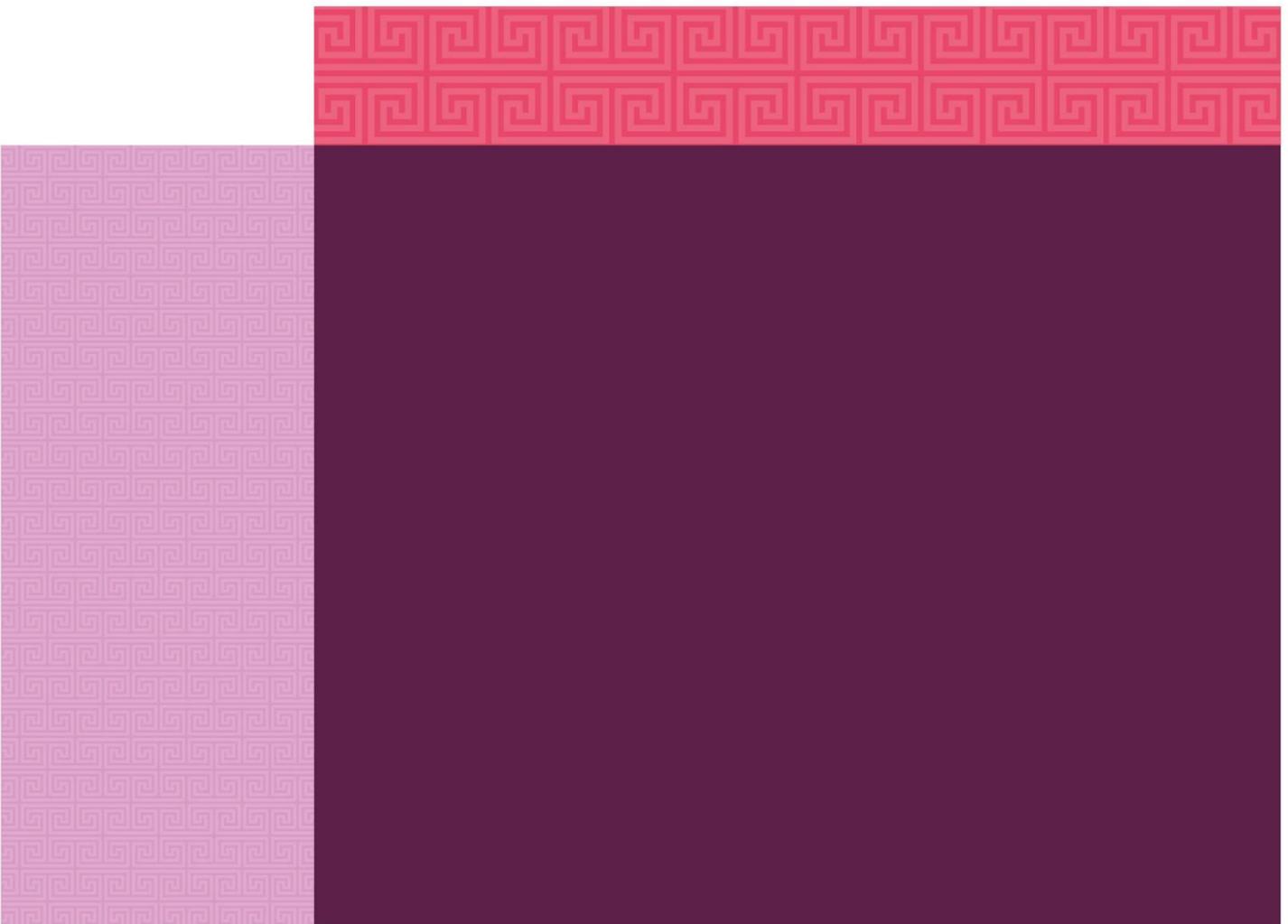




Bank of England Policy Statement | PRA Policy Statement PS27/20

# The Bank of England's amendments under the European Union (Withdrawal) Act 2018: Changes before the end of the transition period

December 2020





BANK OF ENGLAND

Bank of England Policy Statement | PRA PS27/20

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## 1 Overview

1.1 This Bank of England (Bank) and Prudential Regulation Authority (PRA) Policy Statement (PS) provides feedback to responses to Consultation Paper (CP) 13/20 'UK withdrawal from the EU: Changes before the end of the transition period'<sup>1</sup> and CP18/19 'UK withdrawal from the EU: Changes following extension of Article 50'.<sup>2</sup> It also contains the Bank's and PRA's final and near-final policies. For ease of cross-reference, this PS broadly follows the same structure as PS5/19 'The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018':<sup>3</sup>

- Section A relates to the Bank and PRA transitional directions and guidance; and
- Section B contains EU Exit Instruments making changes to existing PRA rules and onshored Binding Technical Standards (BTS) relevant to the Bank's and PRA's remits. Section B also includes updated Bank and PRA Supervisory Statements (SSs), and one Statement of Policy (SoP), which were published in full as part of the April 2019 version of PS5/19. This package of SSs and SoP is referred to collectively as 'Nationalising the Acquis (NtA) non-binding materials'.

1.2 The Bank and PRA Technical Standards (EU Exit) Instruments, NtA non-binding materials, and the Bank transitional direction and related guidance documents are published as final as part of this PS.

1.3 The PRA transitional direction, PRA Rulebook (EU Exit) Instrument, and related guidance documents are published as 'near-final'. This means that the direction and Instrument have been approved by the PRA's governance committees, but they have not been formally made. The PRA will make its final transitional direction and PRA Rulebook (EU Exit) Instrument after the PRA's rules implementing the Capital Requirements Directive V (CRD V) have been made. This is because the power for the PRA to make rules imposing consolidated or sub-consolidated requirements on holding companies cannot be exercised by the PRA before Monday 28 December 2020.<sup>4</sup>

1.4 In the main, the PRA does not intend to make changes to the near-final materials published as part of this PS. However, the PRA has consulted in CP22/20 'Designation of firms within certain consolidation groups' on its proposed rules to a new Part of the PRA Rulebook (the Designation Part).<sup>5</sup> Some of the PRA's proposed rules require amending to ensure that they remain operable after the end of the transition period, and CP22/20 therefore included a companion PRA Rulebook (EU Exit) Instrument. These onshoring changes have been included in the 'near-final' PRA Rulebook (EU Exit) Instrument published as part of this PS, but remain subject to change following responses received to CP22/20.

1.5 This PS and the accompanying instruments, transitional directions, and statements, are relevant to all firms authorised and regulated by the PRA, financial market infrastructure firms (FMIs) that are currently supervised by the Bank, and firms subject to the Bank's powers as resolution authority. Some of the changes are also relevant to firms authorised and regulated by the Financial Conduct Authority (FCA), and to the Financial Services Compensation Scheme (FSCS). This PS and the

1 September 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

2 July 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/uk-withdrawal-from-the-eu-changes-following-extension-of-article-50>.

3 February 2019: <https://www.bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

4 Section 192Z FSMA, inserted by Regulation 2 of The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020.

5 Available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/designation-firms-certain-consolidation-groups>.

accompanying materials may also be relevant to firms applying to the PRA or FCA for authorisation, and to FMIs applying to the Bank for recognition.

### Structure of the document

1.6 This PS is structured as follows:

#### Section A: Transitional directions and guidance

- Chapter 2 sets out further changes and clarifications to the:
  - near-final PRA transitional direction (Appendix A.1);
  - final Bank transitional direction (Appendix A.7);
  - final Bank and near-final PRA general guidance notes on transitional directions (Appendices A.2 and A.8); and
  - final Bank and near-final PRA specific guidance notes on transitional directions (Appendices A.3, A.4, A.5, A.6, A.9 and A.10).

