

## FCA DIRECTION FOR THE DERIVATIVES TRADING OBLIGATION

<b>1</b>	<b>Part 1: Overview of the Direction for the Derivatives Trading Obligation</b>	
1.1	D	This Direction is made by the <i>FCA</i> under Article 28a <i>MiFIR</i> (Suspension or modification of Article 28), having consulted HM Treasury and other regulators as required by Article 28a(4) and (5) <i>MiFIR</i> , and being satisfied within the terms of Article 28a(1)(a) and (b) <i>MiFIR</i> .
1.2	D	This Direction shall come into force on 31 December 2024 at 11.01pm GMT.
<b>2</b>	<b>Part 2: Interpretation of the Direction</b>	
2.1	D	<b>EU trading venue</b> has the meaning contained in Article 2(1)(16B) <i>MiFIR</i> . <b>EU trading venue</b> also includes a venue in an <i>EEA State</i> . <i>EU persons</i> includes <i>EEA persons</i> . A <i>person</i> for these purposes includes all forms of counterparties to which Article 28 <i>MiFIR</i> applies.
2.2	D	Subject to 2.1D, italicised words and phrases have the meanings contained in the <i>Glossary</i> of the <i>FCA Handbook</i> .
<b>3</b>	<b>Part 3: Direction to modify the Derivatives Trading Obligation</b>	
3.1	D	The <i>FCA</i> directs that Article 28 <i>MiFIR</i> is modified so that a <i>person</i> (“A”) does not breach Article 28 where a transaction:
	(1)	takes place on an <b>EU trading venue</b> ;
	(2)	is concluded by A when it transacts with or is executing an order on behalf of an <i>EU</i> 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;
	(4)	is one for which A and the <i>EU</i> client do not have arrangements to conclude on any third country trading venue to which Article 28(1)(d) <i>MiFIR</i> applies; and
	(5)	is one to which Article 28 <i>EU MiFIR</i> applies.
3.2	D	Article 28 <i>MiFIR</i> does not apply to a transaction concluded by an <i>EEA UCITS scheme</i> or <i>EEA AIF</i> .

3.3	D	The Direction at 3.1 applies to <i>EU firms</i> required to comply with <i>MiFIR</i> as a result of <i>GEN 2.2.22AR</i> of the <i>FCA Handbook</i> .
<b>4</b>	<b>Part 4: Guidance in connection with the Direction</b>	
4.1	G	The UK Derivatives Trading Obligation in Article 28 <i>MiFIR</i> requires certain <i>persons</i> to trade in scope derivatives on UK trading venues and equivalent third country venues when concluding relevant transactions. The current equivalent third country venues include designated venues in Singapore, and in the USA via the operation of the Markets in Financial Instruments (Equivalence) (United States of America) (Commodity Futures Trading Commission) Regulations 2024. Relevant <i>persons</i> for these purposes are “relevant financial counterparties” and “relevant non-financial counterparties” as defined by Article 28(1A) <i>MiFIR</i> and third country entities to which Article 28(2) <i>MiFIR</i> refers. The relevant transactions are those to which Article 28 <i>MiFIR</i> applies.
4.2	G	The effect of this Direction is to allow <i>persons</i> to continue to trade in scope derivatives on <b>EU trading venues</b> in certain circumstances, as an alternative to the trading venues referred to in 4.1G. For example, <i>UK- authorised firms</i> , including asset managers and <i>UK branches of EU firms</i> , can execute transactions entered into by <i>EEA UCITS schemes</i> or <i>AIFs</i> , as the named counterparty, on <b>EU trading venues</b> , 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 <i>EU client</i> or (ii) transacting with or executing an order on behalf of a client that is not established in the <i>EU</i> . This Direction does not apply to a transaction concluded by two <i>third country</i> entities through their <i>UK branches</i> if these entities would qualify as financial counterparties under Article 28(1) <i>MiFIR</i> , if they were established in the <i>United Kingdom</i> .
4.4	G	When transacting with or executing an order on behalf of its <i>EU client</i> , A and the <i>EU client</i> 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 <b>EU trading venues</b> to carry on an activity with a <i>UK- based counterparty</i> only where the <b>EU trading venue</b> has the relevant regulatory status, for example, as a <i>recognised overseas investment exchange</i> , or where their activities meet all of the conditions required to benefit from the Overseas Persons Exclusion (article 72 <i>Regulated Activities Order</i> ).

4.6	G	<i>EU firms</i> which are <i>third country investment firms</i> subject to <i>MiFIR</i> by virtue of <i>GEN 2.2.22AR</i> of the <i>FCA Handbook</i> may rely upon this Direction in the same way as other <i>persons</i> .
4.7	G	The UK Derivatives Trading Obligation, as modified by this Direction, defines the parameters of where <i>persons</i> are able to trade. Within these parameters, <i>firms</i> must take all sufficient steps to obtain the best possible results for <i>clients</i> when executing orders, as set out in <i>COBS 11.2A.2R</i> of the <i>FCA Handbook</i> .
4.8	G	The purpose of this Direction is to modify the UK Derivatives Trading Obligation in order to mitigate the disruption that the <i>FCA</i> considers is likely to arise from compliance with onshored obligations, including Article 28 <i>MiFIR</i> and advance one or more of the <i>FCA</i> 's <i>operational objectives</i> . The <i>FCA</i> has published an <a href="#">Explanatory statement</a> under Article 28a(6) <i>MiFIR</i> .
4.9	G	This Direction may be varied or revoked without prejudice to any continuing effect in relation to equivalent directions made under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (Transitional Powers of the Financial Regulators).

28 November 2024