

2006 No. 3385

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (EEA Passport Rights) (Amendment) Regulations 2006

Made - - - - - *18th December 2006*

Laid before Parliament *18th December 2006*

Coming into force in accordance with regulation 1(2)

The Treasury make these Regulations in exercise of the powers conferred on them by paragraphs 13(1)(b)(iii), 14(1)(b), 17(b) and 22 of Schedule 3 to, and section 428(3) of, the Financial Services and Markets Act 2000(a):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (EEA Passport Rights) (Amendment) Regulations 2006.

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

- (a) regulations 4 and 5;
- (b) enabling the Authority to treat a notice referred to in regulation 4A(3)(a) or 5A(3)(a) of the principal Regulations (inserted by these Regulations) given on or after that date as effective for the purpose of regulation 4A(3) or 5A(3) (as the case may be);
- (c) enabling the Authority, on receipt on or after that date of notice under regulation 11A(2)(a) or 12A(2)(a) of the principal Regulations (inserted by these Regulations), to inform the host state regulator of the proposed change in accordance with regulation 11A(3) or 12A(3) (as the case may be); and
- (d) enabling the Authority to give notice under regulation 11A(3) or 12A(3) of the principal Regulations (inserted by these Regulations),

and for all other purposes on 1st November 2007.

(3) Nothing in paragraph (2) gives an investment firm or a UK investment 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(b) 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

(a) 2000 c.8; sections 13(1) and 14(1) were amended by S.I. 2003/1473 and 2066. For the meaning of “prescribed” see section 417(1) of that Act.

(b) OJ No L 145, 30.4.2004, p. 1.

- (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.

(4) In these Regulations, “the principal Regulations” means the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(a) and “the investment services directive” means Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field(b).

Amendment of the principal Regulations

2. The principal Regulations are amended as follows.

3. In regulation 1(2), at the end, insert—

“;

“tied agent” has the meaning given in Article 4.1.25 of the markets in financial instruments directive;

“UK investment firm” means a UK firm—

- (a) which is an investment firm,
- (b) whose EEA right derives from the markets in financial instruments directive”.

4. In regulation 2(2)—

- (a) at the end of sub-paragraph (b) omit “and”;
- (b) for sub-paragraph (c) substitute—

“(c) details of the accredited compensation scheme of which the firm is a member in accordance with Directive 97/9/EC of the European Parliament and of the Council of 3rd March 1997 on investor-compensation schemes(c); and

- (d) a statement of whether the firm intends to use a tied agent established in the United Kingdom.”.

5. In regulation 3—

(a) in paragraph (2)—

- (i) for “In” substitute “Subject to paragraph (2ZA), in”;
- (ii) at the end of sub-paragraph (a) omit “and”;
- (iii) after sub-paragraph (b) insert—

“; and

(c) a statement of whether the firm intends to use a tied agent to provide services in the United Kingdom”;

(b) after paragraph (2) insert—

“(2ZA) In the case of an investment firm exercising the right under Article 31.5 of the markets in financial instruments directive, the prescribed information is—

- (a) a statement that the firm is an investment firm; and
- (b) a statement that the firm intends to exercise that right in the United Kingdom.”.

6. In regulation 4(d)—

- (a) in the heading for “Investment firms, management” substitute “Management”;
- (b) in paragraph (1) for “An investment firm,” substitute “A”;

(a) S.I. 2001/2511.

(b) OJ No L 141, 11.6.1993, p. 27.

(c) OJ No L 84, 26.3.1997, p. 22.

(d) The heading and paragraphs (1) and (6) of regulation 4 were amended by S.I. 2003/2066.

(c) in paragraph (6) for “an investment firm,” substitute “a”.

7. After regulation 4 insert—

“Investment firms: changes to branch details

4A.—(1) An investment firm which has established a branch in the United Kingdom in exercise of an EEA right must not—

- (a) make a change in the requisite details of the branch,
- (b) use, for the first time, any tied agent established in the United Kingdom, or
- (c) cease to use tied agents established in the United Kingdom,

unless the requirements of paragraph (3) have been complied with.

(2) Where those requirements have been complied with, the firm’s permission is to be treated as varied accordingly.

