

FCA TRANSITIONAL DIRECTION FOR THE DERIVATIVES TRADING OBLIGATION

1 Part 1: The transitional direction for the derivatives trading obligation

- 1.1 D This direction is made by the *FCA* under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, having consulted HM Treasury and other regulators as required by regulation 202 of those regulations, and being satisfied within the terms of regulation 200(3) and (4) of those regulations.
- 1.2 D The direction shall come into force on *IP completion day*.

2 Part 2: Interpretation

- 2.1 D **EU trading venue** has the meaning contained in article 2.1.16B of *MiFIR*. **EU trading venue** also includes a venue in an *EEA State* and *EU persons* include *EEA persons*. A *person*, for these purposes, includes all forms of counterparties to which Article 28 of *MiFIR* applies.
- 2.2 D Subject to 2.1D, terms have the meanings contained in the main FCA transitional directions, unless the context requires otherwise.
- 2.3 G Guidance contained in the main FCA transitional directions also applies to this direction to the extent relevant.

3 Part 3: Modification of the derivatives trading obligation

- 3.1 D The *FCA* directs that article 28 of *MiFIR* is modified so that a *person* (“A”) does not breach it if the transaction in accordance with (1) to (4):
- (1) takes place on an **EU trading venue**;
 - (2) is concluded by A when it transacts with or is executing an order on behalf of an *EU* client;
 - (3) is not a transaction to which article 2(6) Commission Delegated Regulation (EU) 2017/579, as amended by the Technical Standards (Markets in Financial Instruments Regulation) (EU Exit) (No 1) Instrument 2019, applies; and

(4) is one for which A and the *EU* client do not have arrangements to conclude on any third country trading venue to which article 28(1)(d) of *MiFIR* applies.

3.2 D Article 28 *MiFIR* does not apply to a transaction concluded by an *EEA UCITS* or *EEA AIF*.

3.3 D The direction in 3.1 also applies to *EU firms* required to comply with *MiFIR* as a result of *GEN 2.2.22AR*.

4 **Part 4: Guidance**

4.1 G The UK derivatives trading obligation in article 28 *MiFIR* requires certain *persons* to trade in scope derivatives on UK trading venues and equivalent third country venues when concluding relevant transactions. The relevant *persons*, for these purposes, are *TP firms* to which article 1(2A) *MiFIR* applies; “financial counterparties” as defined by article 2(8) *EMIR*; non-financial counterparties meeting the conditions in article 10(1)(b) *EMIR*; and third country entities to which article 28(2) *MiFIR* refers. The relevant transactions are those to which article 28 *MiFIR* refers.

4.2 G The effect of this direction is to allow *persons* to continue to trade in scope derivatives on **EU trading venues** in certain circumstances, as an alternative to the eligible trading venues referred to in 4.1G. For example, *UK-authorised firms*, including asset managers and *UK branches* of *EU firms*, can execute transactions entered into by *EEA UCITS* or *AIFs*, as the named counterparty, on **EU trading venues**, where required.

4.3 G The effect of the conditions attaching to the direction is that it does not apply to a firm when either (i) concluding a transaction on a proprietary basis whilst not executing an order on behalf of an *EU* client or (ii) transacting with or executing an order on behalf of a client that is not established in the *EU*. It does not apply to a transaction concluded by two third country entities through their *UK branches* if these entities would qualify as financial counterparties under article 28(1) *MiFIR*, if they were they established in the *United Kingdom*.

4.4 G When transacting with or executing an order on behalf of its *EU* client, A and the *EU* client do not have arrangements to conclude the transaction on any equivalent third country trading venue when the counterparties to the transaction do not have all the necessary access and connectivity to enable them to do so. Firms should take reasonable steps to determine whether or not

they have arrangements to conclude transactions on equivalent third country trading venues such as ascertaining the access of their clients to any such venue, taking into account previous dealings with them.

- 4.5 G The direction does not affect the requirement for **EU trading venues** to carry on an activity with a *UK*- based counterparty only where the **EU trading venue** has the relevant regulatory status, for example, as a Recognised Overseas Investment Exchange, under the relevant temporary permission regime, or where their activities meet all of the conditions required to benefit from the Overseas Persons Exclusion.
- 4.6 G EU firms which are *third country investment firms* subject to *MiFIR* by virtue of *GEN 2.2.22AR* may rely upon this direction in the same way as other *persons*.
- 4.7 G The UK derivatives trading obligation, as modified by this direction, defines the parameters of where *persons* are able to trade. Within these parameters, *firms* must take all sufficient steps to obtain the best possible results for *clients* when executing orders, as set out in *COBS 11.2A.2R*.
- 4.8 G The purpose of the direction is to modify the UK derivatives trading obligation in order to mitigate the disruption that the *FCA* considers is likely to arise from compliance with onshored obligations, including article 28 *MiFIR*, upon and in the period after *IP completion day*.
- 4.9 G This transitional direction may be varied or revoked (without prejudice to any continuing effect in relation to earlier times).

By order of the Board

30 December, 2020