#### Section B: Nationalising the Acquis (NtA) non-binding materials, Binding Technical Standards, and PRA rules

- Chapter 3 is relevant to all PRA-regulated firms and Bank-regulated FMIs, and sets out updates to:
  - Final Bank and PRA SoP 'Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU' (Appendix B.1).
- Chapter 4 is relevant to all PRA-regulated firms, and sets out updates to:
  - Final SS1/19 'Non-binding PRA materials: The PRA's approach after the UK's withdrawal from the EU' (Appendix B.2);
  - Final SS2/19 'PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK's withdrawal from the EU' (Appendix B.3);
  - Final updates to SS18/15 'Depositor and dormant account protection' (Appendix B.4);
  - Near-final PRA Rulebook (EU Exit) Instrument (Appendix B.5); and
  - Final Technical Standards (EU Exit) Instruments in the PRA's remit (Appendices B.6 – B.9).
- Chapter 5 is relevant to firms in scope of the UK resolution regime, and FMIs, and sets out amendments to:
  - Final Technical Standard (EU Exit) Instrument in the Bank's remit as resolution authority, and FMI competent authority (Appendix B.10).
- Chapter 6 is relevant to firms in scope of the UK resolution regime, and sets out amendments to:

- Final Technical Standards (EU Exit) Instruments in the Bank's remit as resolution authority (Appendix B.11).
- Chapter 7 is relevant to FMIs, and sets out amendments to:
  - Final Bank SS 'Non-binding Bank materials relating to Financial Market Infrastructure Supervision: The Bank's approach after the UK's withdrawal from the EU' (Appendix B.12); and
  - Final Technical Standards (EU Exit) Instruments in the Bank's remit as FMI competent authority (Appendices B.13 – B.14).
- Chapter 8 sets out the Bank's and PRA's obligations under the European Union (Withdrawal) Act 2018.
- Chapter 9 sets out the PRA's obligations under the Financial Services and Markets Act 2000 (FSMA).

## Appendices

- Section A Appendices: Final and near-final transitional directions and guidance.
- Section B Appendices: NtA non-binding materials, Binding Technical Standards, and PRA rules.

## Background

1.7 The UK's membership of the European Union (EU) came to an end on Friday 31 January 2020. Under the terms of the Withdrawal Agreement,<sup>6</sup> the UK entered into a transition period during which EU law continues to apply to the UK. The transition period is due to end at 11pm on Thursday 31 December 2020, which is defined in UK law as 'IP completion day'. This date is also referred to in this PS as 'the end of the transition period'.

1.8 The UK's withdrawal from the EU requires changes to be made to UK legislation to ensure that it remains functional after the end of the transition period. The European Union (Withdrawal) Act 2018 (the Act) converts directly applicable EU law (eg EU regulations) into UK law and preserves domestic law that relates to EU membership, including domestic law that was introduced to implement EU directives. This body of law is referred to as 'retained EU law'.

1.9 During the transition period, EU law continues to apply in the UK in the same way as it applied prior to the UK's withdrawal from the EU. This means that new EU legislation or changes to existing EU legislation made before the end of the transition period will form part of the UK body of retained EU law.

1.10 The Act also provides Government ministers with powers to make changes to the law so that it continues to operate effectively after the end of the transition period. These changes are referred to as 'onshoring' or 'NtA' changes.<sup>7</sup> For example, changes may be required to provisions in retained EU law that: have no practical application after the end of the transition period; provide for reciprocal arrangements or rights between the UK and other EU Member States that are no longer in place or are no longer appropriate; or include EU references that are no longer appropriate. The Act refers to such provisions as 'deficiencies'.

<sup>6</sup> The Withdrawal Agreement sets out the terms of the UK's withdrawal from the EU, which took effect at 11pm on 31 January 2020.

<sup>7</sup> Acquis is a shortened form of 'acquis communautaire', which refers to the cumulative body of European Community laws.

1.11 The Government has delegated some of these powers to the Bank, as resolution authority and FMI competent authority, and to the PRA to make relevant changes in FMI rules, the PRA Rulebook, and onshored BTS, for which the Bank and the PRA have been assigned responsibility.<sup>8</sup>

### **The Bank's and PRA's amendments to financial services legislation**

1.12 On Thursday 18 April 2019, the Bank and PRA published their amendments to financial services legislation under the Act.<sup>9</sup> This included final EU Exit Instruments covering onshoring changes to FMI and PRA rules, and BTS in the Bank's and the PRA's remits. The Bank's and PRA's made EU Exit Instruments were due to come into effect on 'exit day' (11pm on Friday 31 January 2020). However, the EU (Withdrawal Agreement) Act 2020 deferred the coming into force of these EU Exit Instruments until IP completion day.

1.13 On Thursday 25 July 2019, the Bank and PRA published CP18/19, which contained a small number of additional draft amendments as a result of financial services legislation that had come into effect since April 2019.<sup>10</sup> These amendments were not made final following the Withdrawal Agreement, and the UK's subsequent entry into the transition period. Consequentially, this PS provides feedback on responses and finalises the policies consulted on in CP18/19.

1.14 On Tuesday 22 September 2020, the Bank and PRA published CP13/20, which contained further proposed amendments to made EU Exit Instruments and some additional draft EU Exit Instruments to reflect legislative changes that will, or are expected to, apply before the end of the transition period and form part of retained EU law.<sup>11</sup> These draft instruments incorporated and, where necessary, updated material originally consulted on in CP18/19.

1.15 With the exception of the PRA Rulebook (EU Exit) Instrument, which has been published as 'near-final', the instruments published in draft in CP13/20, and where relevant CP18/19, are now published in this PS as final. As required by the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the Regulators' Powers SI), the Bank and PRA have made these EU Exit Instruments following HM Treasury's approval and, in respect of three joint EU Exit Instruments, with the FCA's consent.

### **The temporary transitional power**

1.16 The 'Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019' (the FSMA SI) includes a temporary transitional power (TTP). This enables the UK's financial services regulators (the regulators) to delay the application of firms' regulatory obligations where they have changed as a result of onshoring changes made under the Act. This includes onshoring changes that the Bank and PRA makes to rules and BTS, such as those set out in this PS. It also includes such changes to onshored EU legislation, or EU-derived domestic legislation, that the Government makes using its powers under the Act.

1.17 The TTP is available for use by the regulators for a maximum period of two years after the end of the transition period.<sup>12</sup> The Bank and PRA will use the TTP to provide broad transitional relief,

<sup>8</sup> Under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

<sup>9</sup> PSS/19 'The Bank of England's amendments to financial services legislation under the European Union (Withdrawal) Act 2018' April and June 2019: <https://bankofengland.co.uk/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018>.

<sup>10</sup> July 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/uk-withdrawal-from-the-eu-changes-following-extension-of-article-50>.

<sup>11</sup> September 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

<sup>12</sup> As explained in the Explanatory Memorandum to the Financial Services and Economic and Monetary Policy (Consequential Amendments) (EU Exit) Regulations 2020: [https://www.legislation.gov.uk/ukxi/2020/1301/pdfs/ukxiem\\_20201301\\_en.pdf](https://www.legislation.gov.uk/ukxi/2020/1301/pdfs/ukxiem_20201301_en.pdf).

with key exceptions expressly provided for in the Bank's and PRA's transitional directions, for a period of 15 months after the end of the transition period (ie until Thursday 31 March 2022).

1.18 The Bank's and PRA's approach to the TTP remains the same to that which was published in the February version of PS5/19, alongside near-final directions and near-final guidance documents.

1.19 On Tuesday 22 September 2020, in CP13/20, the Bank and PRA published an update on their intended use of the TTP, alongside updated draft Bank and PRA transitional directions, which included the new end date of Thursday 31 March 2022.

1.20 The final Bank and near-final PRA transitional directions are essentially the same as the draft directions that were published as part of CP13/20, aside from the few minor changes set out below and in the directions in Appendices A.1 and A.7.

### **NtA non-binding materials**

1.21 As part of PS5/19, the Bank and PRA published a package of SSs and a SoP. These NtA non-binding materials included:

- joint Bank and PRA SoP 'Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU';
- PRA SS1/19 'Non-binding PRA materials: The PRA's approach after the UK's withdrawal from the EU';
- PRA SS2/19 'PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK's withdrawal from the EU';
- updates to PRA SS18/15 'Depositor and dormant account protection'; and
- Bank SS 'Non-binding Bank materials relating to Financial Market Infrastructure Supervision: The Bank's approach after the UK's withdrawal from the EU'.

1.22 The Bank and PRA have made some minor consequential amendments to the package of NtA non-binding materials to reflect the transition period, for example to amend references to exit day to refer to IP completion day.

1.23 The Bank and PRA have also made some minor further changes to some of these materials. These changes are for clarification purposes and do not constitute policy changes. The overall policy intent of the NtA non-binding materials remains unchanged from that set out in PS5/19. The changes made to NtA non-binding materials are outlined further in Section B of this PS.

### **Responses to CP13/20**

1.24 The PRA received five responses to CP13/20.

### **BTS 2015/2016<sup>13</sup> on the symmetric adjustment of the standard equity capital charge under Solvency II**

1.25 Two responses were received in relation to the PRA's changes to the equity index in BTS 2015/2016 on the symmetric adjustment of the standard equity capital charge.

