Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2006

Made - - - -	***
	in accordance with
Coming into force - -	*regulation 1(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 investment firms and to the provision of investment services and to the operation of regulated markets and clearing or settlement systems and in relation to credit and financial institutions;

A draft of this instrument has been laid before Parliament in accordance with paragraph 2(2) of Schedule 2 to that Act and approved by a resolution of each House of Parliament;

The Treasury make these Regulations in exercise of the powers conferred on them by section 2(2) of that Act:

PART 1

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2006.

(2) These Regulations come into force on 1st April 2007 for the purposes of—

(**1**) S.I. 1993/2661 and 2001/3495.

(**2**) 1972 c.68; 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 L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p. 572). For the decision of the EEA Joint Committee in relation to Directive 2004/39/EC, see Decision No 65/2005 of 29th April 2005 (OJ No L 239, 15.9.2005, p.50).

(a) enabling the Authority to receive a notice under subsection (1)(b) of section 312A of the Act (inserted by these Regulations) in preparation for the making of arrangements as mentioned in that section by an EEA market operator on or after 1st November 2007;

(b) enabling a recognised investment exchange to give notice under subsection (2) of section 312C of the Act (inserted by these Regulations), and enabling the Authority to send a copy of the notice to the host state regulator as required by subsection (3) of that section;

(c) enabling applications to be made for approval under section 412A of the Act (inserted by these Regulations);

(d) enabling the Authority to give a direction as to the manner in which an application under section 412A is to be made and as to the content of the application and information to accompany it, and enabling the Authority to require the applicant to provide further information in accordance with section 412A(3);

(e) enabling the Authority, on receipt on or after that date of a consent notice under paragraph 13(1)(a) of Schedule 3(**3**) in relation to a EEA firm exercising an EEA right deriving from the markets in financial instruments directive, to prepare for the firm's supervision in accordance with paragraph 13(2)(a) of that Schedule;

(f) enabling the Authority, on receipt of a regulator's notice under paragraph 14 of Schedule 3(**4**) or a notice referred to in paragraph 14(1)(ba) of that Schedule (inserted by these Regulations) in relation to a EEA firm exercising an EEA right deriving from the markets in financial instruments directive, to prepare for the firm's supervision in accordance with paragraph 14(2)(a) of that Schedule;

(g) enabling—

(i) a UK firm to give a notice of intention under paragraph 19 of Schedule 3(**5**) (as amended by these Regulations) in exercise of an EEA right deriving from the markets in financial instruments directive,

(ii) the Authority to give a consent notice referred to in paragraph 19(4) of that Schedule to the host state regulator or a notice referred to in paragraph 19(8), (11) or (12) of that Schedule in relation to the exercise of that EEA right, and

(iii) the firm to make a reference to the Tribunal in accordance with paragraph 19(12)(b) of that Schedule in relation to the exercise of that EEA right;

(h) enabling—

(i) a UK firm to give a notice of intention under paragraph 20 of Schedule 3(**6**) (as amended by these Regulations) in exercise of an EEA right deriving from the markets in financial instruments directive,

(ii) the Authority to send a copy of such a notice to the host state regulator under paragraph 20(3) of that Schedule and notify the UK firm under paragraph 20(4) of that Schedule that it has done so,

and for all other purposes on 1st November 2007.

(3) For the purposes of paragraph (2)(e) to (h)—

"EEA right" has the meaning given in paragraph 7 of Schedule 3;

an "EEA right deriving from the markets in financial instruments directive" means an EEA right to carry on an activity—

(**3**) Paragraph 13(1) was amended by S.I. 2003/1473 and 2066.
(**4**) Relevant amendments to paragraph 14 were made by S.I. 2003/1473 and 2066.
(**5**) Relevant amendments to paragraph 19 were made by S.I. 2003/1473 and 2066.
(**6**) Relevant amendments to paragraph 20 were made by S.I. 2001/ 1376 and 2003/ 2066.

(a) which is an investment service or activity listed in Section A of Annex I to the markets in financial instruments directive;

(b) which is an ancillary service listed in Section B of Annex I to the markets in financial instruments directive; or

(c) in relation to an investment which is a financial instrument listed in Section C of Annex I to the markets in financial instruments directive;

"Schedule 3" means Schedule 3 to the Act.

(4) Nothing in paragraph (2)(e) to (h) gives an EEA firm or a UK firm an EEA right to carry on, before 1st November 2007, an activity—

(a) which is an ancillary service listed in Section B of Annex I to the markets in financial instruments directive but which is not a non-core service listed in Section C of the Annex to the investment services directive;

(b) in relation to an investment which is a financial instrument listed in Section C of Annex I to the markets in financial instruments directive but which is not an instrument listed in Section B of the Annex to the investment services directive; or

(c) referred to in paragraph 5 of Section A of Annex I to the markets in financial instruments directive unless the firm has an EEA right to carry on one or more core services listed in Section A of the Annex to the investment services directive.

Interpretation

2. In these Regulations—

"the Act" means the Financial Services and Markets Act 2000(**7**);

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

"the Authority" means the Financial Services Authority;

"investment services directive" means Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field(**8**);

"markets in financial instruments directive" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments(**9**);

"Part IV permission" has the meaning given in section 40(4) of the Act;

"Schedule 3" means Schedule 3 to the Act;

Amendments of primary and secondary legislation

3.—(1) Schedule 1, which contains amendments of Part 13 of the Act (incoming firms: intervention by authority), has effect.

