

FCA STANDARDS INSTRUMENT: THE TECHNICAL STANDARDS (BILATERAL MARGINING) INSTRUMENT 2022

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of powers under section 138P (Technical Standards) of the Financial Services and Markets Act 2000 (“the Act”).
- 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) of Regulation (EU) No 648/2012.
- 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 retained EU law. Delegated Regulation (EU) No 2016/2251 constitutes EU tertiary legislation (as defined in section 20 of the EUWA) for the purposes of section 138P(2)(b) of the Act.
- D. The rule making powers referred to above are specified for the purpose of section 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

- E. The PRA and the Bank of England have been consulted on the changes made by this instrument pursuant to section 138P(4) of the Act.
- F. A draft of this instrument has been approved by the Treasury, as required by section 138R of the Act.
- G. The FCA published a draft of the instrument in accordance with section 138I(1)(b) of the Act, accompanied by the information required by section 138I(2). The FCA had regard to representations made in response to the public consultation.

Interpretation

- H. In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.
- I. In this instrument:
 - “EUWA” means the European Union (Withdrawal) Act 2018;
 - “PRA” means the Prudential Regulation Authority;
 - “retained EU law” has the meaning given it in section 6 of the EUWA; and
 - “the Act” means the Financial Services and Markets Act 2000.

Modifications

- J. The FCA makes the modifications in the Annex to Delegated Regulation (EU) 2016/2251.

Commencement

K. This instrument comes into force on 15 December 2022.

Citation

L. This instrument may be cited as FCA Standards Instrument: The Technical Standards (Bilateral Margining) Instrument 2022.

By order of the FCA Board

09 December 2022

Annex

MODIFICATIONS TO COMMISSION DELEGATED REGULATION (EU) 2016/2251

1. In this Annex, new text is underlined and deleted text is struck through.
 2. Commission Delegated Regulation (EU) 2016/2251 with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, as it forms part of retained EU law, is modified as follows:
-

Article 4

Eligible collateral

- (1) A counterparty shall only collect collateral from the following asset classes:

...

(r) shares or units in UK UCITS, provided that the conditions set out in Article 5 are met;

(s) shares or units in funds which meet the criteria set out in Article 7(2)(b) of the Large Exposures (CRR) Part of the PRA Rulebook, provided that the conditions set out in Article 5A are met.

...

Article 5

Eligibility criteria for units or shares in UK UCITS

- (1) For the purposes of point (r) of Article 4(1), a counterparty may only use units or shares in UK UCITS as eligible collateral where all the following conditions are met:
- (a) the units or shares have a daily public price quote;
 - (b) the UK UCITS are limited to investing in assets that are eligible in accordance with Article 4(1);
 - (c) the UK UCITS meet the criteria laid down in ~~Article 132(3) of Regulation (EU) No 575/2013~~ Article 132(3) of the Standardised Approach and Internal Ratings Based Approach to Credit Risk (CRR) Part of the PRA Rulebook.

...

Article 5A

Eligibility criteria for units or shares in funds

For the purposes of point (s) of Article 4(1), a counterparty may only use units or shares in funds which meet the criteria set out in Article 7(2)(b) of the Large Exposures (CRR) Part of the PRA Rulebook as eligible collateral where all the following conditions are met:

- (a) the units or shares have a daily public price quote;
- (b) the funds are limited to investing in assets that are eligible in accordance with point (a), (c), (d), (e), (f), (g), (h), (i), (j), (k) or (l) of Article 4(1); and
- (c) the funds meet the criteria set out in Article 132(3) of the Standardised Approach and Internal Ratings Based Approach to Credit Risk (CRR) Part of the PRA Rulebook.

For the purposes of point (b), funds may use derivative instruments to hedge the risks arising from the assets in which they invest.

Where a fund invests in shares or units of other funds, the conditions laid down in the first subparagraph shall also apply to those funds.

...

Article 23

CCPs authorised as credit institutions

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that no collateral is exchanged in relation to non-centrally cleared OTC derivative contracts entered into with CCPs ~~provided: that are authorised as credit institutions by the Prudential Regulation Authority as credit institutions having permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits~~

- (a) such CCPs are recognised by the Bank of England pursuant to Article 25 of Regulation (EU) No 648/2012 or by recognition order pursuant to Section 290 of the Financial Services and Markets Act 2000; and
- (b) such contracts are in respect of an activity which is carried on for the purposes of, or in connection with, the services or activities specified in the CCP's recognition by the Bank of England pursuant to Article 25 of Regulation (EU) No 648/2012 or the CCP's recognition order pursuant to Section 290 of the Financial Services and Markets Act 2000.

...

Article 35A

Application of Articles 4(1), 6, 7, 8, point (e) of Article 19(1), Articles 22, 23, 28, 29, 30, 39 and Annexes I, II and III

...

11. For the specified period-that begins on IP completion date and ends on 31 ~~December 2022~~ March 2023: references to UK UCITS in this Regulation shall be read as if they included references to EEA UCITS (and in relation to EEA UCITS, the reference to Article 132(3) of Regulation (EU) No 575/2013 in Article 5(1)(c) of this Regulation shall be read as a reference to Article 132(3) of Regulation (EU) No 575/2013 as it had effect immediately before IP completion day).

...

Article 35B

Transitional for establishment and validation of procedures

1. By way of derogation from Article 2(2), counterparties may provide in their risk-management procedures in relation to non-centrally cleared derivative contracts that for a period of 6 months or until the end of the calendar year, whichever period ends the latest, from the date where, for the first time:
 - (a) a counterparty becomes subject to the requirements in Article 2(1) of this Regulation to maintain risk-management procedures in respect of such non-centrally cleared derivative contracts, the requirements to calculate and collect margins in accordance with Section 3 of Chapter 1 of this Regulation do not apply to transactions with such counterparty;
 - (b) a derogation in Articles 23 or 24 of this Regulation no longer applies, the requirements to calculate and collect margins in accordance with Section 3 of Chapter 1 of this Regulation do not apply to transactions entered into with counterparties which have ceased benefiting from the derogations in Articles 23 or 24.

2. By way of derogation from Article 2(2), counterparties may provide in their risk-management procedures in relation to non-centrally cleared derivative contracts that for a period of 12 months from the date the derogation in Article 31 of this Regulation no longer applies, the requirements to calculate and collect margins in accordance with Section 3 of Chapter 1 of this Regulation do not apply to transactions entered into with counterparties which have ceased benefiting from the derogation in Article 31.

3. This Article does not apply to Articles 28, 36 and 38.