

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 Financial Services and Markets Act 2000 (“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 rule making 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 the Bank of England have been consulted on the changes made by 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 18 December 2023.

Citation

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

By order of the FCA Board
14 December 2023

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:
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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.