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<sup>13</sup> Commission Implementing Regulation (EU) 2015/2016.

1.26 One respondent confirmed support for the PRA's changes, noting that the updated equity index would better align the symmetric adjustment to the market movements experienced by UK firms. The other respondent did not comment on the technical substance of the PRA's changes.

1.27 One respondent stated that it was important that the PRA publishes the symmetric adjustment at least monthly, in line with the current European Insurance and Occupational Pensions Authority (EIOPA) timeline. It is the PRA's intention to be consistent with the monthly timescales set out in PS24/20 'Solvency II technical information: The PRA's proposed approach to the publication at the end of the transition period'.<sup>14</sup>

1.28 One respondent suggested that firms would not have the capacity to build and test systems prior to the Thursday 31 December 2020 reference date to accommodate the change in the equity index. The respondent requested a 6-month deferral in the implementation of the PRA's changes to the equity index, in order to allow firms to develop their systems.

1.29 The PRA recognises the need to give firms appropriate notice of the changes to the equity index, so that they can make the necessary system changes. As a result, the PRA will allow firms to apply a symmetric adjustment calculated by reference to the existing equity index (ie the equity index used before the end of the transition period) until Tuesday 30 March 2021.<sup>15</sup> To assist firms, the PRA intends to republish the symmetric adjustment based on the existing equity index, as published by EIOPA, until Tuesday 30 March 2021. From, and including, Wednesday 31 March 2021, firms will need to apply a symmetric adjustment calculated by reference to the updated equity index, which will be published on the PRA's website.

1.30 One respondent considered it important that international groups are able to avoid dual reporting (eg the need to use different symmetric adjustments for solo and group calculation purposes). The respondent requested that the PRA adopt a pragmatic approach, and ensure companies are able to avoid dual reporting.

1.31 The PRA considers that the change in the symmetric adjustment is necessary in order to meet Article 172(1)(a) of the onshored Commission Delegated Regulation 2015/35, which requires the equity index to measure the market price of a diversified portfolio of equities that is representative of the nature of equities typically held by insurance and reinsurance undertakings. Therefore, the PRA considers that its changes will lead to more appropriate symmetric adjustment calculations, and hence a more appropriate Solvency Capital Requirement for UK firms using the standard formula for equity risk. This will help to provide firms with more appropriate levels of countercyclicality in strongly falling, or strongly rising, equity markets in which UK insurers are invested.

1.32 Both respondents also requested more information on the expected difference in the size of the symmetric adjustment produced by the existing equity index as compared to the updated one.

1.33 The PRA has assessed the potential impact of the changes to the equity indices. Based on current market conditions as at Saturday 31 October 2020, the PRA does not expect there to be a significant difference between the symmetric adjustments produced by the existing equity index as compared to the updated one. The actual difference will, however, depend primarily on the comparative state of the UK and EU equity markets at the time of implementation, and thereafter. Therefore, the PRA cannot say for certain whether the changes to the equity index would lead to an increase, or decrease, in insurers' standard formula Solvency Capital Requirements. However, the

<sup>14</sup> December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/solvency-ii-technical-information>.

<sup>15</sup> This three-month delay is achieved via an amendment to the 'near-final' PRA transitional direction published as part of this PS.

PRA intends to publish the symmetric adjustment calculated by reference to the updated equity index in advance of 30 March 2021, which will assist firms in understanding the differences arising from the existing and updated equity indices.

### **BTS 2016/2251<sup>16</sup> on bilateral margining**

1.34 The PRA received one response that welcomed the Bank's and PRA's intention to set the same 15-month period of transitional relief as was proposed in relation to 'exit day'. However, the respondent requested that the PRA and FCA extend the period of specific transitional relief to two years. At this time, the PRA and FCA consider that 15 months remains an appropriate amount of time for firms to update documentation for existing counterparty relationships.

1.35 The respondent also requested that European Economic Area (EEA) units, or shares, in non-UK undertakings for the collective investment in transferable securities (UCITS) remain eligible collateral for initial margin beyond the transitional relief period. In the European Market Infrastructure Regulation (EMIR) (No. 3) Instrument,<sup>17</sup> the PRA had limited eligibility to units, or shares, in UK UCITS only. As a general principle, the Government's amendments to retained EU law have been prepared on the basis that the UK would treat the EU and its Member States as it currently treats other third countries. As all non-UK UCITS are established within the EEA, the PRA's proposed changes to the eligibility of UCITS in the EMIR (No. 3) Instrument are consistent with this general approach.

1.36 The respondent also queried the operational process for intragroup exemptions from margin under BTS 2015/2205<sup>18</sup> on the clearing obligation. The UK has implemented transitional provisions under EMIR to ensure that the regime for intragroup exemptions from margin will allow UK firms to continue to trade with non-UK group entities after IP completion day. The FCA has published a statement setting out the process for firms in relation to existing and new intragroup exemptions from margin between UK firms and their third country group entities.<sup>19</sup>

1.37 To address particular considerations raised, UK firms with existing intragroup exemptions from margin with their third-country group entities will continue to benefit from those exemptions for both existing and new transactions entered into during the transition period (and may continue into the UK regime with no need for re-notification). For any new exemptions that require a response during the period of Monday 21 December 2020 to IP completion day, the FCA will provide an indicative response to the application and, if necessary, can reconfirm the outcome following IP completion day.

1.38 HM Treasury has published directions unilaterally, providing equivalence in relation to intragroup exemptions from margin between UK firms and EEA group entities.<sup>20</sup> The FCA has also published a statement setting out the process for firms to follow in this scenario.<sup>21</sup>

### **New market risk BTS as part of the Fundamental Review of the Trading Book**

1.39 The PRA received one response in relation to the new BTS on liquidity horizons, which was expected to come into force before the end of the transition period as part of the implementation of the Internal Model Approach under the Fundamental Review of the Trading Book (FRTB) in the

<sup>16</sup> Commission Delegated Regulation (EU) 2016/2251.

<sup>17</sup> The Technical Standards (European Market Infrastructure) (EU Exit) (No. 3) Instrument 2019, available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/ps519-section-b-app3-emir-april-2019.pdf>.

<sup>18</sup> Commission Delegated Regulation (EU) 2015/2205.

<sup>19</sup> November 2020: <https://www.fca.org.uk/firms/european-market-infrastructure-regulation-emir/news>.

<sup>20</sup> Available at: <https://www.gov.uk/government/publications/hm-treasury-equivalence-decisions-for-the-eea-states-9-november-2020>.

<sup>21</sup> Available at: <https://www.fca.org.uk/firms/european-market-infrastructure-regulation-emir/news>.

Capital Requirements Regulation (EU) (575/2013) (CRR) by Regulation (EU) (2019/876) (CRR 2). The BTS on liquidity horizons has not come into force and will not form part of retained EU law, so the PRA's proposed onshoring changes are no longer relevant.

### PRA Depositor Protection rules

1.40 The PRA additionally received two responses in relation to its changes to the Depositor Protection Part of the PRA Rulebook. These responses related to areas that were not covered in CP13/20, to which the PRA had previously consulted on in CP26/18.<sup>22</sup> One respondent highlighted two minor typographical errors in the draft PRA Rulebook (EU Exit) Instrument, which the PRA has now corrected in the near-final PRA Rulebook (EU Exit) Instrument in Appendix B.5.

### Responses to CP18/19

1.41 The PRA received three responses to CP18/19. One respondent welcomed the PRA's intention to extend the end date of transitional relief. This end date has been extended again to account for the transition period. Respondents also made a number of observations and requests for clarification relating to the Temporary Permission Regime (TPR) and Stay in Resolution rules which were not related to the issues covered in CP18/19. The PRA notified these respondents of previously communicated PRA policy as necessary.

### Updates to transitional directions

1.42 The Bank and PRA have made only limited changes to the transitional directions published as part of CP13/20:

- the Bank and PRA have removed the express exception in relation to Article 2 EMIR from their transitional directions following HM Treasury's equivalence directions granting the EEA equivalence for Article 2a EMIR.<sup>23</sup> There is no impact on firms and FMIs in the removal of this exception, as HM Treasury's equivalence direction would supersede the exception if it were retained in the transitional directions;
- the PRA has amended its transitional direction to allow firms to use either the existing EU template or the onshored UK template for their securitisation disclosures, to align with the FCA's transitional direction in this area;
- the PRA has amended its transitional direction to delay the impact on firms of its changes to the equity index used for the calculation of the symmetric adjustment until three months after the end of the transition period. This means that firms can continue to apply a symmetric adjustment calculated by reference to the existing equity index (ie the equity index used before the end of the transition period) until Tuesday 30 March 2021; and
- the PRA has removed references to the European Banking Authority's (EBA's) draft material risk takers BTS from its transitional direction, because this BTS has not yet been adopted by the EU and so will not form part of retained EU law.

