
STATUTORY INSTRUMENTS

2007 No. 126

The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007

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 2007.

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

- (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^{M1} 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^{M2} 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^{M3} (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

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- (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^{M4} (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—
- (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.

Marginal Citations

- M1** Paragraph 13(1) was amended by S.I. 2003/1473 and 2066.
- M2** Relevant amendments to paragraph 14 were made by S.I. 2003/1473 and 2066.
- M3** Relevant amendments to paragraph 19 were made by S.I. 2003/1473 and 2066.
- M4** Relevant amendments to paragraph 20 were made by S.I. 2001/ 1376 and 2003/ 2066.

Interpretation

2. In these Regulations—

“the Act” means the Financial Services and Markets Act 2000^{M5};

“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 ^{M6};

“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 ^{M7};

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

“Schedule 3” means Schedule 3 to the Act;

Marginal Citations

M5 [2000 c. 8](#).

M6 OJ No L 141, 11.6.1993, p. 27.

M7 OJ No L 145, 30.4.2004, p.1.

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.

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 ^{M8}.

Marginal Citations

M8 [Section 424A](#) was inserted by [S.I. 2006/2975](#).

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
 - (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,

it is on 1st November 2007 to be treated as having given that notice in relation to the investment service specified in paragraph 5 of Section A of Annex I to the markets in financial instruments directive (investment advice) and the ancillary service specified in paragraph 5 of Section B of the Annex to that directive (investment research and financial analysis).

- (4) Where—
 - (a) a UK investment firm on or before 31st October 2007 has given—
 - (i) notice of intention under 19(2) or 20(1) of Schedule 3 in relation to an instrument specified in the first column in table 3 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 an instrument specified in the first column in table 3 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 instrument specified in the first column in table 3 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 instrument specified in the first column in table 3 in Schedule 7 to these Regulations,

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it is on 1st November 2007 to be treated as having given that notice in relation to the financial instrument specified in the second column of table 3 opposite that instrument.

(5) Nothing in this regulation gives a UK investment firm the right to carry on a regulated activity (or an activity which, if it were regarded as carried on in the United Kingdom, would be a regulated activity) which it would require Part IV permission to carry on but for which it does not have Part IV permission.

Additional saving provision: UK investment firms

8. Where the Authority has given a consent notice under paragraph 19(4) of Schedule 3 in relation to a UK investment firm on or before 31st October 2007, paragraph 19(6) of that Schedule applies as if it had not been amended by paragraph 10(c) of Schedule 4 to these Regulations, and paragraph 19(7B) (inserted by paragraph 10(d) of Schedule 4 to these Regulations) does not apply.

Transitional provision: appointed representatives and tied agents

9.—(1) A person—

- (a) to whom section 39(1A) or 39A(1) of the Act (both inserted by these Regulations) applies,
- (b) whose name appeared in the record maintained by the Authority under section 347(1)(i) of the Act immediately before 1st November 2007,

is deemed, with effect from 1st November 2007, to be included in the record maintained by the Authority under section 347(1)(ha) of the Act (inserted by paragraph 12 of Schedule 5 to these Regulations).

(2) Paragraph (1) does not prevent the Authority from removing an entry from the record in accordance with section 347(3).

[^{F1}Transitional provision: exempt investment firms

9A.—(1) Except where paragraph (3) applies, an authorised person who immediately before 1st November 2007—

- (a) is an investment firm within the meaning given in Article 4.1.1 of the markets in financial instruments directive,
- (b) has his relevant office in the United Kingdom, and
- (c) fulfils all the requirements set out in regulation 4C(3),

becomes an exempt investment firm with effect from that day as if he had applied as mentioned in regulation 4A(2) for a variation of his Part IV permission to permit him to carry on regulated activities as an exempt investment firm and the Authority had so varied the permission on that day.

(2) In paragraph (1) “relevant office” has the meaning given in regulation 4A(5).

(3) This paragraph applies—

- (a) to an authorised person having a Part IV permission that, immediately before 1st November 2007—
 - (i) includes no requirement having the effect of prohibiting the person from holding clients’ funds, or
 - (ii) permits the person, in connection with the carrying on of regulated activities comprising any investment services and activities (excluding activities to which, by virtue of Article 2, the markets in financial instruments directive does not apply), to carry on the activity consisting of both the safeguarding of assets belonging to another and the administration of those assets; and

- (b) to an authorised person who, before 1st November 2007, gives the Authority notice, in such form as the Authority may direct, that he does not wish to become an exempt investment firm.
- (4) In paragraph (3)—
- (a) “clients’ funds”, in sub-paragraph (a)(i), has the same meaning as in Article 3 of the markets in financial instruments directive, and
- (b) sub-paragraph (a)(ii) is to be construed in accordance with section 22 of the Act, any relevant order made under that section and Schedule 2 to the Act.
- (5) The variation of a person’s Part IV permission effected by paragraph (1) does not amount to the grant of an application for variation of a Part IV permission for the purpose of section 52(4) of the Act or to the determination of an application under Part IV for the purpose of section 55(1) of the Act.]