(3) The requirements are that—

- (a) the firm has given a notice to its home state regulator stating the details of the proposed change, and
- (b) the period of one month beginning with the day on which the firm gave the notice has elapsed.

(4) Paragraph (1) does not apply to a change occasioned by circumstances beyond the firm’s control.”.

8. In regulation 5(a)—

- (a) in the heading for “Investment firms and management” substitute “Management”;
- (b) omit paragraph (1).

9. After regulation 5 insert—

“Investment firms: changes to services

5A.—(1) An investment firm which is providing services in the United Kingdom in exercise of an EEA right must not—

- (a) make a change in any of the matters referred to in regulation 3(2)(b),
- (b) use, for the first time, any tied agent to provide services in the United Kingdom, or
- (c) cease to use tied agents to provide services in the United Kingdom,

unless the requirements of paragraph (3) have been complied with.

(2) Where those requirements have been complied with, the firm’s permission is to be treated as varied accordingly.

(3) The requirements are that—

- (a) the firm has given a notice to its home state regulator stating the details of the proposed change, and
- (b) the period of one month beginning with the day on which the firm gave the notice has elapsed.

(4) Paragraph (1) does not apply to a change occasioned by circumstances beyond the firm’s control.”.

10. In regulation 11(b)—

- (a) in the heading omit “investment firms,”;

(a) The heading of regulation 5 was amended by S.I. 2003/2066.

(b) The heading and paragraph (1) of regulation 11 were amended by S.I. 2003/2066.

(b) in paragraph (1) omit “the investment services directive,”.

11. After regulation 11 insert—

“UK investment firms: changes to branch details

11A.—(1) A UK investment firm which has exercised an EEA right deriving from the markets in financial instruments directive to establish a branch must not—

- (a) make a change in the requisite details of the branch,
- (b) use, for the first time, any tied agent established in the EEA State in which the branch is established, or
- (c) cease to use tied agents established in the EEA State in which the branch is established,

unless the requirements of paragraph (2) have been complied with.

(2) The requirements are that—

- (a) the firm has given a notice to the Authority stating the details of the proposed change, and
- (b) the period of one month beginning with the day on which the firm gave the notice has elapsed.

(3) The Authority must, as soon as reasonably practicable after receiving a notice under paragraph (2), inform the host state regulator of the proposed change.

(4) Paragraph (1) does not apply to a change occasioned by circumstances beyond the firm’s control.”.

12. In regulation 12(a)—

- (a) in the heading omit “investment firms and”;
- (b) in paragraph (1) omit “the investment services directive or”.

13. After regulation 12 insert—

“UK investment firms: changes to services

12A.—(1) A UK investment firm which is providing services in a particular EEA State in exercise of an EEA right deriving from the markets in financial instruments directive must not—

- (a) make a change in the programme of operations, or the EEA activities, to be carried on in exercise of that right,
- (b) use, for the first time, any tied agent to provide services in the territory of that State, or
- (c) cease to use tied agents to provide services in the territory of that State,

unless the requirements of paragraph (2) have been complied with.

(2) The requirements are that—

- (a) the firm has given a notice to the Authority stating the details of the proposed change, and
- (b) the period of one month beginning with the day on which the firm gave the notice has elapsed.

(3) The Authority must, as soon as reasonably practicable after receiving a notice under paragraph (2), inform the host state regulator of the proposed change.

(a) The heading and paragraph (1) of regulation 12 were amended by S.I. 2001/2066.

(4) Paragraph (1) does not apply to a change occasioned by circumstances beyond the firm's control.”.

14. In regulation 18(1) after “11(1),” insert “11A(1),” and after “12(1),” insert “12A(1),”.

Transitional and saving provisions

15.—(1) Where an investment firm has given notice to the Authority and to its home state regulator pursuant to regulation 4(4)(a) of the principal Regulations (of a change in the requisite details of its branch) on or before 31st October 2007, regulation 4 continues to apply in relation to that change as if it had not been amended by these Regulations, and regulation 4A of the principal Regulations (inserted by these Regulations) does not apply in relation to that change.