### Changes to EU Exit Instruments

1.43 The PRA has made only two limited further changes to its final and near-final EU Exit Instruments which were not consulted on in CP13/20, or any other relevant PRA consultation:

<sup>22</sup> January 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-changes-to-pra-rulebook-and-onshored-bts>.

<sup>23</sup> November 2020, HM Treasury equivalence decisions for the EEA States, available at: <https://www.gov.uk/government/publications/hm-treasury-equivalence-decisions-for-the-eea-states-9-november-2020/hm-treasury-equivalence-decisions-for-the-eea-states-9-november-2020>.

- the PRA has removed the definition of State aid from the Glossary of the PRA Rulebook, and updated the related definition of extraordinary public financial support to reflect the definition of that term in section 3(1) of the Banking Act 2009, as amended by the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020;<sup>24</sup> and
- the PRA has updated the definitions of matching adjustment, volatility adjustment and relevant risk-free rate term structure in the Glossary of the PRA Rulebook with a minor clarification.

1.44 The PRA is expected to make a number of new rules before the end of the transition period to implement CRD V. Some of these rule changes give rise to additional deficiencies, which require amending to ensure they remain operable. The PRA's CRD V consultations included companion Rulebook (EU Exit) Instruments containing the PRA's onshoring changes. These onshoring changes have now been incorporated into the near-final PRA Rulebook (EU Exit) Instrument 2020.

1.45 In CP13/20, the PRA consulted on its amendments to BTS which were expected to come into force before the end of the transition period, on the basis of draft texts published by the European Supervisory Authorities (ESAs). These BTS have either not yet been adopted by the EU, or will not apply before the end of the transition period, so do not form part of retained EU law. The PRA has adjusted its approach accordingly, and these changes are outlined further in Section B of this PS.

#### NtA changes made under the Act

1.46 The changes made to EU Exit Instruments since CP13/20 are minor. The Bank and PRA consider that these changes meet the obligations under the Act as set out in Chapter 8 of this PS.

#### NtA changes made under FSMA

1.47 One area of the PRA Rulebook (EU Exit) Instrument, relating to FSCS levies, was originally consulted on and made under FSMA. There have not been any further changes to these rules since they were published in the final PRA Rulebook (EU Exit) Instrument appended to PS5/19.

#### Implementation and next steps

1.48 The PRA transitional direction, PRA Rulebook (EU Exit) Instrument, and related guidance documents are published as 'near-final'. The PRA will make its final transitional direction and PRA Rulebook (EU Exit) Instrument before the end of the transition period, once the PRA's rules implementing CRD V have been made.

1.49 The remainder of the materials published as part of this PS are final. This includes Bank and PRA Technical Standards (EU Exit) Instruments, NtA non-binding materials, and the Bank transitional direction and related guidance documents.

1.50 The transitional directions and Technical Standards (EU Exit) Instruments will all commence on IP completion day (11pm on Thursday 31 December 2020). Most provisions of the updated PRA Rulebook (EU Exit) Instrument will also commence on IP completion day, although a small number of provisions will take effect at different times as explained in the commencement provision. All NtA non-binding materials will become applicable on IP completion day.

1.51 These final instruments will sit alongside the other final EU Exit Instruments published in Section B of the April 2019 version of PS5/19. These instruments will also commence on IP completion day.

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<sup>24</sup> Available at: <https://www.legislation.gov.uk/ukxi/2020/1470/contents/made>.

1.52 All EU Exit Instruments and related policy documents, transitional directions, and transitional guidance documents can be found on the 'Transitioning to post-exit rules and standards' webpage.<sup>25</sup>

1.53 The Bank and/or PRA may issue further statements in relation to this topic, including in relation to any EU materials issued after the publication of this PS.

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<sup>25</sup> Available at: <https://www.bankofengland.co.uk/eu-withdrawal/transitioning-to-post-exit-rules-and-standards>.

## Section A: Use of the temporary transitional power

### 2 Transitional Directions

2.1 This section sets out updates and clarifications made to the Bank's final and PRA's near-final transitional directions. The transitional directions are essentially the same as the draft directions published as part of CP13/20, aside from the few minor changes set out below. The Bank's final and PRA's near-final transitional directions are in Appendices A.1 and A.7.

#### Updates and clarifications

2.2 **EMIR 2a:** The Bank and PRA have altered their transitional directions following HM Treasury's equivalence directions that grant the EEA equivalence for Article 2a EMIR. Obligations relating to the definition of 'OTC derivative' in Article 2 EMIR were previously explicitly excluded from the February 2019 near-final directions, and the September 2020 draft directions. There is no impact on firms and FMIs in the removal of this exception, as HM Treasury's equivalence direction would supersede the exception if it were retained in the transitional directions.

2.3 **The symmetric adjustment of the equity capital charge:** The PRA has amended its transitional direction to delay the impact on firms of its changes to the equity index used to calculate the symmetric adjustment until three months after the end of the transition period. This means that firms can continue to apply a symmetric adjustment calculated by reference to the existing equity index (ie the equity index used before the end of the transition period) until Tuesday 30 March 2021. This will give firms appropriate notice to make the necessary systems changes to apply a symmetric adjustment calculated by reference to the updated equity index from Wednesday 31 March 2021.

2.4 **Securitisation disclosures:** The PRA has amended its transitional direction as a result of the new securitisation disclosure BTS 2020/1224.<sup>26</sup> The FCA consulted on its onshoring changes to the securitisation disclosure BTS in its September 2020 Quarterly Consultation Paper, jointly with the PRA.<sup>27</sup> The FCA has now finalised these changes in its December 2020 Handbook Notice, with the PRA's consent.<sup>28</sup> The PRA has amended its transitional direction to allow firms to use either the existing EU template or the onshored UK template for securitisation disclosures. This is to align with the FCA's approach to transitional relief in this area.

2.5 **Remuneration:** The PRA intends to provide former passporting firms with transitional relief upon the Remuneration Part of the PRA Rulebook commencing to apply to them. The related provisions in the PRA transitional direction contained references to the EBA's draft material risk takers BTS, which the PRA had expected to enter into force before the end of the transition period. This BTS has not yet been adopted by the EU, and as a result the PRA has removed the related references from the PRA transitional direction.

2.6 On Thursday 28 February 2019, the Bank and PRA published guidance on their transitional directions.<sup>29</sup> This package of materials contained two general guidance notes and six specific guidance notes on the Bank's and PRA's transitional directions. The Bank and PRA published the

<sup>26</sup> Commission Delegated Regulation (EU) 2020/1224.

<sup>27</sup> Available at: <https://www.fca.org.uk/publication/consultation/cp2018-quarterly-consultation-paper-no-29.pdf>.

<sup>28</sup> Available at: <https://www.fca.org.uk/publication/handbook/handbook-notice-83.pdf>.

<sup>29</sup> Available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/the-boes-amendments-to-financial-services-legislation-under-the-eu-withdrawal-act-2018.pdf?la=en&hash=1B26AA88A7DCA56C731498A74DB2B688EC79CD58>.

updated general guidance notes on Thursday 1 October 2020, and the updated specific guidance notes on Friday 13 November 2020.<sup>30</sup>

2.7 The Bank and PRA have now updated this guidance to reflect the small number of changes to the transitional directions described in this chapter and CP13/20, and to provide further clarification where necessary. The guidance can be found in Appendices A.2, A.3, A.4, A.5, A.6, A.8, A.9 and A.10. The guidance documents relating to the PRA's transitional direction have been published as near-final. These documents will be published as final once the PRA's transitional direction has been made.

### **Requirements relating to the use of the temporary transitional power**

2.8 Pursuant to Regulation 202(3) of the FSMA SI, the Bank and PRA have consulted HM Treasury on the drafts of their transitional directions. The Bank, PRA, and FCA are also subject to an obligation under Regulation 202 to consult each other on how they use the transitional power. Consistent with these obligations, the approach set out in this PS, as in PS5/19 in February 2019, has benefited from close co-ordination and consultation with HM Treasury and the FCA. The Bank, PRA, and FCA have actively engaged and ensured that their respective approaches to the use of the transitional power is generally aligned.

