FCA 2024/XX

TECHNICAL STANDARDS (BILATERAL MARGINING) (AMENDMENT) INSTRUMENT 2024

Powers exercised

A.   The FCA makes this instrument in the exercise of the following powers and related provisions of the Act:

    (1)   section 138P (Technical standards);
    (2)   section 138Q (Standards instruments);
    (3)   section 138S (Application of Chapters 1 and 2); and
    (4)   section 137T (General supplementary powers).

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) (Risk-mitigation techniques for OTC derivative contracts not cleared by a CCP) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

C.   Pursuant to section 138P(2)(b) of the Act, the power to make technical standards includes the power to modify, amend or revoke an EU tertiary legislation made by an EU entity under the original EU power which forms part of assimilated law. Delegated Regulation (EU) No 2016/2251 constitutes EU tertiary legislation (as defined in section 20 of the European Union (Withdrawal) Act 2018) for the purposes of section 138P(2)(b) of the Act.

D.   The provisions referred to above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

Interpretation

E.   In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of assimilated law.

F.   In this instrument:

    (1)   "the Act" means the Financial Services and Markets Act 2000;
    (2)   "assimilated law" has the meaning given in section 6 of the European Union (Withdrawal) Act; and
    (3)   "the FCA" means the Financial Conduct Authority.

Pre-conditions to making

G. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.

H. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

Modifications

I. The following technical standard is amended in accordance with the Annex to this instrument.

> Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty

Commencement

J. This instrument comes into force on [*date*].

Citation

K. This instrument may be cited as the Technical Standards (Bilateral Margining) (Amendment) Instrument 2024.

By order of the Board
[*date*]

In this Annex, underlining indicates new text and striking through indicates deleted text

Annex

Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty

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Article 30a

Treatment of derivatives in connection with securitisations for hedging purposes

(1)　　By way of derogation from Article 2(2) and where the conditions set out in paragraph 2 of this Article are met, counterparties may provide in their risk management procedures the following in connection with OTC derivatives contracts that are concluded by a securitisation special purpose entity in connection with a securitisation as defined in ~~point (1) of Article 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council (*1)~~ <u>regulation 3(1) of the Securitisation Regulations 2024 (SI 2024/102)</u> and meeting the conditions of Article 4(5) of Regulation (EU) No 648/2012<u>, as amended by the Securitisation Amendment Regulations 2024</u> [*Editor's note*: add SI number once finalised].

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