Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Data Reporting Services Regulations 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 699

FINANCIAL SERVICES AND MARKETS

The Data Reporting Services Regulations 2017

Made - - - - *21st June 2017*

Laid before Parliament *22nd June 2017*

Coming into force in accordance with regulation 1(2)

The Treasury are a government department designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, make the following Regulations:

F1 S.I. 2012/1759.

F2 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 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).

PART 1

Introductory Provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Data Reporting Services Regulations 2017.

(2) These Regulations come into force—

(a) on 3rd July 2017 for the purposes of—

(i) enabling applications to be made and determined under regulations 7 and 8;

(ii) enabling the FCA to give guidance under regulation 20;

(iii) enabling the FCA to prepare and issue a statement of policy under regulation 27;

(iv) regulations 19 (co-operation), 29 (offence of misleading the FCA), 33 (application of Part 11 of the Act: information gathering and investigations), 35 (restrictions on disclosure of information), 37 (application of Part 26 of the Act: notices), 38 (application of Part 27 of the Act: offences) and 42 (disclosure of confidential information); and

(v) regulation 40 (penalties, fees and exemption from liability in damages) in so far as it relates to a matter referred to in paragraph (i), (ii), (iii) or (iv);

(b) for all other purposes on 3rd January 2018.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Financial Services and Markets Act 2000 [F3];

"APA" means a person authorised under regulation 10 to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of the markets in financial instruments regulation;

"ARM" means a person authorised under regulation 10 to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms;

"authorised person" has the meaning given in section 31(2) of the Act;

"credit institution" has the meaning given in Article 4.1.27 of the markets in financial instruments directive;

"CTP" means a person authorised under regulation 10 to provide the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of the markets in financial instruments regulation from regulated markets, multilateral trading facilities, organised trading facilities and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

"data reporting service" means—

(a) the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of the markets in financial instruments regulation;

(b) the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms; or

(c) the service of collecting trade reports for financial instruments listed in Articles 6, 7, 10, 12, 13, 20 and 21 of the markets in financial instruments regulation from regulated markets, multilateral trading facilities, organised trading facilities and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument;

"data reporting service provider" means an APA, an ARM or a CTP;

"ESMA" means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) [F4];

"the FCA" means the Financial Conduct Authority;

"financial instrument" has the meaning given in Article 4.1.15 of the markets in financial instruments directive;

"home Member State" has the meaning given in Article 4.1.55(c) of the markets in financial instruments directive;

"investment firm" has the meaning given in Article 4.1.1 of the markets in financial instruments directive, but does not include a person to whom that directive does not apply by virtue of Article 2 of that directive;

"management body" in relation to a data reporting service provider means—

(a) the board of directors, or if there is no such board, the equivalent body responsible for the management of the data reporting service provider; and

(b) any other person who effectively directs the business of the provider;

"the markets in financial instruments directive" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast) [F5];

"the markets in financial instruments regulation" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments [F6];

"multilateral trading facility" has the meaning given in Article 4.1.22 of the markets in financial instruments directive;

"organised trading facility" has the meaning given in Article 4.1.23 of the markets in financial instruments directive;

"overseas clearing house" and "overseas investment exchange" have the meanings given in section 313(1) of the Act [F7];

"the PRA" means the Prudential Regulation Authority;

"PRA-authorised person" has the meaning given in section 2B(5) of the Act [F8];

"recognised body" has the meaning given in section 313(1) of the Act, but does not include—

(a) an overseas investment exchange, or

(b) an overseas clearing house;

"recognised clearing house" has the meaning given in section 285(1)(b) of the Act [F9] but does not include an overseas clearing house;

"recognised CSD" means a legal person established in the United Kingdom who is authorised by the Bank of England for the purposes of Article 16 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories [F10];

"recognised investment exchange" has the meaning given in section 285(1)(a) of the Act, but does not include an overseas investment exchange;

"recognition order" has the meaning given in section 313(1) of the Act;

"register" means the register maintained by the FCA under regulation 6;

"regulated market" has the meaning given in Article 4.1.21 of the markets in financial instruments directive;

"senior management" has the meaning given in Article 4.1.37 of the markets in financial instruments directive;

"systematic internaliser" has the meaning given in Article 4.1.20 of the markets in financial instruments directive;

"trading venue" has the meaning given in Article 4.1.24 of the markets in financial instruments directive;

"the Tribunal" means the Upper Tribunal;

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 [F11] in any part of the United Kingdom.