2.9 Regulation 203 of the FSMA SI provides that regulators must prepare an explanation of the purpose of the transitional directions, guidance in connection with the transitional directions that the regulators consider appropriate, and a statement that they are satisfied that the statutory criteria for making the directions are met. This PS, alongside the transitional directions and guidance set out in Appendices A.1 to A.10, meet these obligations, and provides firms and FMIs with an explanation of the Bank's and PRA's use of the transitional power.

2.10 Regulation 205 of the FSMA SI also notes that regulators must provide annual reports to Parliament in relation to the exercise of the powers. On Thursday 17 September 2020, HM Treasury laid in Parliament the Bank's and PRA's report covering the financial year ending Saturday 29 February 2020.<sup>31</sup> The Bank and PRA will report on the use of the power for the financial year ending Sunday 28 February 2021 after the end of that financial year.

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<sup>30</sup> Available at: <https://www.bankofengland.co.uk/eu-withdrawal/temporary-transitional-power>.

<sup>31</sup> Available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/exercise-of-sub-delegated-powers-under-eu-withdrawal-act-2018>.

## Section B: Nationalising the Acquis

B.1 This section sets out updates made to final Bank and PRA Technical Standards (EU Exit) Instruments, the near-final PRA Rulebook (EU Exit) Instrument, and NtA non-binding materials. It also highlights a number of small further changes that have not previously been consulted on.

B.2 All NtA non-binding materials have been updated to reflect the transition period. These updates are, for example, to amend references to exit day to refer to IP completion day, or in some places the end of the transition period.

### 3 Updated guidance on EU Guidelines and Recommendations

3.1 The Bank and PRA have updated the list of Guidelines and Recommendations in the appendices of the SoP (in Appendix B.1) with new Guidelines and Recommendations that the UK has notified compliance with before the end of the transition period. Appendix 4 of the SoP has also been re-named as 'Individual Guidelines where explanation has been provided that the UK does not intend to comply either in whole or in part'. This reflects that, for some Guidelines, the UK has explained partial-compliance or non-compliance.

3.2 The Bank and PRA have also added some additional examples where Guidelines and Recommendations may no longer be relevant after the end of the transition period. This includes instances in the future where the Bank or PRA confirms that a Guideline or Recommendation no longer needs to be complied with in the UK, or where a Guideline or Recommendation has been fully, or in part, integrated into a separate UK policy.

3.3 The Bank and PRA have also explained that they expect firms and FMIs to make every effort to continue to comply with EU Guidelines and Recommendations that are in place as at the end of the transition period, to the extent that these remain relevant. The Bank and PRA do not expect firms to comply with changes to existing Guidelines and Recommendations made by EU authorities after the end of the transition period. The Bank and PRA will consider their approach to such developments and other non-legislative EU material, and may issue further statements in relation to them.

3.4 In order to aid firms and FMIs, the Bank and PRA have republished copies of EU Guidelines and Recommendations applicable as at the end of the transition period. Links to these Guidelines and Recommendations can be found in the appendices of the SoP. The Bank and PRA have not made amendments to the content of individual Guidelines and Recommendations.

3.5 These changes are for clarification purposes, and do not constitute a policy change. The overall policy intent of the SoP remains unchanged from that published in February 2019.

## 4 PRA Rulebook, BTS, and NtA non-binding materials

### SS1/19 on PRA non-binding materials

4.1 The final SS1/19 in Appendix B.2 has been updated to reflect the transition period.

### SS2/19 on PRA reporting and disclosure requirements and regulatory transactions forms

4.2 In CP13/20, the PRA proposed to remove EU-related references that are no longer relevant due to updates to reporting templates, and to add one additional clarification and a correction. The PRA did not receive any feedback in relation to these changes, which have now been finalised in the SS2/19 in Appendix B.3.

4.3 The PRA also proposed to amend SS2/19 to reflect a distinctive element of the new IFRS 9 benchmarking instructions due to amendments to BTS 2016/2070,<sup>32</sup> which were expected to be in force before the end of the transition period. These amendments have not been adopted by the EU, as initially expected, and the PRA has accordingly not made these changes in its final policy.

### SS18/15 on depositor protection

4.4 The PRA has updated the final SS18/15 in Appendix B.4 to reflect the most recently published waiver by consent available in respect of the PRA's Continuity of Access rules in the Depositor Protection Part of the PRA Rulebook.

### PRA Rulebook changes

4.5 Unlike the other EU Exit Instruments appended to this PS, which are either new or amending instruments, the entire PRA Rulebook (EU Exit) Instrument which was made in April 2019, and updated in June 2019, will be revoked and remade in updated form. This is for transparency purposes, to ensure greater ease of reading, as many parts of the PRA Rulebook (EU Exit) Instrument have been affected by minor technical formatting changes.

4.6 The near-final PRA Rulebook (EU Exit) Instrument 2020 in Appendix B.5 contains the following changes from the previous April 2019 PRA Rulebook (EU Exit) Instrument, which were included in the draft consulted on in CP13/20:

- **Amendments to new rules:** The PRA has made a number of new rules since the PRA Rulebook (EU Exit) Instrument was made on Tuesday 9 April 2019. Some of these rules require amending to ensure that they remain operable after the end of the transition period. Where amendments to new rules have created additional deficiencies, the relevant consultations included a companion PRA Rulebook (EU Exit) Instrument. These onshoring amendments have been incorporated in the 'near-final' PRA Rulebook (EU Exit) Instrument.
- **Minor Rulebook technical changes:** The PRA has made a small number of clarifications, along with formatting and technical changes, to the PRA Rulebook (EU Exit) Instrument.
- **Amendments of references to exit day:** The PRA has amended references to exit day in the PRA Rulebook to refer to IP completion day.

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<sup>32</sup> Commission Implementing Regulation (EU) 2016/2070.

- **Risk Transformation rules:** The PRA has made some minor consequential rule changes to the Insurance Special Purpose Vehicles (ISPV) Part of the PRA Rulebook, as a result of the Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019.<sup>33</sup>
- **Solvency 2 Gibraltar consequential amendments:** The PRA has made consequential changes in the Glossary and Solvency II Groups Supervision Part of the PRA Rulebook, due to specific amendments made in the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019.<sup>34</sup>
- **Credit Union transitional provision:** The PRA has updated the end date of the specific transitional provision for Credit Union EEA investments in the Credit Union Part of the PRA Rulebook to Thursday 31 March 2022. This is to align the overall duration of transitional relief provided in this area with the temporary transitional power.
- **Mortgage reporting rules:** The PRA has made two minor onshoring amendments to the Regulatory Reporting Part of the PRA Rulebook. This is the result of new rules to increase the data that mortgage lenders and administrators are required to submit via the Product Sales Data Return and the Mortgage Lending and Administration Return.
- **Definition of micro, small, and medium-sized enterprises:** The PRA has amended the definition of micro, small, and medium-sized enterprises in the Depositor Protection and Contractual Recognition of Bail-in Parts of the PRA Rulebook. This is to clarify that the calculation of the relevant turnover criteria in the definition takes into account all provisions in the Annex to Commission Recommendation 2003/361/EC, including any relevant data from partner enterprises or linked enterprises in accordance with Article 3 of that Annex.
- **Fees rules:** The PRA has simplified its rules on the fees payable by firms submitting variation of permission applications, so that a fee is payable only for the most complex and resource-intensive applications.<sup>35</sup> Consequentially, the PRA has deleted its onshoring amendments to Rule 4.6A of the Fees Part of the PRA Rulebook (EU Exit) Instrument.

4.7 The PRA has made some changes to the near-final PRA Rulebook (EU Exit) Instrument 2020, in addition to those which were consulted on in CP13/20. These are:

- **Amendments to new rules implementing CRD V:** The PRA is expected to make a number of new rules before the end of the transition period, implementing elements of CRD V. Some of these rule changes create additional deficiencies, which require amending to ensure they remain operable. The PRA's CRD V consultations included companion PRA Rulebook (EU Exit) Instruments containing the relevant onshoring changes. As put forward in CP13/20, these onshoring changes have now been incorporated in the 'near-final' PRA Rulebook (EU Exit) Instrument.
- **Minor Rulebook technical changes:** The PRA has made a small number of minor clarifications and updates to the PRA Rulebook (EU Exit) Instrument.
- **Definition of State aid and extraordinary public financial support:** In line with the Government's approach on subsidy control, the PRA has removed the definition of State aid from the Glossary of the PRA Rulebook, and updated the related definition of extraordinary

<sup>33</sup> Available at: <https://www.legislation.gov.uk/ukxi/2019/1233/made>.