(2) Schedule 2, which contains amendments of Part 18 of the Act (recognised investment exchanges and clearing houses), has effect.

(3) Schedule 3, which inserts Part 18A of the Act, has effect.

(4) Schedule 4, which contains amendments of Schedule 3 to the Act (EEA passport rights), has effect.

(5) Schedule 5, which contains other amendments of the Act, has effect.

(6) Schedule 6, which contains consequential amendments of other enactments, has effect.

(**7**) 2000 c. 8.
(**8**) OJ No L 141, 11.6.1993, p. 27.
(**9**) OJ No L 145, 30.4.2004, p.1.

PART 2

PART IV PERMISSION: INVESTMENT FIRMS

4.—(1) The Authority must not give a Part IV permission to an applicant who is an investment firm unless it is satisfied that the applicant complies with—

(a) the provisions contained in or made under the Act implementing Chapter I of Title II of the markets in financial instruments directive; and

(b) any directly applicable Community regulation made under that Chapter.

(2) Paragraph (1) also applies if an authorised person becomes an investment firm by virtue of a variation of his Part IV permission.

(3) "Investment firm" has the meaning given in section 424A of the Act(**10**).

PART 3

TRANSITIONAL AND SAVING PROVISIONS

Transitional and saving provisions: market operators

5.—(1) Section 312A(2) of the Act applies to arrangements made on or before 31st October 2007, in the United Kingdom, by an EEA market operator to facilitate access to, or use of, a regulated market or multilateral trading facility operated by it as it applies to arrangements under section 312A(1).

(2) Section 312C(2) and (4) of the Act does not apply in relation to arrangements made by a recognised investment exchange on or before 31st October 2007 in the territory of another EEA State to facilitate access to, or use of, a regulated market or multilateral trading facility operated by it by persons established in that State.

Transitional and saving provisions: EEA firms

6.—(1) Where the Authority has received a consent notice of the sort referred to in paragraph 13(1)(a) of Schedule 3 from the home state regulator of an EEA investment firm on or before 31st October 2007, paragraph 13 of Schedule 3 applies as if it had not been amended by paragraph 8 of Schedule 4 to these Regulations.

(2) In this regulation, "EEA investment firm" means an EEA firm falling within paragraph 5(a) of Schedule 3 (before its amendment by these Regulations).

Transitional provisions: UK investment firms exercising passport rights under the investment services directive

7.—(1) Where—

(a) a UK investment firm on or before 31st October 2007 has given—

(i) notice of intention under paragraph 19(2) or 20(1) of Schedule 3 in relation to an investment service specified in the first column in table 1 in Schedule 7 to these Regulations, or

(**10**) Section 424A was inserted by S.I. 2006/2975.

(ii) notice of change under regulation 11(3) or 12(2)(a) of the EEA Passport Rights Regulations in relation to an investment service specified in the first column in table 1 in Schedule 7 to these Regulations, or

(b) the Authority on or before 31st October 2007 has given—

(i) a consent notice under paragraph 19(4) of Schedule 3 or a notice referred to in paragraph 20(3) of Schedule 3 in relation to an investment service specified in the first column in table 1 in Schedule 7 to these Regulations, or

(ii) a notice referred to in regulation 11(5) of the EEA Passport Rights Regulations in relation to an investment service specified in the first column in table 1 in Schedule 7 to these Regulations,

it is on 1st November 2007 to be treated as having given that notice in relation to the investment service or activity specified in the second column of table 1 opposite that investment service.

(2) Where—

(a) a UK investment firm on or before 31st October 2007 has given—

(i) notice of intention under paragraph 19(2) or 20(1) of Schedule 3 in relation to a non-core service specified in the first column in table 2 in Schedule 7 to these Regulations, or

(ii) notice of change under regulation 11(3) or 12(2)(a) of the EEA Passport Rights Regulations in relation to a non-core service specified in the first column in table 2 in Schedule 7 to these Regulations, or

(b) the Authority on or before 31st October 2007 has given—

(i) a consent notice under paragraph 19(4) of Schedule 3 or a notice referred to in paragraph 20(3) of Schedule 3 in relation to a non-core service specified in the first column in table 2 in Schedule 7 to these Regulations, or

(ii) a notice referred to in regulation 11(5) of the EEA Passport Rights Regulations in relation to a non-core service specified in the first column in table 2 in Schedule 7 to these Regulations,

it is on 1st November 2007 to be treated as having given that notice in relation to the ancillary service specified in the second column of table 2 opposite that non-core service.

(3) Where—

(a) a UK investment firm on or before 31st October 2007 has given—

(i) notice of intention under paragraph 19(2) or 20(1) of Schedule 3 in relation to the non-core service specified in paragraph 6 of Section C of the Annex to the investment services directive (investment advice concerning one or more of the instruments listed in Section B), or

(ii) notice of change under regulation 11(3) or 12(2)(a) of the EEA Passport Rights Regulations in relation to the non-core service specified in paragraph 6 of Section C of the Annex to the investment services directive, or

(b) the Authority on or before 31st October 2007 has given—

(i) a consent notice under paragraph 19(4) of Schedule 3 or a notice referred to in paragraph 20(3) of Schedule 3 in relation to the non-core service specified in paragraph 6 of Section C of the Annex to the investment services directive, or

(ii) a notice referred to in regulation 11(5) of the EEA Passport Rights Regulations in relation to the non-core service specified in paragraph 6 of Section C of the Annex to the investment services directive,