

Bank of England PRA

Appendices to CP13/23 – Margin requirements for non-centrally cleared derivatives: Amendments to BTS 2016/2251

Consultation paper | CP13/23

July 2023

Draft for consultation



Contents

| | |
|---|----------|
| Contents | 1 |
| 1: Draft amendments to BTS 2016/2251 | 2 |
| 2: FCA draft amendments to BTS 2016/2251 | 5 |
| 3: PRA statutory obligations | 8 |

Draft for consultation

1: Draft amendments to BTS 2016/2251

PRA STANDARDS INSTRUMENT: THE TECHNICAL STANDARDS (BILATERAL MARGINING) INSTRUMENT 2023

Powers exercised

- A. The PRA makes this instrument in the exercise of powers under section 138P (Technical Standards) of the Act.
- B. For the purposes of section 138P of the Act, the power to make regulatory technical standards which the PRA relies on for the purposes of this instrument is conferred on the PRA by Article 11(15) of Regulation (EU) No 648/2012.
- C. Pursuant to section 138P(2) of the Act, the power to make technical standards includes the power to modify, amend or revoke any EU tertiary legislation made by an EU entity under the original EU power which forms part of retained EU law. Commission Delegated Regulation (EU) No 2016/2251 constitutes EU tertiary legislation (as defined in section 20 of the EUWA) for the purposes of section 138P(2)(b) of the Act.
- D. The powers referred to above are specified for the purpose of section 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

- E. The FCA and Bank of England have been consulted on this instrument pursuant to section 138P(4) of the Act.
- F. In accordance with section 138J of the Act as applied by section 138S(2)(g) of the Act, the PRA published a draft of the proposed instrument and had regard to representations made.
- G. A draft of this instrument has been approved by the Treasury, as required by section 138R of the Act.

Interpretation

- H. In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.
- I. In this instrument:-
 - “EUWA” means the European Union (Withdrawal) Act 2018.
 - “PRA” means the Prudential Regulation Authority;
 - “retained EU law” has the meaning given it in section 6 of the EUWA; and
 - “the Act” means the Financial Services and Markets Act 2000.

Modifications

- J. The PRA makes the modifications in the Annex to Commission Delegated Regulation (EU) 2016/2251 insofar as it applies to counterparties that are PRA-authorized persons.

Commencement

- K. This instrument comes into force on [DATE].

Citation

- L. This instrument may be cited as PRA Standards Instrument: The Technical Standards (Bilateral Margining) Instrument 2023.

By order of the Prudential Regulation Committee
[DATE]

Draft for consultation

Annex

MODIFICATIONS TO COMMISSION DELEGATED REGULATION (EU) 2016/2251

1. In this Annex, new text is underlined and deleted text is struck through.
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 retained EU law, is modified as follows:

...

Article 38

Dates of application for specific contracts

By way of derogation from Articles 36(1) and 37, in respect of all non-centrally cleared OTC derivatives which are single-stock equity options or index options, the Articles referred to in Articles 36(1) and 37 shall not apply until 4 January ~~2024~~2026.

Draft for consultation

2: FCA draft amendments to BTS 2016/2251

FCA STANDARDS INSTRUMENT: THE TECHNICAL STANDARDS (BILATERAL MARGINING) INSTRUMENT 2023

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of powers under section 138P (Technical Standards) of the Act.
- B. For the purposes of section 138P of the Act, the power to make regulatory technical standards which the FCA relies on for the purposes of this instrument is conferred on the FCA by Article 11(15) of Regulation (EU) No 648/2012.
- C. Pursuant to section 138P(2)(b) of the Act, the power to make technical standards includes the power to modify, amend or revoke any EU tertiary legislation made by an EU entity under the original EU power which forms part of retained EU law. Delegated Regulation (EU) No 2016/2251 constitutes EU tertiary legislation (as defined in section 20 of the EUWA) for the purposes of section 138P(2)(b) of the Act.
- D. The powers referred to above are specified for the purpose of section 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

- E. The PRA and Bank of England have been consulted on this instrument pursuant to section 138P(4) of the Act.
- F. A draft of this instrument has been approved by the Treasury, as required by section 138R of the Act.
- G. The FCA published a draft of the instrument in accordance with section 138I(1)(b) of the Act, accompanied by the information required by section 138I(2). The FCA had regard to representations made in response to the public consultation.