<sup>34</sup> Available at: <https://www.legislation.gov.uk/ukxi/2019/680/contents/made>.

<sup>35</sup> 'Regulated fees and levies: Rates for 2020/21', July 2020: <https://www.bankofengland.co.uk/prudentialregulation/publication/2020/regulated-fees-and-levies-rates-proposals-2020-21>.

public financial support. This is to reflect the definition of that term in section 3(1) of the Banking Act 2009 as amended by the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020.<sup>36</sup>

- **Definitions related to Solvency II technical information:** The PRA has updated the definitions of matching adjustment, volatility adjustment, and relevant risk-free rate term structure in the Glossary of the PRA Rulebook. This is to clarify that, for the purpose of calculating technical provisions, firms should use EIOPA published technical information for all periods before IP completion day, and PRA published technical information for all periods falling on, or after, IP completion day. Firms should refer to PS24/20 for more information on the PRA's approach to publishing technical information.<sup>37</sup>

## PRA BTS changes

4.8 The PRA's amendments to onshored BTS have now been finalised in the made EU Exit Instruments in Appendices B.6 – B.9.

4.9 The PRA has made a number of changes to the draft instruments published as part of CP13/20. These changes reflect that, in CP13/20, the PRA consulted on its amendments to BTS which were expected to come into force before the end of the transition period, on the basis of draft texts published by the ESAs. These BTS have either not yet been adopted by the EU, or will not apply before the end of the transition period, and the PRA has adjusted its approach accordingly. These changes are explained further below.

4.10 The amendments contained in the PRA's final instruments are:

- **The PRA Consequential Amendments Instrument:**<sup>38</sup> The PRA has amended references to exit day in existing EU Exit Instruments, to refer to IP completion day.
- **Capital Requirements (No.4) Instrument:**<sup>39</sup>
  - **BTS 2016/1646**<sup>40</sup> **on main indices and recognised exchanges for use in prudential calculations for credit institutions and investment firms – PRA Part:** The PRA has updated the related lists in the BTS to remove EU 'recognised exchanges' at the end of the transition period.
  - **BTS 2016/1799**<sup>41</sup> **on the mapping of external credit assessment institutions' (ECAIs) credit ratings to credit quality steps for the Standardised Approach to credit risk in the CRR – PRA Part:** The PRA has updated the mappings in the BTS to refer to new UK legal entities of Credit Rating Agency (CRA) groups, where the mappings previously only referred to the specific EU legal entities. These changes have been made to ensure consistency with the FCA's part of the BTS.
  - **BTS 2016/1801**<sup>42</sup> **on the mapping of ECAIs' credit ratings to credit quality steps for securitisation exposures in the CRR – PRA part:** The PRA has updated the mappings in the

<sup>36</sup> Available at: <https://www.legislation.gov.uk/ukxi/2020/1470/contents/made>.

<sup>37</sup> December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/solvency-ii-technical-information>.

<sup>38</sup> The PRA Technical Standards (Consequential Amendment) Instrument 2020.

<sup>39</sup> The Technical Standards (Capital Requirements) (EU Exit) (No. 4) Instrument 2020.

<sup>40</sup> Commission Implementing Regulation (EU) 2016/1646.

<sup>41</sup> Commission Implementing Regulation (EU) 2016/1799.

<sup>42</sup> Commission Implementing Regulation (EU) 2016/1801.

BTS to refer to new UK legal entities of CRA groups, where the mappings previously only referred to the specific EU legal entities.

- **BTS 680/2014<sup>43</sup> on supervisory reporting – PRA part:** Amending BTS 2020/429<sup>44</sup> added a new provision to Article 5(b)(1) of BTS 680/2014 stating that: 'Institutions shall be exempted from submitting those securitisation details where they are part of a group in the same country in which they are subject to own funds requirements'. As a consequence, the PRA has deleted reference to 'same country' and clarified that the exemption applies to firms which are subject to own funds requirements 'in the United Kingdom on a consolidated basis' in BTS 680/2014.
- **BTS 241/2014<sup>45</sup> on own funds requirements for institutions – PRA part:** Due to adaptations in the EEA agreement, the PRA had deleted Liechtenstein and Norwegian entities from the list of entities that qualify as cooperative societies and savings institutions in the BTS.<sup>46</sup>
- **Solvency 2 (No.2) Instrument:<sup>47</sup>**
  - **BTS 2015/462<sup>48</sup> on establishing ISPVs:** The PRA has made some minor changes to this BTS, as a consequence of onshoring changes in the Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019 which relate to ISPVs.
  - **BTS 2016/1800<sup>49</sup> on the mapping of ECAIs' credit ratings to credit quality steps for Solvency Capital Requirements:** The PRA has updated the mappings in the BTS to refer to new UK legal entities of CRA groups, where the mappings previously only referred to the specific EU legal entities.
  - **BTS 2015/2016<sup>50</sup> on the symmetric adjustment of the equity risk capital charge:** The PRA has updated the equity index in the BTS to ensure that the index is representative of the equities held by UK insurers, as a consequence of onshoring changes to Article 172(1)(a) of Commission Delegated Regulation 2015/35.
- **EMIR (No.5) Instrument:<sup>51</sup>**
  - **BTS 2016/225152 on bilateral margining:** The PRA and FCA have updated the end date of the transitional provisions in this BTS to Thursday 31 March 2022 to align with the updates to the PRA's transitional direction. The PRA and FCA have also aligned the specific transitional provisions in this BTS relating to credit ratings to align with the 12-month period contained in the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019.<sup>53</sup> The PRA and FCA have also revised some corrections to this BTS made by the EMIR

<sup>43</sup> Commission Implementing Regulation (EU) 680/2014.

<sup>44</sup> Commission Implementing Regulation (EU) 2020/429.

<sup>45</sup> Commission Delegated Regulation (EU) 241/2014.

<sup>46</sup> The Financial Services Annex to the EEA Agreement applies EU financial services legislation to the EEA-European Free Trade Association (EFTA) countries (Norway, Iceland, and Liechtenstein) together with 'adaptations'. These adaptations form part of retained EU law, where relevant.

<sup>47</sup> The Technical Standards (Solvency II Directive) (EU Exit) (No. 2) Instrument 2020.

<sup>48</sup> Commission Implementing Regulation (EU) 2015/462.

<sup>49</sup> Commission Implementing Regulation (EU) 2016/1800.

<sup>50</sup> Commission Implementing Regulation (EU) 2015/2016.

<sup>51</sup> The Technical Standards (European Market Infrastructure) (EU Exit) (No. 5) Instrument 2020.

<sup>52</sup> Commission Delegated Regulation (EU) 2016/2251.

<sup>53</sup> Available at: <https://www.legislation.gov.uk/ukxi/2019/266/contents/made>.

(No. 3) Instrument in April 2019.<sup>54</sup> Due to the passage of time, these corrections are no longer appropriate, and are explained further below.

4.11 The PRA has also made the following amendments or deletions to the instruments published as part of CP13/20, which reflect that a number of the BTS which were expected to come into force before the end of the transition period have not done so:

- **Capital Requirements (No.4) Instrument:**

- **BTS on backtesting and profit and loss attribution (PLA) test requirements, which prescribes the two internal model approach tests on backtesting and PLA requirements:** The PRA has deleted its onshoring changes to this BTS from the CRR (No. 4) Instrument.
- **BTS on liquidity horizons, which prescribes the criteria for mapping risk factors to the liquidity horizons specified in CRR 2 under the internal model approach:** The PRA has deleted its onshoring changes to this BTS from the CRR (No. 4) Instrument.
- **BTS on risk retention:** The PRA has deleted its onshoring changes to this BTS from the CRR (No. 4) Instrument. As a result, the existing risk retention BTS 625/2014,<sup>55</sup> and the PRA's onshoring changes to this BTS in the CRR (No. 3) Instrument<sup>56</sup> both remain in force. The related onshoring changes in the Securitisation (No. 1) Instrument<sup>57</sup> have also been deleted.
- **BTS on material risk takers (MRT):** The PRA has deleted its onshoring changes to this BTS from the CRR (No. 4) Instrument. As a result, the existing MRT BTS 604/2014<sup>58</sup> remains in force, and the PRA's onshoring changes to this BTS in the CRR (No. 3) Instrument remain in force. If the existing MRT BTS 604/2014 remains in force and is onshored into UK law, the PRA is aware that there will be a discrepancy between MRT BTS 604/2014, which is directly applicable in UK law, and the revised draft BTS which has been used as the basis for the PRA's changes to the Remuneration Part of the Rulebook to transpose CRD V, as set out in PS26/20 'Capital Requirements Directive V (CRD V).<sup>59</sup> The PRA intends to update the onshored MRT BTS 604/2014 to ensure it aligns with the PRA's rules and expectations. The PRA envisages consulting on these proposed amendments at the earliest possible stage in 2021.

