

Explanatory note: Direction to vary FCA Transitional Direction for the Derivatives Trading Obligation (a direction under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (Transitional Powers of the Financial Regulators))

29 August 2023

Introduction

Regulation 201 of The Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (the FSMA Regulations 2019) give us (and the Bank of England and the Prudential Regulation Authority) the power to vary an existing transitional direction.

Statutory context

Part 7 of the FSMA Regulations 2019 sets out our powers to make, vary and revoke transitional directions. Where we make a direction to vary an existing transitional direction, regulation 203 (Notification and publication of transitional directions) requires us to prepare and publish, alongside the publication of the direction to vary, the following material:

- (i) an explanation of the purpose of the direction,
- (ii) such guidance in connection with the direction as the regulator considers appropriate, and
- (iii) a statement to the effect that the regulator is satisfied that giving the transitional direction would not adversely affect the advancement of its key objectives viewed collectively.

This explanatory note and the direction set out this material.

Purpose of the direction to vary

Paragraph 16 of Part 1 of Schedule 2 of the Financial Services and Markets Act 2023 amends article 28 MiFIR (the UK derivatives trading obligation) to bring it in line with the clearing obligation in EMIR.

The purpose of the direction is to vary paragraph 4.1 of the guidance in Part 4 of the FCA Transitional Direction for the Derivatives Trading Obligation dated 30 December 2020 (DTO TTP Direction) in order to give effect to the Financial Services and Markets Act 2023.

Effect on advancement of our key objectives

We are satisfied that the direction to vary does not adversely affect the advancement of our key objectives (ensuring that relevant markets work well, securing an appropriate degree of consumer protection, protecting and enhancing the integrity of the UK financial system and promoting effective competition in the interests of consumers in specified markets) viewed collectively.

Consultation with other regulators and the Treasury

Under regulation 202 of the FSMA Regulations 2019, we are obliged to consult the Treasury on a draft of the proposed direction to vary. The Bank, the PRA and the FCA are also subject to an obligation to consult each other before giving a transitional direction, including a direction to vary.

The direction has benefited from close coordination and consultation with the Treasury, the Bank and the PRA.