Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016. 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

2016 No. 715

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016

Made - - - -	*7th July 2016*
Laid before Parliament	*8th July 2016*
Coming into force - -	*13th July 2016*

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 and the following provisions of the Financial Services and Markets Act 2000 [F3]: sections 1A(6), 1L(2)(b), 168(4)(k), 204A(2) and (4), 293A, 296(1A), 297(2A)(c), 312E(3)(c), 380(6)(a)(i), 380(9); paragraph 23(2)(b) of Schedule 1ZA; paragraphs 14(2)(d), 26(2)(c) and 36(2)(b) of Schedule 17A; 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) made by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L1, 3.11.1994, p.3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L1, 3.1.1994, p.572).

F3 2000 c.8. Sections 1A to 3S were inserted by section 6 of the Financial Services Act 2012 (c.21); section 168 was amended by Schedule 12 to that Act; sections 204A and 380 were amended by Schedule 9 to that Act; section 293A was inserted by Schedule 8 to that Act; sections 296 and 297 were amended by Schedule 8 to that Act; section 312E was inserted by section 33 of that Act; Schedule 1ZA was inserted by Schedule 3 to that Act; Schedule 17A was inserted by Schedule 7 to that Act. There are other amendments to the Act which are not relevant to this Order.

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PART 1

Citation, commencement and interpretation

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016.

(2) These Regulations come into force on 13th July 2016.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Financial Services and Markets Act 2000;

"Bank" means the Bank of England;

[[F4]"recognised CSD" has the meaning given in section 285(1) of the Act;**]**

"SFTR requirement" means a requirement imposed by—

(a) Article 4 or 15 of the SFT regulation [F5]; or

(b) any directly applicable regulation made under Article 4(9) or 4(10) of the SFT regulation.

(2) Any expression used in these Regulations which is given a meaning in Article 3 or 16 of the SFT regulation has the meaning which it is given in that Article.

F4 Words in reg. 2(1) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 43(2)** (with regs. 7(4), 9(1))

F5 "SFT regulation" is defined in section 417 of the Act, as amended by paragraph 1(5) of Schedule 1 to these Regulations.

PART 2

Designation of competent authorities

Designation of competent authorities

3.—(1) Subject to paragraph (2), the FCA is responsible for the functions of the competent authority for the purposes of the SFT regulation.

(2) The Bank is responsible for the functions of the competent authority for the purposes of the SFT regulation in relation to any financial counterparty which is a recognised central counterparty **[**[F6]or a recognised CSD**]**.

F6 Words in reg. 3(2) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 43(3)** (with regs. 7(4), 9(1))

PART 3

Administration and enforcement

CHAPTER 1

Interpretation

Meaning of "non-authorised counterparty"

4. In this Part a "non-authorised counterparty" is a financial or non-financial counterparty which is not—

(a) an authorised person;

(b) a recognised investment exchange; [F7]...

(c) a recognised central counterparty **[**[F8]; or

(d) a recognised CSD.**]**

F7 Word in reg. 4(b) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 43(4)(a)** (with regs. 7(4), 9(1))

F8 Reg. 4(d) and word inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 43(4)(b)** (with regs. 7(4), 9(1))

CHAPTER 2

Information gathering

Power of the FCA to require information

5.—(1) This regulation applies where—

(a) it is necessary for the FCA to determine whether a person is subject to an SFTR requirement; or

(b) the FCA requires information or documents from a non-authorised counterparty in connection with the exercise of its functions under the SFT regulation or these Regulations.

(2) The FCA may, by notice in writing, require a non-authorised counterparty or any other person—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(3) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified; and

(b) at such place as may be specified.

(4) The FCA may require any information provided under this regulation to be provided in such a form as it may reasonably require.

(5) The FCA may require—

(a) any information provided, whether in a document or otherwise, to be verified in such a manner; or

(b) any document produced to be authenticated in such a manner,

as it may reasonably require.

(6) In this regulation "specified" means specified in the notice.

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Reports by skilled persons

6.—(1) Section 166 [F9] of the Act (reports by skilled persons) applies where the FCA has required or could require a non-authorised counterparty to provide information or produce a document under regulation 5 as it applies where the FCA has required or could require a person to provide information or produce a document under the Act with the following modifications.

(2) In section 166(1) the reference to any matter is to be read as a reference to any matter related to the exercise of the FCA's functions under the SFT regulation.

(3) In section 166(2)(a) the reference to an authorised person is to be read as a reference to a non-authorised counterparty.

F9 Section 166 was amended by the Financial Services Act 2012, Schedule 12, paragraph 5.

Information and documents: supplemental provisions

7.—(1) Section 175 [F10] of the Act (information and documents: supplemental provisions) applies where the FCA has the power under regulation 5 to require a non-authorised counterparty or any other person to produce a document as it applies where the FCA has a power to require a person to produce a document under Part 11 of the Act with the following modifications.

(2) In subsection (1) and (3) of section 175 the reference to an investigator is to be ignored.

(3) Section 175(8) is to be ignored.

F10 Section 175 was amended by the Financial Services Act 2012, Schedule 12, paragraph 13.

CHAPTER 3

Supervisory measures

Guidance

8.—(1) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to—

(a) an SFTR requirement;

(b) any matter relating to the functions of the FCA under these Regulations; or

(c) any other matter about which it appears to the FCA to be desirable to give information or advice in connection with these Regulations.

(2) The FCA may—

(a) publish its guidance;

(b) offer copies of its published guidance for sale at a reasonable price; or

(c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

Directions

9.—(1) The FCA may direct a non-authorised counterparty to take, or refrain from taking, specified action where—

(a) it appears to the FCA that the non-authorised counterparty has contravened an SFTR requirement; and

(b) the FCA considers the action necessary to—

(i) end any conduct which is contributing to a continuing contravention of an SFTR requirement; or

(ii) prevent a further contravention of an SFTR requirement.

(2) The direction may specify the time for compliance with the direction.

(3) The direction is enforceable, on the application of the FCA, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988 [F11].

(4) The FCA may revoke a direction given under this regulation.

F11 1988 c.36.

Directions: procedure

10.—(1) Before giving a direction under regulation 9 the FCA must give written notice of its intention to do so to the non-authorised counterparty concerned.

(2) A notice under paragraph (1) must—

(a) state why the FCA intends to give the direction; and

(b) state a period of time during which representations may be made to the FCA about the proposed direction.

(3) Before the end of the period for making representations, the non-authorised counterparty may make representations to the FCA.

(4) The period for making representations may, in any particular case, be extended by the FCA.

(5) In deciding whether to give a direction, the FCA must have regard to any representations made in accordance with paragraph (3).

(6) When the FCA has decided whether to give a direction under regulation 9, it must give the non-authorised counterparty written notice of its decision.

(7) If the FCA considers it necessary to do so, it may give a direction under regulation 9—

(a) without following the procedure set out in this regulation; or

(b) if the FCA has begun to follow that procedure, regardless of whether the period for making representations has expired.

(8) If the FCA gives a direction in reliance on paragraph (7) it must, within a reasonable time of giving the direction, give the non-authorised counterparty a statement of its reasons—

(a) for giving the direction; and

(b) for relying on paragraph (7).

(9) If the FCA gives a non-authorised counterparty a direction under regulation 9, the non-authorised counterparty may refer the matter to the Tribunal.

(10) If the FCA has, in relation to a particular matter, followed the procedure set out in paragraphs (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under paragraph (1).