

## **TECHNICAL STANDARDS (EUROPEAN MARKETS INFRASTRUCTURE REGULATION) (BILATERAL MARGINING) INSTRUMENT 2025**

### **Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”) as amended by the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc) (EU Exit) Regulations 2018 (SI 2018/1115):
- (1) section 137T (General supplementary powers);
  - (2) section 138P (Technical standards);
  - (3) section 138Q (Standards instruments); and
  - (4) section 138S (Application of Chapters 1 and 2).
- 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 Articles 11(14) and 11(16) 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 any EU tertiary legislation made by an EU entity under the original EU power which forms part of assimilated law. Delegated Regulation (EU) 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 rule-making powers listed above are specified for the purpose of section 138Q(2) (Rule-making instruments) of the Act.

### **Pre-conditions to making**

- E. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.
- F. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.
- G. The FCA published a draft of this instrument in accordance with section 138I(1)(b)(b) of the Act, accompanied by the information required by section 138I(2). [No representations were made in response to the public consultation.]

## Modifications

- H. 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
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## Commencement

- I. This instrument comes into force on [*date*].

## Citation

- J. This instrument may be cited as the Technical Standards (European Markets Infrastructure Regulation) (Bilateral Margining) Instrument 2025.

By order of the Board  
[*date*]

Draft for consultation

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 28*

##### **Threshold based on notional amount**

- (1) By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that initial margins are not collected for all new OTC derivative contracts entered into within a calendar year where one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives for the months March, April and May of the preceding year of below EUR 8 billion.
- (1A) By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that initial margins already collected are released and no further initial margins are collected for all outstanding OTC derivative contracts between two counterparties from the start of a calendar year if one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives for the months March, April and May of the preceding year of below EUR 8 billion.
- (1B) By way of derogation from Article 2(2), counterparties may make the provision in their risk management procedures described in subparagraph (1C) in relation to OTC derivative contracts where:
- (a) one of the two counterparties has its registered office, or if it has no registered office, its head office, outside the UK;
  - (b) the counterparty referred to in (a) is subject to margining requirements in the jurisdiction where it has its registered office, or if it has no registered office, its head office; and
  - (c) the margining requirements in the jurisdiction referred to in (b) provide the option not to collect initial margins for all new OTC derivative contracts entered into in a specified period after one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives that is below the threshold for three consecutive months as specified in the margining requirements of that jurisdiction.

- (1C) Where (1B) applies, counterparties may provide in their risk management procedures that initial margins are not collected for all new OTC derivative contracts entered into between these two counterparties within the relevant period where one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives that is below EUR 8 billion for the three consecutive months specified in the margining requirements referred to in subparagraph (1B)(b) in the preceding 12 months. For the purpose of this subparagraph the relevant period is the period specified in the margining requirements referred to in subparagraph (1B)(b) up to a maximum of 12 months.
- (1D) By way of derogation from Article 2(2), counterparties may make the provision in their risk management procedures described in (1E) in relation to OTC derivative contracts where:
- (a) one of the two counterparties has its registered office, or if it has no registered office, its head office, outside the UK;
  - (b) the counterparty referred to in (a) is subject to margining requirements in the jurisdiction where it has its registered office, or if it has no registered office, its head office; and
  - (c) the margining requirements in the jurisdiction referred to in (b) provide the option not to collect initial margins for all new OTC derivative contracts entered into in a specified period after one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives that is below the threshold for three consecutive months as specified in the margining requirements of that jurisdiction.
- (1E) Where (1D) applies, counterparties may provide in their risk management procedures that initial margins already collected are released and no further initial margins are collected for all outstanding OTC derivative contracts between these two counterparties after the date specified in the margining requirements referred to in (1D)(b) if one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives that is below EUR 8 billion for the three consecutive months specified in the margining requirements referred to in subparagraph (1D)(b) in the preceding 12 months.
- (1F) Counterparties shall keep a record of the dates they are using in accordance with (1C) and (1E) for their OTC derivative contracts.
- (1G) The aggregate month-end average notional amount referred to in ~~the first subparagraph~~ subparagraphs (1) to (1E) shall be calculated at the counterparty level or at the group level where the counterparty belongs to a group.

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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 OTC derivatives which are single-stock equity options or index options, the Articles referred to in paragraph Articles 36(1) and 37 shall not apply until 4 January 2026.

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Draft for consultation