(2) In this regulation, a "person authorised under regulation 10" includes a person whose compliance with Title V of the markets in financial instruments directive has been verified by the FCA under regulation 8.

(3) For the purposes of these Regulations, a person is established in the United Kingdom if it is—

(a) a natural person and its head office is situated in the United Kingdom; or

(b) a body corporate and its registered office is situated in the United Kingdom.

F3 2000 c.8.
F4 OJ no L331, 15/12/2010, p84.
F5 OJ no L173, 12/6/2014, p349.
F6 OJ no L173, 12/6/2014, p84.
F7 Section 313(1) was amended by S.I. 2013/504. There are other amendments but none is relevant.
F8 Section 2B was inserted by section 6 of the Financial Services Act 2012 (c.21).
F9 Section 285(1) was amended by S.I. 2013/504.
F10 OJ No L257, 28.8.2014, p1.
F11 1971 c.80. Schedule 1 was amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2). There are other amendments but none is relevant.

[F12References to EU Regulations etc

2A. Any reference in these Regulations to any EU Regulation, EU decision or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation, EU decision or EU tertiary legislation as it **[**F13forms part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018**].]**

F12 Reg. 2A inserted (20.12.2018) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(2), **3**
F13 Words in reg. 2A substituted (25.10.2019) by The Financial Services (Miscellaneous) (Amendment) (EU Exit) (No. 3) Regulations 2019 (S.I. 2019/1390), regs. 1(3), **5**

CTP definition and conditions

3.—(1) The following definitions in regulation 2(1) apply as if they do not include reference to Articles 10 and 21 of the markets in financial instruments regulation until 3rd September 2019—

(a) the definition of "CTP", and

(b) paragraph (c) of the definition of "data reporting service".

(2) The conditions for a CTP in regulation 15 apply as if paragraphs (5) to (8) were not included until 3rd September 2019.

Directly applicable EU regulations

4.—(1) In these Regulations, a reference to an Article of the markets in financial instruments regulation includes a reference to any directly applicable EU regulation made under that Article.

(2) In Parts 4 and 5 any reference to a requirement imposed by or under these Regulations includes a reference to a requirement imposed on a person to whom these Regulations apply under—

(a) a directly applicable EU regulation made under the markets in financial instruments directive or the markets in financial instruments regulation; and

(b) the markets in financial instruments regulation.

PART 2

Authorisation of Data Reporting Services

Prohibition on provision of data reporting service

5.—(1) A person must not provide a data reporting service in the United Kingdom as a regular occupation or business unless the person is—

(a) acting in accordance with an authorisation to provide a data reporting service granted under these Regulations;

(b) an investment firm which is operating a multilateral trading facility or an organised trading facility where the FCA has verified in accordance with Article 59.2 of the markets in financial instruments directive that the firm complies with Title V of that directive;

(c) a credit institution which is operating a multilateral trading facility or an organised trading facility where the FCA has verified in accordance with Article 59.2 of the markets in financial instruments directive that the firm complies with Title V of that directive;

(d) a recognised investment exchange operating a trading venue where the FCA has verified in accordance with Article 59.2 of the markets in financial instruments directive that the firm complies with Title V of that directive; or

(e) a person who is—

(i) established in an EEA State other than the United Kingdom; and

(ii) authorised in its home Member State in accordance with Title V of the markets in financial instruments directive or is permitted to provide a data reporting service in accordance with Article 59.2 of that directive.

(2) A person who breaches this regulation is to be taken to have contravened a requirement imposed on it under these Regulations.

Register of data reporting service providers

6.—(1) The FCA must maintain a register of all persons—

(a) it has authorised to provide a data reporting service under these Regulations, or

(b) whose compliance with Title V of the markets in financial instruments directive it has verified in accordance with Article 59.2 of that directive.

(2) The FCA must—

(a) publish the register online and make it available for public inspection;

(b) ensure that the register contains information on the services which persons on the register are authorised to provide; and

(c) update the register on a regular basis.

Application for authorisation to provide a data reporting service

7.—(1) An application for authorisation to provide a data reporting service must be made to the FCA and contain, or be accompanied by, all the information required to demonstrate that the applicant meets the obligations under these Regulations for the data reporting service the applicant wishes to provide.