Textual Amendments

- F1** [Reg. 9A](#) inserted (1.4.2007 for specified purposes) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(Amendment\) Regulations 2007 \(S.I. 2007/763\)](#), regs. 1(2), [3](#)

[^{F2}Transitional provision: operators of alternative trading systems

- 9B.**—(1) Any person who immediately before 1st November 2007—
- (a) had a Part IV permission to carry on an activity of the kind specified by article 14, 21 or 25 of the principal Order in relation to an investment of a particular kind; and
- (b) operated an alternative trading system (within the meaning of the Alternative Trading Systems Instrument 2003 (2003/45) made by the Authority under the Act on 19th June 2003),

is, subject to regulation 9C, from 1st November 2007 to be treated as having a Part IV permission to carry on the kind of activity specified by article 25D of the principal Order (inserted by the 2006 Order) in relation to an investment of the same kind which is a financial instrument.

- (2) Where the person concerned gave written notice to the Authority on or before 1st October 2007 to that effect, paragraph (1) shall not apply to him.

Textual Amendments

- F2** [Regs. 9B-9D](#) inserted (1.4.2007 for specified purposes) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(Amendment\) Regulations 2007 \(S.I. 2007/763\)](#), regs. 1(2), [4](#)

Transitional provision for investment firms and credit institutions in relation to options, futures and contracts for differences

- 9C.**—(1) Any person who immediately before 1st November 2007—
- (a) was an investment firm or a credit institution (in each case within the meaning of the principal Order as amended by the 2006 Order); and
- (b) had a Part IV permission to carry on an activity of the kind specified by article 14, 21, 25, 37 or 53 of the principal Order in relation to an investment specified in the first column in the table in Schedule 8,

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is from 1st November 2007 also to be treated as having a Part IV permission to carry on that kind of activity in relation to an investment specified in the second column of the table opposite that investment (in so far as he does not already have such permission).

(2) Where the person concerned gave written notice to the Authority on or before 1st October 2007 to that effect, paragraph (1) shall not apply to him.

Textual Amendments

F2 Regs. 9B-9D inserted (1.4.2007 for specified purposes) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(Amendment\) Regulations 2007 \(S.I. 2007/763\)](#), regs. 1(2), 4

Transitional provision for management companies in relation to options, futures and contracts for differences

9D.—(1) Any person who immediately before 1st November 2007—

- (a) was a management company (within the meaning of the principal Order as amended by the 2006 Order);
- (b) was providing, in accordance with Article 5.3 of Council Directive [85/611/EEC](#) of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the markets in financial instruments directive; and
- (c) had a Part IV permission to carry on an activity of the kind specified by article 14, 21, 25, 37, 40 or 53 of the principal Order in relation to an investment specified in the first column in the table in Schedule 8,

is from 1st November 2007 also to be treated as having a Part IV permission to carry on that kind of activity in relation to an investment specified in the second column of the table opposite that investment (in so far as he does not already have such permission).]

(2) Where the person concerned gave written notice to the Authority on or before 1st October 2007 to that effect, paragraph (1) shall not apply to him.

Textual Amendments

F2 Regs. 9B-9D inserted (1.4.2007 for specified purposes) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(Amendment\) Regulations 2007 \(S.I. 2007/763\)](#), regs. 1(2), 4

Interpretation of Part 3

10. In this Part—

“ancillary service” has the meaning given in Article 4.1.3 of the markets in financial instruments directive;

“EEA Passport Rights Regulations” means the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 ^{M9};

“EEA State” has the meaning given in paragraph 8 of Schedule 3;

“EEA market operator” has the meaning given in section 312D of the Act (inserted by these Regulations);

“financial instrument” has the meaning given in Article 4.1.17 of the markets in financial instruments directive;

- “home state regulator” the meaning given in paragraph 9 of Schedule 3;
- “instrument” (except in the expression “financial instrument”) means any of the instruments listed in Section B of the Annex to the investment services directive;
- “investment service” (except in the expression “investment services and activities”) has the meaning given in Article 1.1 of the investment services directive;
- “investment services and activities” has the meaning given in Article 4.1.2 of the markets in financial instruments directive;
- “multilateral trading facility” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;
- “non-core service” means any of the services listed in Section C of the Annex to the investment services directive;
- “recognised investment exchange” has the meaning given in section 285 of the Act;
- “regulated activity” has the meaning given in section 22 of the Act;
- “regulated market” has the meaning given in Article 4.1.14 of the markets in financial instruments directive;
- “Schedule 3” means Schedule 3 to the Act;
- “UK investment firm” means a UK firm (within the meaning of paragraph 10 of Schedule 3 M10)—
- (a) which is an investment firm (within the meaning of the investment services directive); and
 - (b) whose EEA right derives from that directive.

Marginal Citations

M9 [S.I. 2001/2511](#).

M10 Paragraph 10 was amended by [S.I. 2003/1473](#).

Kevin Brennan
Claire Ward
Two of the Lords Commissioners of Her
Majesty's Treasury

Status:

Point in time view as at 01/04/2007.

Changes to legislation:

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