

EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (AMENDMENT ETC.) (EU EXIT) (No. 4) INSTRUMENT 2020

Powers exercised

- A. The Bank of England (“the Bank”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

History

- B. In this instrument, the Bank makes amendments to the Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No.2) Instrument 2019 on 28 March 2019 which made modifications to the EU EMIR.

Pre-conditions to making

- C. The Bank and the Financial Conduct Authority (“FCA”) are the appropriate regulators for the EU EMIR.
- D. The Bank proposes to exercise the power in regulation 3 of the Regulations to modify the EU EMIR.
- E. In accordance with regulation 3(2)(b) of the Regulations, the FCA has given consent to the modifications contained in the Annexes to this instrument.
- F. The Bank and the FCA have consulted the Prudential Regulation Authority (“the PRA”) in accordance with regulation 5 of the Regulations.
- G. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- H. In this instrument –

- (a) “the 2018 Act” means the European Union (Withdrawal) Act 2018;
- (b) “the 2020 Act” means the European Union (Withdrawal Agreement) Act 2020;
- (c) “EU EMIR” means the EU Regulations specified in Part 5 of the Schedule to the Regulations under the heading “European Markets Infrastructure Regulation”, as it forms part of domestic law by virtue of section 3 of the 2018 Act; and
- (d) “IP completion day” has the meaning given in section 39 of the 2020 Act.

- I. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications

- J. The Bank makes the modifications in the Annexes listed in column (2) below to the corresponding annex to the Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No.2) Instrument 2019 (or part thereof) listed in column (1) below.

(1)	(2)
Annex B to the Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No.2) Instrument 2019	A
Annex C to the Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No.2) Instrument 2019	B
Annex D to the Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No.2) Instrument 2019	C

Commencement

K. This instrument comes into force immediately before IP completion day.

Citation

L. This instrument may be cited as Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No.4) Instrument 2020.

By order of the Bank of England

14 December 2020

Annex A

Clearing Obligation

1 MODIFICATIONS TO SPECIFIED PARAGRAPHS OF ANNEX B TO THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (AMENDMENT ETC.) (EU EXIT) (NO. 2) INSTRUMENT 2019

- 1.1 Relevant provisions of paragraph 2.2 of Annex B to the Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No.2) Instrument 2019 (which modifies Commission Delegated Regulation (EU) 2015/2205 of 6 August 2015 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, as it forms part of domestic law by virtue of section 3 of the Act) are substituted as follows:

...

Article 3

Dates from which the clearing obligation takes effect

1. In respect of contracts pertaining to a class of OTC derivatives set out in the Annex, the clearing obligation shall take effect on:

...

(e) the applicable relevant day referred to in Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 for OTC derivative contracts in respect of which an exemption from the clearing obligation applies until the applicable relevant day in accordance with transitional provisions granted by or under Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019.

In relation to points (a) to (d), ~~Where~~ a contract is concluded between two counterparties, or between one counterparty established in an EFTA State and one counterparty established in an EU Member State, included in different categories of counterparties, the date from which the clearing obligation takes effect for that contract shall be the later date.

~~2. By way of derogation from paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union, the clearing obligation shall take effect on:~~

~~(a) 21 December 2020 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country; or~~

~~(b) the later of the following dates in case an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country:~~

~~(i) 60 days after the date of entry into force of the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country;~~

~~(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.~~

~~This derogation shall only apply where the counterparties fulfil the following conditions:~~

~~(a) the counterparty established in a third country is either a financial counterparty or a non-financial counterparty;~~

~~(b) the counterparty established in the Union is:~~

~~(i) a financial counterparty, a non-financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the counterparty referred to in point (a) is a financial counterparty; or~~

~~(ii) either a financial counterparty or a non-financial counterparty and the counterparty referred to in point (a) is a non-financial counterparty;~~

~~(c) both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;~~

~~(d) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;~~

~~(e) the counterparty established in the Union has notified its competent authority in writing that the conditions laid down in points (a), (b), (c) and (d) are met and, within 30 calendar days after receipt of the notification, the competent authority has confirmed that those conditions are met.~~

Article 4

Minimum remaining maturity

...