- **Securitisation (No. 1) Instrument:**

- **BTS on risk retention:** The PRA has deleted its onshoring changes to this BTS from the Securitisation (No. 1) Instrument, and this Instrument has accordingly not been made. The related onshoring changes in the CRR (No. 4) Instrument have also been deleted.

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<sup>54</sup> The Technical Standards (European Market Infrastructure) (EU Exit) (No. 3) Instrument 2019, available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/ps519-section-b-app3-emir-april-2019.pdf>.

<sup>55</sup> Commission Delegated Regulation (EU) No 625/2014.

<sup>56</sup> The Technical Standards (Capital Requirements) (EU Exit) (No. 3) Instrument 2019, available at: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2019/ps519-section-b-app3-crr3-april-2019.pdf>.

<sup>57</sup> The Technical Standards (Securitisation) (EU Exit) (No. 1) Instrument 2020, which was published in draft as part of CP13/20.

<sup>58</sup> Commission Delegated Regulation (EU) No 604/2014.

<sup>59</sup> December 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v-further-implementation>.

- **EMIR (No. 5) Instrument:**

- **BTS 2016/2251<sup>60</sup> on bilateral margining:** The PRA and FCA had expected a number of amendments to BTS 2016/2251 at EU level to be in force before the end of the transition period. These amendments included: (i) extending the initial margin implementation phase-in timelines and adjusted thresholds; and (ii) delayed application of the rules to physically settled foreign exchange (FX) forward and swap contracts with end users, intragroup contracts, and equity option contracts. These EU amendments have not yet entered into force and, given the remaining EU procedural processes outstanding, are not expected to apply before the end of the transition period.<sup>61</sup> Therefore, the final EMIR (No. 5) Instrument published in this PS differs, in some respects, from the draft version published in CP13/20. In the absence of the EU amendments to BTS 2016/2251:
  - (i) Draft Article 31a, relating to the treatment of physically settled FX forward and swap contracts, will not form part of retained EU law and therefore no PRA corrections to this Article are needed.
  - (ii) The phase-in timelines and thresholds in Article 36(1), as it forms part of retained EU law, will not reflect the final initial margin implementation phases envisaged in the Basel Committee on Banking Supervision (BCBS) / International Organization of Securities Commissions (IOSCO) standard. In the EMIR (No. 3) Instrument, the PRA had deleted Articles 36(1)(d) and (e) on the basis that these provisions would not have formed part of domestic law after 'exit day' if the UK had left the EU in April 2019. Due to the passage of time, these deletions are no longer appropriate, and are reversed in the EMIR (No. 5) Instrument published in this PS. Similarly, the drafting notes added to the text of the onshored BTS to explain why those provisions had been deleted are no longer relevant.
  - (iii) The PRA's corrections to Article 36(2)–(3) and Article 37 in the EMIR (No. 3) Instrument remain accurate. Therefore, there is no need for the PRA to make the updated corrections that it had proposed in CP13/20. Corrections to Article 36(2)–(3) and Article 37 do not appear in the final EMIR (No. 5) Instrument published in this PS because the corrections in the EMIR (No. 3) instrument still stand.
  - (iv) The exemption for single-stock equity and index options in Article 38(1), as it forms part of retained EU law, expired in January 2020. The PRA's corrections in the EMIR (No. 5) Instrument published in this PS reflect the expiry of this exemption.
- The PRA's approach in the final EMIR (No. 5) instrument published in this PS is consistent with the approach taken by the Government, and the scope of the delegated power that the PRA is exercising, not to make amendments that are unrelated to the UK's withdrawal from the EU or the end of the transition period. The restrictions on the PRA's exercise of this power are described in paragraphs 8.1-8.3 below.

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<sup>60</sup> Commission Delegated Regulation (EU) 2016/2251.

<sup>61</sup> There remains the possibility that the proposed amendments enter into force in the EU before the end of the transition period and form part of retained EU law in the UK. If that happens, the corrections made by the EMIR (No.3) Instrument (as amended by the EMIR (No.5) Instrument published in this PS) may not fully or correctly address all deficiencies in the onshored BTS. In this scenario the PRA will make further amendments to the BTS to address these deficiencies. Depending on timing, this may occur after the end of the transition period.

- After the end of the transition period, the Bank, PRA, and FCA will have new powers to make wider-ranging amendments to onshored BTS. The PRA and FCA are considering which aspects of the onshored BTS 2016/2251 should be adjusted following the end of the transition period. At a minimum, the PRA and FCA will clarify the application of the final initial margin implementation phases envisaged in the BCBS/IOSCO standard. The PRA is also considering the pending amendments which were consulted on in CP13/20, but which are not included in the final EMIR (No. 5) Instrument. The PRA and FCA intend to consult in Q1 2021 on these issues.
- The PRA and FCA are aware of the current gaps between the BTS requirements, firm practice, and the pending BTS amendments proposed by the EU regulators. These gaps will persist in the UK after IP completion day. The ESAs have previously issued guidance that they expect competent authorities to apply the EU framework in a risk-based and proportionate manner until the amended BTS enters into force.<sup>62</sup> The PRA and FCA have been supervising on this basis. At this stage, the PRA and FCA do not propose to alter the supervisory approach, pending the outcome of the Q1 2021 consultation. This reflects the costs and burden of implementing requirements that are potentially subject to amendment. However, this supervisory approach only applies to those aspects of the requirements where changes have been proposed in draft by EU regulatory authorities. The PRA and FCA will consider the implications of any conclusions of the consultation on their supervisory approach, and will update firms at that time.

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<sup>62</sup> Available at: [https://www.esma.europa.eu/sites/default/files/library/esas\\_2020\\_09\\_-\\_final\\_report\\_-\\_bilateral\\_margin\\_amendments.pdf](https://www.esma.europa.eu/sites/default/files/library/esas_2020_09_-_final_report_-_bilateral_margin_amendments.pdf).

## 5 Final Bank (Resolution and FMI) BTS

5.1 The Bank, as resolution authority and FMI competent authority, has amended references to exit day in relevant existing EU Exit Instrument to refer to IP completion day. The final Bank Consequential Amendments Instrument<sup>63</sup> in Appendix B.10 will make these changes.

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<sup>63</sup> The Bank Technical Standards (Consequential Amendments) (EU Exit) Instrument 2020.

## 6 Final Resolution BTS

6.1 The Bank's, as resolution authority, amendments to onshored BTS have now been finalised in the made EU Exit Instruments in Appendix B.11. The amendments contained in the Bank's final instruments consist of:

- **BRRD (No.3) Instrument:**<sup>64</sup>
  - **BTS 2019/348**<sup>65</sup> **on Simplified Obligations:** The Bank consulted on its onshoring changes to this BTS in CP32/18 'UK withdrawal from the EU: Further changes to 'PRA Rulebook and Binding Technical Standards' and 'Resolution Binding Technical Standards'.<sup>66</sup> At the time the Bank's previous instruments were made in April 2019, the Bank did not have the mandate from HM Treasury to make these onshoring changes. The correct mandate is now in place, and accordingly the Bank has made these changes.<sup>67</sup>

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<sup>64</sup> The Technical Standards (Bank Recovery and Resolution) (Amendment etc.) (EU Exit) (No. 3) Instrument 2020.

<sup>65</sup> Commission Delegated Regulation (EU) 2019/348.

<sup>66</sup> December 2018: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/uk-withdrawal-from-the-eu-further-changes-to-pra-rulebook-bts-and-resolution-bts>.

<sup>67</sup> This mandate was contained in the Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019.

## 7 Final FMI BTS and NtA non-binding materials

### Bank SS on FMI non-binding materials

7.1 The final Bank SS has been updated to reflect the transition period. There has also been the addition of certain Bank materials in relation to the supervision of FMIs that were not included in the previous April 2019 version.

