (No. 3) Instrument 2019 (which modifies 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) are substituted as follows:

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.**
 - ~~(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.]