STATUTORY INSTRUMENTS

2016 No. 225

FINANCIAL SERVICES AND MARKETS

The Undertakings for Collective Investment in Transferable Securities Regulations 2016

Made - - - -	*25th February 2016*
Laid before Parliament	*25th February 2016*
Coming into force - -	*18th March 2016*

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 that Act, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Undertakings for Collective Investment in Transferable Securities Regulations 2016 and come into force on 18th March 2016.

Amendments to the Financial Services and Markets Act 2000

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

(2) In section 55J(**4**) (variation or cancellation on initiative of regulator), after subsection (7) insert—

> "(7ZA) Without prejudice to the generality of subsections (1) and (2), if it appears to the FCA that there has been a serious failure, by a person with permission to carry on the regulated activity specified in article 51ZA of the Financial Services and Markets Act (Regulated Activities) Order 2001 (managing a UCITS), to comply with the requirements imposed—

(**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 in Brussels on 17th March 1993 (Cm 2183).

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

(**4**) Section 55J was substituted by section 11(2) of the Financial Services Act 2012 (c. 21) and was subsequently amended by S.I. 2013/1773, S.I. 2013/3115, S.I. 2015/575, S.I. 2015/910 and S.I. 2015/1882.

(a) by or under this Act in pursuance of the UCITS Directive(**5**), or

(b) by the Undertakings for Collective Investment in Transferable Securities Regulations 2011(**6**),

the FCA may exercise its powers under this section to vary the Part 4A permission of the person concerned by removing that activity from those to which the permission relates, or to cancel the person's Part 4A permission.".

(3) In section 66A(4)(**7**) (misconduct: action by the FCA)—

(a) omit the "or" at the end of paragraph (aa);

(b) after paragraph (aa), insert—

"(ab) imposed by the Undertakings for Collective Investment in Transferable Securities Regulations 2011, or".

(4) In section 168(4)(ja)(**8**) (appointment of persons to carry out investigations in particular cases)—

(a) omit the "or" at the end of sub-paragraph (i), and at the end of sub-paragraph (ii);

(b) after sub-paragraph (ii), insert—

"(iii) any provision made by or under this Act for the purpose of implementing the UCITS Directive; or

(iv) any provision made by the Undertakings for Collective Investment in Transferable Securities Regulations 2011; or.".

(5) In section 204A (meaning of "relevant requirement" and "appropriate regulator")—

(a) in subsection (2)(**9**)—

(i) omit the "or" at the end of paragraph (b);

(ii) at the end of paragraph (c), insert—

", or

(d) by the Undertakings for Collective Investment in Transferable Securities Regulations 2011.".

(b) for subsection (6), substitute—

"(6) The FCA is "the appropriate regulator" in the case of a contravention of any other requirement imposed—

(a) by or under this Act;

(b) by the Alternative Investment Fund Managers Regulations 2013; or

(c) by the Undertakings for Collective Investment in Transferable Securities Regulations 2011.".

(**5**) OJ L 302, 17.11.2009, p. 32. The term "UCITS Directive" is defined in paragraph 4B of Part I of Schedule 3 to the Financial Services and Markets Act 2000 (c.8).

(**6**) S.I. 2011/1613, amended by S.I. 2012/2015, S.I. 2013/472 and S.I. 2013/1388.

(**7**) Section 66A was inserted by section 32(2) of the Financial Services (Banking Reform) Act 2013 (c.33) and was amended by S.I. 2015/1864.

(**8**) Section 168(4) was amended by section 41 of, and paragraphs 8(1) and 8(4)(a) to (g) of Part 1 of Schedule 12 to, the Financial Services Act 2012 (c.21), by section 62 of, and paragraph 33(3) of Part 7 of Schedule 7 to, the Counter-Terrorism Act 2008 (c.28), by section 24(1) and (2) of, and paragraph 1 and 16 of Part 1 of Schedule 2 to, the Financial Services Act 2010 (c.28), and by S.I. 2007/126, S.I. 2012/2554 and S.I. 2013/1773.

(**9**) Section 204A was inserted by section 37(1) of, and paragraph 1 of Part 1, and paragraph 10 of Part 4 of Schedule 9 to, the Financial Services Act 2012. Subsection (2) was amended by S.I. 2013/1773.