### FMI BTS changes

7.2 As FMI competent authority, the Bank's amendments to onshored BTS have now been finalised in the made EU Exit Instruments in Appendices B.13 and B.14. The amendments contained in the Bank's final instruments consist of:

- **CSDR (No. 2) Instrument:**<sup>68</sup>
  - **BTS 2017/392**<sup>69</sup> **on authorisation, supervisory, and operational requirements for central securities depositories:** Given HM Treasury's announcement that it will not be taking any action to adopt the EU's settlement discipline regime (SDR), the Bank has deleted requirements relating to the SDR to reflect that these requirements do not form part of retained EU law at the end of the transition period.<sup>70</sup>
  - **BTS 2017/394**<sup>71</sup> **on forms, templates, and procedures for authorisation, review, and evaluation of central securities depositories:** An amendment has been made to the clarify provisions in this BTS.
- **EMIR (No. 4) Instrument:**<sup>72</sup>
  - **BTS 2015/2205,**<sup>73</sup> **BTS 2016/592,**<sup>74</sup> **and BTS 2016/1178**<sup>75</sup> **on the clearing obligation:** The EMIR (No. 4) Instrument reflects additional changes made to these BTS which the Bank previously amended under the made EMIR (No. 2) Instrument. The Bank has also deleted the extension of certain requirements in these BTS due to adaptations made under Annex IX of the EEA agreement.

<sup>68</sup> The Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) (No. 2) Instrument 2020.

<sup>69</sup> Commission Delegated Regulation (EU) 2017/392.

<sup>70</sup> See HM Treasury's Written Ministerial Statement made on 23 June 2020: <https://questions-statements.parliament.uk/written-statements/detail/2020-06-23/HCWS309>.

<sup>71</sup> Commission Implementing Regulation (EU) 2017/394.

<sup>72</sup> The Technical Standards (European Market Infrastructure) (EU Exit) (No. 4) Instrument 2020.

<sup>73</sup> Commission Delegated Regulation (EU) 2015/2205.

<sup>74</sup> Commission Delegated Regulation (EU) 2016/592.

<sup>75</sup> Commission Delegated Regulation (EU) 2016/1178.

## 8 Bank and PRA statutory obligations

### The Bank's and PRA's obligations under the Act

#### EU Exit Instruments

8.1 HM Treasury has delegated a power under Section 8 of the Act to the Bank and PRA, to make changes to rules and relevant BTS. As such, similar restrictions that apply to the power in Section 8 of the Act also apply to the Bank's and PRA's delegated power. Different constraints exist in relation to the transitional power and are described in Section A of this PS.

8.2 In accordance with the restrictions under the Regulators' Powers SI, the Bank and PRA consider that all changes made to the PRA Rulebook and BTS in this PS are appropriate to prevent, remedy, or mitigate any:

- (i) failure of the relevant Bank or PRA rules or BTS to operate effectively; or
- (ii) other deficiency in the relevant Bank or PRA rules or BTS, arising from the UK's withdrawal from the EU or the end of the transition period.

8.3 The types of changes that fall within the scope of 'deficiency' are listed in Section 8(2) of the Act. This list is exhaustive, ie all amendments must address deficiencies of these types or make consequential, supplementary, transitory, or transitional provision in connection with them.

8.4 The Bank and PRA also confirm that the PRA Rulebook and BTS changes made under the Act do not:

- (i) impose or increase taxation or fees;
- (ii) make retrospective provision;
- (iii) create a criminal offence which is capable of leading to imprisonment of more than two years;
- (iv) establish a public authority;
- (v) result in the transfer of a function of an EU authority to a UK authority;
- (vi) confer any power to legislate by means of orders, rules, regulations, or any other subordinate instrument; or
- (vii) amend any legislation other than the relevant PRA rules or BTS.

### Other regulators' consent to joint BTS

8.5 Regulation 5 of the Regulators' Powers SI requires that changes made by any regulator to a joint BTS require the consent of the other regulators that share the mandate for that BTS in advance of them being made. The Bank and PRA have received the relevant regulator's consent to the changes made to the joint BTS that the Bank and PRA are leading on, as published in this PS.

### HM Treasury approval of EU Exit Instruments

8.6 Regulation 5 of the Regulators' Powers SI requires that any EU Exit Instrument that the Bank or PRA proposes to make using its deficiency fixing powers must be approved by HM Treasury before it is made. HM Treasury has approved the final EU Exit Instruments in this PS.

### **Equality and diversity (Requirements under the Equality Act 2010)**

8.7 The Bank and PRA have performed an assessment of the policy in PS5/19, and the changes outlined in this PS, and do not consider that the changes give rise to equality and diversity implications.

### **Information Commissioner's Office (ICO) consultation (Requirements under GDPR)**

8.8 Pursuant to Article 36(4) of the General Data Protection Regulation (GDPR), the PRA has consulted the ICO on the updated PRA Rulebook (EU Exit) Instrument which contains provisions relating to the processing of personal data.

## **9 PRA statutory obligations**

### **The PRA's obligations under FSMA**

9.1 The PRA made certain parts of the April 2019 PRA Rulebook (EU Exit) Instrument, relating to FSCS levies and administrative fees, under FSMA powers. As the April 2019 instrument is being revoked in its entirety and remade in updated form, the PRA is exercising the same FSMA powers again. Those aspects of the updated PRA Rulebook (EU Exit) Instrument relating to FSCS levies and administrative fees are unchanged from the April 2019 instrument.

## Appendices

### Section A: Transitional directions and guidance

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- A.1 PRA transitional direction instrument, available at:  
<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a1.pdf>
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- A.2 PRA general guidance, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a2.pdf>
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- A.3 CRR guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a3.pdf>
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- A.4 Solvency II guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a4.pdf>
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- A.5 Securitisation Regulation guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a5.pdf>
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- A.6 PRA Rulebook guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a6.pdf>
- 
- A.7 Bank transitional direction instrument, available at:  
<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a7.pdf>
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- A.8 Bank general guidance, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a8.pdf>
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- A.9 Resolution guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a9.pdf>
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- A.10 FMI guidance note on transitional powers, available at:  
<https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-a10.pdf>

## Section B: Nationalising the Acquis

### Bank (relevant to all PRA-regulated firms and Bank-regulated FMIs)

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- B.1** Bank Statement of Policy 'Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU', available at: <https://www.bankofengland.co.uk/paper/2019/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop>

### PRA

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- B.2** SS1/19 'Non-binding PRA materials: The PRA's approach after the UK's withdrawal from the EU', available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/non-binding-pra-materials-the-pras-approach-after-the-uks-withdrawal-from-the-eu-ss>
- B.3** SS2/19 'PRA approach to interpreting reporting and disclosure requirements and regulatory transactions forms after the UK's withdrawal from the EU', available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/pr-approach-to-interpreting-reporting-and-disclosure-reqs-and-reg-trans-forms-ss>
- B.4** SS18/15 'Depositor and dormant account protection', available at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/depositor-and-dormant-account-protection-ss>
- B.5** Near-final PRA Rulebook: (EU Exit) Instrument 2020, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-b5.pdf>
- B.6** Final The PRA Technical Standards (Consequential Amendment) Instrument 2020, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-b6.pdf>
- B.7** Final The Technical Standards (Capital Requirements) (EU Exit) (No. 4) Instrument 2020, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-b7.pdf>
- B.8** Final The Technical Standards (Solvency II Directive) (EU Exit) (No. 2) Instrument 2020, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-b8.pdf>
- B.9** Final The Technical Standards (European Market Infrastructure) (EU Exit) (No. 5) Instrument 2020, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-b9.pdf>

### Bank (as resolution authority and FMI competent authority)

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- B.10** Final The Bank Technical Standards (Consequential Amendments) (EU Exit) Instrument 2020, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-b10.pdf>
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### **Bank (as resolution authority)**

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- B.11** Final The Technical Standards (Bank Recovery and Resolution) (Amendment etc.) (EU Exit) (No. 3) Instrument 2020, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-b11.pdf>

### **Bank (as FMI competent authority)**

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- B.12** Bank SS 'Non-binding Bank materials relating to Financial Market Infrastructure Supervision: The Bank's approach after the UK's withdrawal from the EU', available at: <https://www.bankofengland.co.uk/paper/2018/uk-withdrawal-from-the-eu-changes-to-fmi-rules-and-onshored-binding-technical-standards>
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- B.13** Final The Technical Standards (Central Securities Depositories) (Amendment etc.) (EU Exit) (No. 2) Instrument 2020, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-b13.pdf>
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- B.14** Final The Technical Standards (European Market Infrastructure) (EU Exit) (No. 4) Instrument 2020, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2020/ps2720app-b14.pdf>