3. For financial counterparties in Category 3 and for transactions ~~referred to in Article 3(2) of this Regulation~~ in respect of which an exemption from the clearing obligation applies until the applicable relevant day in accordance with transitional provisions granted by or under Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 and which are concluded between financial counterparties, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

(a) 50 years for contracts that belong to the classes in Table 1 set out in Annex I;

(b) 3 years for contracts that belong to the classes in Table 2 set out in Annex I.

4. Where a contract is concluded between two financial counterparties belonging to different categories, ~~between one financial counterparty established in an EFTA State and one financial counterparty established in an EU Member State~~ or between two

financial counterparties involved in transactions ~~referred to in Article 3(2)~~ in respect of which an exemption from the clearing obligation applies until the applicable relevant day in accordance with transitional provisions granted by or under Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019, the minimum remaining maturity to be taken into account for the purposes of this Article shall be the longer remaining maturity applicable.

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Annex B

Clearing Obligation

2 MODIFICATIONS TO SPECIFIED PARAGRAPHS OF ANNEX C TO THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (AMENDMENT ETC.) (EU EXIT) (NO. 2) INSTRUMENT 2019

- 2.1 Relevant provisions of paragraph 3.2 of Annex C to the Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No.2) Instrument 2019 (which modifies Commission Delegated Regulation (EU) 2016/592 of 1 March 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, as it forms part of domestic law by virtue of section 3 of the Act) are substituted as follows:

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Article 3

Dates from which the clearing obligation takes effect

1. In respect of contracts pertaining to a class of OTC derivatives set out in the Annex, the clearing obligation shall take effect on:

...

(e) the applicable relevant day referred to in Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 for OTC derivative contracts in respect of which an exemption from the clearing obligation applies until the applicable relevant day in accordance with transitional provisions granted by or under Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019.

In relation to points (a) to (d), ~~Where~~ a contract is concluded between two counterparties included in different categories of counterparties, ~~or between one counterparty established in an EFTA State and one counterparty established in an EU Member State~~, the date from which the clearing obligation takes effect for that contract shall be the later date.

~~2. By way of derogation from paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union, the clearing obligation shall take effect on:~~

~~(a) 21 December 2020 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country; or~~

~~(b) the later of the following dates in case an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article~~

~~4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country:~~

~~(i) 60 days after the date of entry into force of the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country;~~

~~(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.~~

~~This derogation shall only apply where the counterparties fulfil the following conditions:~~

~~(a) the counterparty established in a third country is either a financial counterparty or a non-financial counterparty;~~

~~(b) the counterparty established in the Union is:~~

~~(i) a financial counterparty, a non-financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the counterparty referred to in point (a) is a financial counterparty;~~

~~(ii) either a financial counterparty or a non-financial counterparty and the counterparty referred to in point (a) is a non-financial counterparty;~~

~~(c) both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;~~

~~(d) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;~~

~~(e) the counterparty established in the Union has notified its competent authority in writing that the conditions laid down in points (a), (b), (c) and (d) are met and, within 30 calendar days after receipt of the notification, the competent authority has confirmed that those conditions are met.~~

Article 4

Minimum remaining maturity

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3. For financial counterparties in Category 3 and for transactions ~~referred to in Article 3(2) of this Regulation in respect of which an exemption from the clearing obligation applies until the applicable relevant day in accordance with transitional provisions granted by or under Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 and which are concluded between financial counterparties, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be 5 years and 3 months.~~

4. Where a contract is concluded between two financial counterparties belonging to different categories, ~~between one financial counterparty established in an EFTA State and one financial counterparty established in an EU Member State or between two~~

financial counterparties involved in transactions ~~referred to in Article 3(2)~~ in respect of which an exemption from the clearing obligation applies until the applicable relevant day in accordance with transitional provisions granted by or under Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019, the minimum remaining maturity to be taken into account for the purposes of this Article shall be the longer remaining maturity applicable.

