STATUTORY INSTRUMENTS

2017 No. 1255

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017

Made - - - -	*12th December 2017*
Laid before Parliament	*13th December 2017*
Coming into force in accordance with regulation 2	

The Treasury are a government department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 22(1) and (5), and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(**3**), make the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017.

2. These Regulations come into force as follows—

(a) regulations 10 to 38 come into force on 2nd January 2018; and

(b) the remaining provisions of these Regulations come into force on 3rd January 2018.

Financial Services and Markets Act 2000

3.—(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) In section 129(**4**) (power of court to impose administrative sanctions in cases of market abuse)—

(**1**) S.I. 2012/1759.

(**2**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(**3**) 2000 c.8.

(**4**) Section 129 was substituted by S.I. 2016/680.

(a) in the opening words of subsection (1) for the words "sections 380 to 383 which relates to a market abuse requirement" substitute "Part 25 which relates to the market abuse regulation";

(b) in subsection (7) omit the definition of "market abuse requirement"; and

(c) after subsection (8) insert—

"(9) An application under Part 25 relates to the market abuse regulation if—

(a) it is made under section 380 or 382 and the relevant requirement for the purposes of that section is a requirement imposed by the market abuse regulation or a supplementary EU regulation; or

(b) it is made under section 381 or 383.".

(3) In section 165A(9)(b) for "4.1(17)" substitute "4.1(15)".

(4) For section 168(4)(jb)(**5**) (appointment of persons to carry out investigations in particular cases) substitute—

"(jb) a person may have contravened—

(i) any provision made by or under this Act for the purposes of the market abuse regulation; or

(ii) a requirement imposed on that person under sections 122A to 122C, 122G to 122I, 123A or 123B;

(jc) a person may have been knowingly concerned in the contravention of—

(i) a provision of the market abuse regulation other than Article 14 (prohibition of insider dealing) or 15 (prohibition of market manipulation) of that regulation; or

(ii) a directly applicable EU regulation made under the market abuse regulation; or".

Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

4.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**6**) is amended as follows.

(2) In article 54(1)(b)(i)(**7**) (advice given in newspapers etc) after "securities" insert ", structured deposits,".

(3) After article 72I(**8**) (registered consumer buy-to-let mortgage firms) insert—

"**Persons seeking to use the exemption under Article 2.1(j) of the markets in financial instruments directive**

72J.—(1) An activity which falls within Article 2.1(j)(i) or (ii) (exemptions) of the markets in financial instruments directive ("an Article 2.1(j) activity") is excluded from the activities specified by articles 14, 21 and 25 if during a calendar year the person carrying on the activity—

(a) cannot perform the market threshold calculation to establish if the Article 2.1(j) activity falls within the exemption under Article 2.1(j) of the markets in financial instruments directive because the relevant data is not publicly available from an official source;

(**5**) Paragraph (jb) was inserted by S.I. 2016/680.
(**6**) S.I. 2001/544.
(**7**) Article 54(1)(b)(i) was substituted by S.I. 2003/1475 and amended by S.I. 2003/1476.
(**8**) Article 72I was inserted by S.I. 2015/910; there are amendments which are not relevant to these Regulations.

(b) carries on the Article 2.1(j) activity during a period of 8 weeks beginning with the day after the day on which the relevant data is made publicly available from an official source; or

(c) has made an application to the appropriate regulator for a Part 4A permission to carry on a regulated activity specified by articles 14, 21 and 25 which constitutes the Article 2.1(j) activity and the application has not been determined or withdrawn.

(2) The exclusion in paragraph (1) does not apply to an Article 2.1(j) activity carried on by a person who is an authorised person in relation to an activity which constitutes the Article 2.1(j) activity.

(3) In this paragraph—

"market threshold calculation" means the calculation of the size of trading activities referred to in Article 2 of the delegated regulation that must be carried out annually in the first quarter of a calendar year under the procedure set out in Article 4 (procedure for calculation) of that delegated regulation;

"official source" means an EU institution or a regulator;

"relevant data" means any data or other information that enables a calculation to be made of the overall market trading activity in an asset class under the procedure in Article 2.3 (overall market threshold) of the delegated regulation;

"the appropriate regulator" in relation to an application for a Part 4A permission means the appropriate regulator in relation to that application for the purposes of section 55A(**9**) (application for permission) of the Act; and

"the delegated regulation" means Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business (**10**).".

Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

5. Omit paragraph 7C(4)(**11**) of Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(**12**).

Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005

6. In regulation 4(11) (investment by trustees) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005(**13**)—

(a) in the definition of "derivative instrument" for "Directive 2004/39/EC" substitute "Directive 2014/65/EU(**14**)"; and

(b) in paragraph (b) of the definition of "regulated market" for "Directive 2004/39/EC" substitute "Directive 2014/65/EU".