(2) Where an investment firm has given notice to the Authority and to its home state regulator pursuant to regulation 5(3)(a) of the principal Regulations or before 31st October 2007 (in relation to a change in the matters referred to in regulation 3(2)(b) of those Regulations), regulation 5 continues to apply in relation to that change as if it had not been amended by these Regulations, and regulation 5A of the principal Regulations (inserted by these Regulations) does not apply in relation to that change.

(3) Where on or before 31st October 2007—

(a) a UK investment firm has given notice to the Authority and to its host state regulator pursuant to regulation 11(2)(a) of the principal Regulations (of a change in the requisite details of the branch) on or before 31st October 2007, but

(b) the Authority has not performed its function under regulation 11(4) of those Regulations, the Authority must inform the host state regulator of the change pursuant to regulation 11A(3) of the principal Regulations (inserted by these Regulations) instead of performing its function under regulation 11(4).

(4) Where the Authority has performed its function under regulation 11(4) of the principal Regulations (in relation to a change in the requisite details of a branch by a UK investment firm) on or before 31st October 2007, regulation 11 of the principal Regulations continues to apply in relation to that change as if it had not been amended by these Regulations, and regulation 11A of the principal Regulations (inserted by these Regulations) does not apply in relation to that change.

(5) Where a UK investment firm has given notice to the Authority and to its host state regulator pursuant to regulation 12(2)(a) of the principal Regulations (in relation to a change in its programme of operations or EEA activities) on or before 31st October 2007—

(a) regulation 12A of the principal Regulations (inserted by these Regulations) does not apply in relation to that change;

(b) the firm must not make the change to which the notice relates until the period of one month beginning with the day on which it gave the notice pursuant to regulation 12(2)(a) of the principal Regulations has elapsed; and

(c) the Authority must, as soon as reasonably practicable after receiving the notice, inform the host state regulator of the proposed change.

(6) In this regulation, “UK investment firm” means a UK firm (within the meaning of Schedule 3)—

(a) which is an investment firm (within the meaning of the investment services directive); and

(b) whose EEA right derives from that directive.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p1) ("the Directive"). The Directive is also implemented by other statutory instruments including the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations (S.I. 2006/....), the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2006 (S.I. 2006/....), the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006 (S.I. 2006/3386) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), and by the Financial Services Authority ("FSA") using powers under the Financial Services and Markets Act 2000 (c. 8).

The Regulations amend the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (S.I. 2001/2511) ("the principal Regulations").

Changes made to implement Article 31 of the Directive (investment firms' freedom to provide investment services and activities) are as follows:

- amendments to regulation 3 of the principal Regulations to supplement the prescribed information which the home state regulator must provide to the FSA in relation to an EEA investment firm seeking to provide services in the UK;
- the insertion of regulation 5A (which applies in place of regulation 5 of the principal Regulations) setting out the requirements to be complied with before an EEA investment firm which is providing services in the UK can make certain significant changes to its operations in the UK;
- the insertion of regulation 12A (which applies in place of regulation 12 of the principal Regulations) setting out the requirements to be complied with before a UK investment firm which is providing services in another EEA State can make certain significant changes to its operations in that State.

Changes made to implement Article 32 of the Directive (investment firms' freedom to establish a branch) are as follows:

- amendments to regulation 2 of the principal Regulations to supplement the prescribed information which the home state regulator must provide to the FSA in relation to an EEA investment firm seeking to establish a branch in the UK;
- the insertion of regulation 4A (which applies in place of regulation 4 of the principal Regulations) setting out the requirements to be complied with before an EEA investment firm which has established a branch in the UK can make certain significant changes to its operations in the UK;
- the insertion of regulation 11A (which applies in place of regulation 11 of the principal Regulations) setting out the requirements to be complied with before a UK investment firm which has established a branch in another EEA State can make certain significant changes to its operations in that State.

The Regulations also make consequential amendments to the principal Regulations and transitional provision.

A transposition note has been prepared which sets out how the main elements of the Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument and the other instruments transposing the Directive on the costs of business has been prepared. Both may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury's website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.

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£3.00

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E1655 12/2006 161655T 19585