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Annex C

Clearing Obligation

3 MODIFICATIONS TO SPECIFIED PARAGRAPHS OF ANNEX D TO THE TECHNICAL STANDARDS (EUROPEAN MARKET INFRASTRUCTURE) (AMENDMENT ETC.) (EU EXIT) (NO. 2) INSTRUMENT 2019

- 3.1 Relevant provisions of paragraph 4.2 of Annex D to the Technical Standards (European Market Infrastructure) (Amendment etc.) (EU Exit) (No.2) Instrument 2019 (which modifies Commission Delegated Regulation (EU) 2016/1178 of 10 June 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the clearing obligation, as it forms part of domestic law by virtue of section 3 of the Act) are substituted as follows:

...

Article 3

Dates from which the clearing obligation takes effect

1. In respect of contracts pertaining to a class of OTC derivatives set out in the Annex, the clearing obligation shall take effect on:

...

(e) the applicable relevant day referred to in Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 for OTC derivative contracts in respect of which an exemption from the clearing obligation applies until the applicable relevant day in accordance with transitional provisions granted by or under Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019.

In relation to points (a) to (d), ~~Where a contract is concluded between two counterparties included in different categories of counterparties, or between one counterparty established in an EFTA State and one counterparty established in an EU Member State,~~ the date from which the clearing obligation takes effect for that contract shall be the later date.

~~2. By way of derogation from paragraph 1, in respect of contracts pertaining to a class of OTC derivatives set out in the Annex and concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union, the clearing obligation shall take effect on:~~

~~(a) 21 December 2020 in case no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts set out in the Annex to this Regulation in respect of the relevant third country; or~~

~~(b) the later of the following dates in case an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article~~

~~4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country:~~

~~(i) 60 days after the date of entry into force of the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 4 of that Regulation covering the OTC derivative contracts referred to in the Annex to this Regulation in respect of the relevant third country;~~

~~(ii) the date when the clearing obligation takes effect pursuant to paragraph 1.~~

~~This derogation shall only apply where the counterparties fulfil the following conditions:~~

~~(a) the counterparty established in a third country is either a financial counterparty or a non financial counterparty;~~

~~(b) the counterparty established in the Union is:~~

~~(i) a financial counterparty, a non financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the counterparty referred to in point (a) is a financial counterparty; or~~

~~(ii) either a financial counterparty or a non financial counterparty and the counterparty referred to in point (a) is a non financial counterparty;~~

~~(c) both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;~~

~~(d) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;~~

~~(e) the counterparty established in the Union has notified its competent authority in writing that the conditions laid down in points (a), (b), (c) and (d) are met and, within 30 calendar days after receipt of the notification, the competent authority has confirmed that those conditions are met.~~

Article 4

Minimum remaining maturity

...

3. For financial counterparties in Category 3 and for transactions referred to in Article 3(2) of this Regulation in respect of which an exemption from the clearing obligation applies until the applicable relevant day in accordance with transitional provisions granted by or under Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 and which are concluded between financial counterparties, the minimum remaining maturity referred to in point (ii) of Article 4(1)(b) of Regulation (EU) No 648/2012, at the date the clearing obligation takes effect, shall be:

(a) 15 years for contracts that belong to the classes in Table 1 set out in Annex I;

(b) 3 years for contracts that belong to the classes in Table 2 set out in Annex I.

4. Where a contract is concluded between two financial counterparties belonging to different categories, ~~between one financial counterparty established in an EFTA State and one financial counterparty established in an EU Member State~~ or between two financial counterparties involved in transactions ~~referred to in Article 3(2)~~ in respect of which an exemption from the clearing obligation applies until the applicable relevant day in accordance with transitional provisions granted by or under Part 5 of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019, the minimum remaining maturity to be taken into account for the purposes of this Article shall be the longer remaining maturity applicable.

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