

**MEMO# 33013**

January 4, 2021

## **Brexit: FCA Statement on the UK Derivative Trading Obligation**

[33013]

January 4, 2021 TO: ICI Members

ICI Global Members

ICI Global Brexit Task Force SUBJECTS: International/Global RE: Brexit: FCA Statement on the UK Derivative Trading Obligation

On 31 December, the UK Financial Conduct Authority (FCA) announced that it would use its temporary transitional power[\[1\]](#) to modify the application of the UK Derivative Trading Obligation (DTO) to address instances where some firms (e.g., UK branches of EU firms) are subject to a conflict of law between the UK and EU DTOs. The FCA's transitional direction for the DTO[\[2\]](#) modifies the UK's application of the onshored MiFIR provisions[\[3\]](#) to enable firms that are subject to the UK's DTO and trading with, or on behalf of, EU clients that are subject to the EU DTO, to transact or execute those trades on EU venues providing that the following two conditions are met:

- firms take reasonable steps to be satisfied the client does not have arrangements in place to execute the trade on a trading venue to which both the UK and EU have granted equivalence; and
- the EU venue has the necessary regulatory status to do business in the UK – such venues include those that are a Recognised Overseas Investment Exchange, have been granted the relevant temporary permission, or are certain that they benefit from the Overseas Person Exclusion.

The FCA has confirmed that the modification of the UK DTO applies to the following firms:

- UK firms;
- EU firms using the UK's temporary permissions regime (TPR); and
- Branches of overseas firms in the UK.

Transactions concluded by UCITS and EEA AIF are outside the scope of the UK DTO.

As previously advised, on 25 November 2020 the European Securities and Markets Authority published a statement to confirm that it did not consider that a change of its approach to the EU DTO is warranted, noting that most UK trading venues that offer trading

in derivatives subject to the DTO have established new venues in the EU.<sup>[4]</sup>

## Next Steps

The FCA will review by 31 March 2021 whether market or regulatory developments warrant a review of its approach.

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## endnotes

[1] <https://www.fca.org.uk/brexit/onshoring-temporary-transitional-power-ttp>

[2] FCA Transitional Direction for the Derivatives Trading Obligation, *available from* <https://www.fca.org.uk/publication/handbook/direction-derivatives-trading-obligation.pdf>

[3] Article 28

[4] See ICI Memorandum No. 32945, RE: Brexit: ESMA Statement on the EU Derivative Trading Obligation, dated 25 November 2020, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo32945>

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