Interpretation

- H. All references to EU regulations in this instrument are to EU law as it forms part of retained EU law.
- I. In this instrument:-
 - “EUWA” means the European Union (Withdrawal) Act 2018.
 - “PRA” means the Prudential Regulation Authority;
 - “retained EU law” has the meaning given it in section 6 of the EUWA; and
 - “the Act” means the Financial Services and Markets Act 2000.

Modifications

- J. The FCA makes the modifications in the Annex to Delegated Regulation (EU) 2016/2251.

Commencement

- K. This instrument comes into force on [date].

Citation

- L. This instrument may be cited as FCA Standards Instrument: The Technical Standards (Bilateral Margining) Instrument 2023.

By order of the FCA Board

[Date]

Draft for consultation

Annex

MODIFICATIONS TO COMMISSION DELEGATED REGULATION (EU) 2016/2251

1. In this Annex, new text is underlined and deleted text is struck through.
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 retained EU law, is modified as follows:

...

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 cleared OTC derivatives which are single-stock equity options or index options, the Articles referred to in Articles 36(1) and 37 shall not apply until 4 January ~~2024~~2026.

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3: PRA statutory obligations

The statutory obligations applicable to the PRA's policy development process are set out below. This CP explains the policy assessment of relevant considerations.

- **For rules instruments and UK Technical Standards Instruments:** Purpose of the policy proposals (FSMA s138J(2)(b)).
- **For rules instruments and UK Technical Standards Instruments:** Cost benefit analysis (FSMA s138J(2)(a) and (7)(a)); and an estimate of those costs and benefits (if reasonable) (FSMA s138J(8)).
- **For rules instruments and UK Technical Standards Instruments:** Analysis of whether the impact on mutuals is significantly different to the impact on other authorised firms (FSMA s138J(2)(c) and 138K).
- Compatibility with the PRA's primary objectives (FSMA s138J(2)(d)(i), 2B and 2C).
- Compatibility with the PRA's secondary competition objective (FSMA s138J(2)(d)(ii) and 2H(1)).
- Compatibility with the regulatory principles (FSMA s138J(2)(d)(ii), 2H(2) and 3B).
- Have regard to the HMT recommendation letters (BoE Act s30B).
- Have due regard to the public sector equality duty (Equality Act s149).
- Have regard, subject to any other requirement affecting the exercise of the regulatory function, to the principles of good regulation and when determining general policy or principles to the Regulators Code (Legislative and Regulatory Reform Act 2006 s21 & 22).
- Have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat (Natural Environment and Rural Communities Act 2006, s40).
- **For rules instruments and UK Technical Standards Instruments:** Consultation of the FCA (FSMA s138J(1)(a)).
- **For UK Technical Standards Instruments only:** FSMA s138J(1)(a) is replaced with: consultation of the FCA and/or Bank, where that Regulator has an interest in the technical standards (FSMA s138P(4) and (5)).
- **For UK Technical Standards Instruments only:** notice given to HMT of the consultation on the UKTS ('best efforts' basis).
- For CRR rules only: subject to certain exceptions, have regard to:
 - relevant standards recommended by the Basel Committee on Banking Supervision from time to time
 - the likely effect of the rules on the relative standing of the United Kingdom as a place for internationally active credit institutions and investment firms to be

based or to carry on activities. For these purposes, the PRA must consider the United Kingdom's standing in relation to the other countries and territories in which, in its opinion, internationally active credit institutions and investment firms are most likely to choose to be based or carry on activities

- the likely effect of the rules on the ability of CRR firms to continue to provide finance to businesses and consumers in the United Kingdom on a sustainable basis in the medium and long term
 - the target in section 1 of the Climate Change Act 2008 (carbon target for 2050)
 - (s144C (1) & (2) FSMA – exceptions in s144E FSMA).
 - **For CRR rules only** – explanation of the ways in which having regard to the matters specified above has affected the proposed rules (s144D FSMA).
 - **For CRR rules only** – publication of a summary of the proposed CRR rules.
 - **For CRR rules only** – consideration and consultation with the Treasury about the likely effect of the rules on relevant equivalence decisions (s144C (3) & (4) FSMA).
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