(6) In section 380(6)(a)(**10**) (injunctions)—

(a) omit the "or" at the end of sub-paragraph (ii);

(b) omit the "or" at the end of the second sub-paragraph (iii);

(c) renumber the second sub-paragraph (iii) as (iv);

(d) at the end of sub-paragraph (v), insert—

", or

(vi) which is imposed by the Undertakings for Collective Investment in Transferable Securities Regulations 2011.".

(7) In section 391(4A)(**11**), for "and 391B" substitute ", 391B and 391C".

(8) After section 391B(**12**) (publication: special provisions relating to the transparency obligations directive), insert—

"**Publication: special provisions relating to the UCITS directive**

391C.—(1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure to which Article 99 of the UCITS directive applies.

(2) Where the FCA publishes information under section 391(4) or (5) about a matter to which a decision notice or supervisory notice relates and the person to whom the notice is given refers the matter to the Tribunal, the FCA must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(3) Subject to subsection (4), where the FCA gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Subject to subsection (6), information about a matter to which a final notice relates must be published anonymously where—

(a) the sanction or measure is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;

(b) failing to publish anonymously would jeopardise the stability of financial markets or an ongoing investigation; or

(c) failing to publish anonymously would cause, insofar as it can be determined, disproportionate damage to the persons involved.

(5) Where subsection (4) applies, the FCA may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(6) Information about a matter to which a final notice relates must not be published where anonymous publication under subsection (4) is considered by the FCA to be insufficient to ensure—

(a) that the stability of the financial markets would not be put in jeopardy; or

(b) that the publication would be proportionate with regard to sanctions or measures which are considered by the FCA to be of a minor nature.

(**10**) Section 380(6) was amended by section 141 of, and paragraph 3(1) and (2) of Schedule 10 to, the Financial Services (Banking Reform) Act 2013, by section 37(1) of, and paragraph 1 of Part 1 of Schedule 9, and paragraphs 19(1) and (3) of Part 5 of Schedule 9 to, the Financial Services Act 2012, and by S.I. 2013/1773 and S.I. 2015/1755.

(**11**) Section 391(4A) was inserted by S.I. 2013/3115 and amended by S.I. 2015/1755.

(**12**) Section 391B was inserted by S.I. 2015/1755.

(7) Where the FCA publishes information in accordance with subsections (2) to (5), the FCA must—

(a) ensure the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998 requires the information to be retained for a different period; and

(b) promptly report the information to ESMA.".

(9) In Part 1 of Schedule 3 (EEA passport rights), at the end of paragraph 4B, insert ", as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23rd July 2014(**13**).".

Amendments to the Undertakings for Collective Investment in Transferable Securities Regulations 2011

3.—(1) The Undertakings for Collective Investment in Transferable Securities Regulations 2011(**14**) are amended as follows.

(2) In regulation 7(1)(**15**)—

(a) insert in the appropriate places the following definitions—

""EEA management company" means a management company that is established in an EEA State other than the UK;";

""implementing provision" means a requirement that is imposed—

(a) by these Regulations; or

(b) by or under the Act, if the provision implements the UCITS directive;";

""UK management company" means a management company that is established in the UK;";

(b) in the definition of "UCITS directive", at the end insert ", as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23rd July 2014;"

(c) replace regulation 7(2) with—

"(2) Expressions used in this Part which are defined in the UCITS directive have the same meaning as in the UCITS directive and, subject to paragraph (1), expressions used in this Part shall have the same meaning as in the Act.".

(3) After Part 5 (Divisions) insert—

"PART 5A

DEPOSITARIES

Interpretation

15A. The interpretative provisions in regulation 7 shall apply to this Part.

Depositary liability: general provisions

15B.—(1) This regulation, and regulations 15C and 15D, apply in relation to the depositary of a UCITS.

(**13**) OJ L 257 28.8.2014, p.186.
(**14**) S.I. 2011/1613, amended by S.I. 2012/2015, S.I. 2013/472 and S.I. 2013/1388.
(**15**) Regulation 7 was amended by S.I. 2013/472 and S.I. 2013/1388.