STATUTORY INSTRUMENTS

2016 No. 1095

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets (Disclosure of Information to the European Securities and Markets Authority etc. and Other Provisions) Regulations 2016

Made - - - -	*15th November 2016*
Laid before Parliament	*16th November 2016*
Coming into force - -	*8th December 2016*

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F1] and sections 213(10) [F2], 214(5), 224(4) and 417(1) [F3] of the Financial Services and Markets Act 2000 [F4].

The Treasury are designated [F5] for the purposes of the European Communities Act 1972 in relation to financial services.

F1 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), **section 27(1)(a)**, and by the European Union (Amendment) Act 2008 (c. 7), **section 3** and the Schedule, Part 1. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51), an order 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 in Brussels on 17th March 1993 (Cm 2183).

F2 Section 213(10) was substituted by S.I. 2011/1613.

F3 See the definition of "prescribed".

F4 2000 c.8.

F5 S.I. 2012/1759.

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets (Disclosure of Information to the European Securities and Markets Authority etc. and Other Provisions) Regulations 2016, and come into force on 8th December 2016.

Amendment of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

2.—(1) The Financial Markets and Insolvency (Settlement Finality) Regulations 1999 [F6] are amended as follows.

(2) In regulation 2 (interpretation) after the definition of "EEA State" insert—

""ESMA" means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council [F7] of 24th November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority);".

(3) In regulation 4 (grant and refusal of designation), in paragraph (6) for "the European Securities and Markets Authority" substitute " ESMA ".

(4) In regulation 22 (notification of insolvency order or passing of resolution for creditors' voluntary winding up)—

(a) in paragraph (2) after "the Treasury" insert " , the Board, ESMA and other EEA States "; and

(b) after paragraph (2) insert—

"(3) In paragraph (2) "the Board" means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24th November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board [F8].".

F6 S.I. 1999/2979, as amended by S.I. 2010/2993, 2013/472 and 2015/347. There are other amendments not relevant to these Regulations.
F7 OJ No. L 331, 15.12.2010, p. 84.
F8 OJ No. L 331, 15.12.2010, p. 1.

Amendment of the Financial Services and Markets Act 2000

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

(2) In section 87D [F9] (procedure for decision on application for approval)—

(a) in subsection (1) after "the applicant" insert " and ESMA "; and

(b) after subsection (1) insert—

"(1A) The written notice to ESMA must be accompanied by a copy of the prospectus as approved.".

(3) After section 354C [F10] insert—

"Provision of information to ESMA, the Commission and other EEA States

354D Information under the markets in financial instruments directive

(1) The appropriate regulator must give ESMA—

(a) information about any general difficulties encountered by UK investment firms in relation to their establishment of a branch or their provision of investment services and activities in a country or territory other than an EEA State;

(b) a return for each calendar year showing aggregated information about all—

(i) cases dealt with under section 177(2) [F11] (failure to comply with information gathering and investigation requirements treated as contempt of court) where

the requirement was imposed in connection with the regulator's markets in financial instruments directive functions;

(ii) convictions for an offence under section 177(3), (4) or (6) where the proceedings were instituted by the regulator in connection with the regulator's markets in financial instruments directive functions;

(iii) final notices and supervisory notices given by the regulator in relation to the contravention of a markets in financial instruments directive requirement; and

(c) information about any complaint and redress procedures of the kind referred to in Article 53.1 of the markets in financial instruments directive which are available in the United Kingdom.

(2) The appropriate regulator must also give the information specified in subsection (1)(a) to the Commission.

(3) The PRA is the "appropriate regulator"—

(a) for the purposes of subsection (1)(a), in relation to UK investment firms which are PRA-authorised persons;

(b) for the purposes of subsection (1)(b)(i), where the case relates to a failure to comply with a requirement imposed by the PRA or by a person appointed by the PRA;

(c) for the purposes of subsection (1)(b)(ii), where the conviction is for an offence in relation to which the PRA is the appropriate regulator under section 401(3A) [F12];

(d) for the purposes of subsection (1)(b)(iii), where the notice was given by the PRA; and

(e) for the purposes of subsection (1)(c), where the procedure is only available in relation to investment firms which are PRA-authorised persons.

(4) The FCA is the "appropriate regulator" in any other case.

(5) The FCA must give ESMA—

(a) notice of any determination which the FCA makes in relation to any shares in compliance with Article 27.2 of the markets in financial instruments directive;

(b) a list of the regulated markets (within the meaning given by Article 4.1.14 of the markets in financial instruments directive) for which the United Kingdom is the home Member State (within the meaning given by Article 4.1.20(b) of that directive); and

(c) notice of any change to that list.

(6) The FCA must also give the information specified in subsection (5)(b) and (c) to all EEA States other than the United Kingdom.

(7) Section 424A [F13] (meaning of "investment firm") has effect for the purposes of this section as if subsections (3) and (4) were omitted.

(8) In this section—

"final notice" means a notice given under section 390 [F14];

"markets in financial instruments directive function" means a function conferred by any provision made by or under this Act to the extent that it implements the markets in financial instruments directive;

"markets in financial instruments directive requirement" means a requirement imposed—

(a) by or under any provision made by or under this Act which implements the markets in financial instruments directive; or

(b) by any directly applicable EU regulation made under the markets in financial instruments directive;

"supervisory notice" has the meaning given by section 395(13) [F15]; and

"UK investment firm" means an investment firm whose home Member State (within the meaning given by Article 4.1.20(a) of the markets in financial instruments directive) is the United Kingdom.

354E Competent authorities under the markets in financial instruments directive: designation and co-operation

(1) The Treasury must inform the Commission, ESMA and the competent authorities established in EEA States other than the United Kingdom—

(a) of the identity of the authority (or authorities) for the time being designated by the Treasury under Article 48.1 of the markets in financial instruments directive (designation of authorities competent to carry out duties under that directive); and

(b) if more than one authority is designated, of the division of responsibilities between them.

(2) The Treasury must inform the Commission, ESMA and EEA States other than the United Kingdom of the identity of the authority for the time being designated by the Treasury under Article 56.1 of the markets in financial instruments directive as a contact point for the purposes of that directive (obligation to co-operate with competent authorities of other member States).

(3) Subsection (4) applies where the FCA or the PRA has good reason to suspect that any person, other than an authorised person who has a Part 4A permission or a recognised investment exchange, has acted or is acting in an EEA State other than the United Kingdom in a manner contrary to the markets in financial instruments directive.

(4) The FCA must give a competent authority established in that State and ESMA notice of those suspicions, together with information, which is as specific as reasonably practicable under the circumstances, about the reason for those suspicions.

(5) Subsections (6) and (7) apply where a competent authority established in an EEA State other than the United Kingdom informs the FCA that it has good reason to suspect that an authorised person who has a Part 4A permission or a recognised investment exchange has acted or is acting in a manner contrary to the markets in financial instruments directive.

(6) If the information relates to a PRA-authorised person, the FCA must inform the PRA.

(7) The FCA must inform the competent authority and ESMA—

(a) of the outcome of any action taken by the FCA or PRA in response to receiving that information; and

(b) if reasonably practicable under the circumstances, of significant interim developments resulting from that action.

(8) Subsections (9) and (10) apply where the FCA receives a request by a competent authority established in an EEA State other than the United Kingdom—

(a) under Article 57 of the markets in financial instruments directive for co-operation in carrying out any investigation, on-the-spot verification or supervisory activity; or

(b) for the supply of information required for the purposes referred to in Article 58.1 of that directive.

(9) If the request relates to a PRA-authorised person, the FCA must inform the PRA.