Annex K

COMMISSION DELEGATED REGULATION (EU) 2017/578 of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes (Text with EEA relevance)

~~(Text with EEA relevance)~~

…

Article -3

Definitions

In this Regulation, 'Exit Day' has the meaning given in the European Union (Withdrawal) Act 2018.

Article -2

Application

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU.

Article -1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.

(2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.

(3) References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which were relied upon by the United Kingdom immediately before Exit Day to give effect to that EU legislation.

(4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

…

Article 2

Content of market making agreements

1. The content of a binding written agreement referred to in UK law corresponding to Article 17(3)(b) and Article 48(2) of Directive 2014/65/EU shall include at least:

   (a) the financial instrument or instruments covered by the agreement;

   (b) the minimum obligations to be met by the investment firm in terms of presence, size and spread that shall require at least posting firm, simultaneous two-way quotes of comparable size and competitive prices in at least one financial instrument on the trading venue for at least 50% of daily trading hours of during which continuous trading takes place excluding opening and closing auctions and calculated for each trading day;

   (c) where appropriate, the terms of the applicable market making scheme;

   (d) the obligations of the investment firm in relation to the resumption of trading after volatility interruptions;

   (e) the surveillance, compliance and audit obligations of the investment firm enabling it to monitor its market making activity;

   (f) the obligation to flag firm quotes submitted to the trading venue under the market making agreement in order to distinguish those quotes from other order flows;

   (g) the obligation to maintain records of firm quotes and transactions relating to the market making activities of the investment firm, which are clearly distinguished from other trading activities and to make those records available to the trading venue and the competent authority upon request.

2. Trading venues shall continuously monitor the effective compliance of the relevant investment firms with the market making agreements.

Article 3

Exceptional circumstances

The obligation for investment firms to provide liquidity on a regular and predictable basis laid down in UK law corresponding to Article 17(3)(a) of Directive 2014/65/EU shall not apply in any of the following exceptional circumstances:

(a) a situation of extreme volatility triggering volatility mechanisms for the majority of financial instruments or underlyings of financial instruments traded on a trading segment within the trading venue in relation to which the obligation to sign a market making agreement applies;

(b) war, industrial action, civil unrest or cyber sabotage;

(c) disorderly trading conditions where the maintenance of fair, orderly and transparent execution of trades is compromised, and evidence of any of the following is provided:

- (i) the performance of the trading venue's system being significantly affected by delays and interruptions;
- (ii) multiple erroneous orders or transactions;
- (iii) the capacity of a trading venue to provide services becoming insufficient;

(d) where the investment firm's ability to maintain prudent risk management practices is prevented by any of the following:

- (i) technological issues, including problems with a data feed or other system that is essential to carry out a market making strategy;
- (ii) risk management issues in relation to regulatory capital, margining and access to clearing,
- (iii) the inability to hedge a position due to a short selling ban;

(e) for non-equity instruments, during the suspension period referred to in Article 9(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council.

…

Article 5

Obligation for trading venues to have market making schemes in place

1. Trading venues shall not be required to have market making scheme as referred to in the <u>UK law corresponding to</u> Article 48(2)(b) of Directive 2014/65/EU in place except for any of the following classes of financial instruments traded through a continuous auction order book trading system:

   (a) shares and exchange traded funds for which there is a liquid market as defined in accordance with Article 2(1)(17)of Regulation (EU) No 600/2014 and as specified in Commission Delegated Regulation (EU) 2017/567;

   (b) options and futures directly related to the financial instruments set out in point (a);

   (c) equity index futures and equity index options for which there is a liquid market as specified in accordance with point (c) of Article 9(1) and point (c) of Article 11(1) of Regulation (EU) No 600/2014 and Commission Delegated Regulation (EU) 2017/583.

2. For the purposes of paragraph 1, a continuous auction order book trading system means a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with buy orders on the basis of the best available price on a continuous basis.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…