(**9**) Section 55A was inserted by section 11(2) of the Financial Services Act 2012 (c. 21).
(**10**) OJ L87, 31.3.2017, p. 492.
(**11**) Paragraph 7C(4) was inserted by S.I. 2006/3386.
(**12**) S.I. 2001/995.
(**13**) S.R. 2005 No. 569.
(**14**) OJ L173, 12.06.2014, p.349. The Directive was amended by Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 (OJ L257, 28.8.2014, p.1) and Directive (EU) 2016 of the European Parliament and of the Council of 23 June 2016 (OJ L175, 30.6.2016, p.8).

Companies Act 2006

7.—(1) The Companies Act 2006(**15**) is amended as follows.

(2) In section 474(1)(**16**) in the definition of "MiFID investment firm" —

(a) for sub-paragraph (b) substitute—

"(b) a company which is an exempt investment firm as defined by regulation 8 (meaning of "exempt investment firm") of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(S.I. 2017/701);"; and

(b) in paragraph (c) for "4C(3)" substitute "6(3)".

Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010

8. In regulation 35(2)(**17**) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010(**18**) in paragraph (b) of the definition of "competent authority" for "Article 4(22) of Directive 2004/39/EC" substitute "Article 4(26) of Directive 2014/65/EU".

Recognised Auction Platform Regulations 2011

9. In paragraph 11(**19**) of Schedule 1 (modifications of the Act for the purposes of Articles 37 to 43 of the emission allowance auctioning regulation) of the Recognised Auction Platforms Regulations 2011(**20**)—

(a) for paragraph (a) substitute—

"(a) in subsection (1) the reference to the market abuse regulation were to the emission allowance market abuse regime;";"

(b) omit paragraph (c)(ii); and

(c) after paragraph (c) insert –

"; and

(d) for subsection (8) there were substituted—

"(8) An application under Part 25 relates to the emission allowance market abuse regime if —

(a) it is made under section 380 or 382 and the relevant requirement for the purposes of that section is a requirement imposed by the emission allowance market abuse regime; or

(b) it is made under section 381 or 383.".".

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017

10. In article 16 (transitional provision: structured deposits) of the Financial Services and Markets Act (Regulated Activities) (Amendment) Order 2017(**21**)—

(a) in paragraph (1)(a) for "3rd January 2018" substitute "1st April 2018"; and

(**15**) 2006 c.46.
(**16**) Section 474(1) was amended by S.I. 2007/2932; there are other amendments but none is relevant.
(**17**) Regulation 35(2) was substituted by S.R. 2012 No.237.
(**18**) S.R. 2010 No. 122.
(**19**) Paragraph 11 was substituted by S.I. 2016/680.
(**20**) S.I. 2011/2699.
(**21**) S.I. 2017/488.

(b) after paragraph (2) insert—

"(2A) Notwithstanding article 15, paragraph (2B) applies where—

(a) an EEA firm gives notice to the appropriate regulator before 1st April 2018, in such form as the appropriate regulator directs, that the EEA firm wishes to carry on a permitted activity in relation to structured deposits;

(b) the appropriate regulator acknowledges receipt of the notice in writing; and

(c) the EEA firm—

(i) immediately before 3rd January 2018 had permission under paragraph 15 of Schedule 3 (EEA passport rights) to the Act to carry on the permitted activity to which the notice under sub-paragraph (a) relates;

(ii) the EEA firm's permission under paragraph 15 of Schedule 3 to the Act does not permit it to carry on the permitted activity in relation to structured deposits after 3rd January 2018; and

(iii) the EEA firm is not, or would not be, otherwise entitled to carry on the permitted activity in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.

(2B) The EEA firm is to be treated, from 3rd January 2018 (or the date of acknowledgement of receipt, if later), as having a Part 4A permission to carry on any permitted activity to which the notice under paragraph (2A)(a) relates in relation to structured deposits.".

Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

11. The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(**22**) are amended as follows.

12. In regulation 2(1) (interpretation) at the appropriate place insert—

""regulated market" has the meaning given by article 4.1.21 of the markets in financial instruments directive;".

13. In the closing words of regulation 5 (limitation on exempt investment firms) for "paragraph" substitute "regulation".

14. In regulation 6 (requirements applying to exempt investment firms)—

(a) for paragraph (3)(c)(iii) substitute—

"(iii) a branch of an investment firm or of a credit institution authorised in a third country and which is subject to, and complies with, prudential rules considered by the appropriate regulator to be at least as stringent as those laid down in the markets in financial instruments directive, the capital requirements regulation, and the solvency 2 directive."; and

(b) after paragraph (5) insert—

"(6) In this regulation—

"appropriate regulator" means the appropriate regulator for the purposes of section 55A in relation to an application under regulation 4(1);

(**22**) S.I. 2017/701.