

2007 No. 2160

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Markets in
Financial Instruments) (Amendment No. 2) Regulations 2007**

Made - - - - - *24th July 2007*

Laid before Parliament *25th July 2007*

Coming into force in accordance with regulation 1(2)

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to investment firms and to the provision of investment services;

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

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Amendment No. 2) Regulations 2007.

(2) These Regulations come into force—

- (a) for the purposes of regulation 7A of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007(c) (inserted by regulation 2(4)) on 15th August 2007;
- (b) for the purposes of enabling notice to be given in accordance with regulation 9E(3) of those Regulations (inserted by regulation 2(5)), on 15th August 2007, and
- (c) for all other purposes, on 1st November 2007.

Amendment of the transitional provisions in the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007

2.—(1) The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 are amended as follows.

(2) After regulation 6 insert—

(a) S.I. 1993/2661.

(b) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51). 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).

(c) S.I. 2007/126 amended by S.I. 2007/763.

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

6A.—(1) Where on or before 31st October 2007 an EEA investment firm has exercised an EEA right deriving from the investment services directive to establish a branch or to provide services in the United Kingdom, and the Authority has received in respect of that firm—

- (a) a consent notice under paragraph 13(1)(a) of Schedule 3 or a regulator’s notice under paragraph 14(1)(b) of Schedule 3 in relation to an investment service specified in the first column in table 1 in Schedule 7 to these Regulations, or
- (b) notice of change under regulation 4(4) or 5(3) 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,

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

(2) Where on or before 31st October 2007 an EEA investment firm has exercised an EEA right deriving from the investment services directive to establish a branch or to provide services in the United Kingdom, and the Authority has received in respect of that firm—

- (a) a consent notice under paragraph 13(1)(a) of Schedule 3 or a regulator’s notice under paragraph 14(1)(b) 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
- (b) notice of change under regulation 4(4) or 5(3) 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,

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

(3) Where on or before 31st October 2007 an EEA investment firm has exercised an EEA right deriving from the investment services directive to establish a branch or to provide services in the United Kingdom, and the Authority has received in respect of that firm—

- (a) a consent notice under paragraph 13(1)(a) of Schedule 3 or a regulator’s notice under paragraph 14(1)(b) 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
- (b) notice of change under regulation 4(4) or 5(3) 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,

that notice is on 1st November 2007 to be treated as having been given 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).

(4) Where on or before 31st October 2007 an EEA investment firm has exercised an EEA right deriving from the investment services directive to establish a branch or to provide services in the United Kingdom, and the Authority has received in respect of that firm—

- (a) a consent notice under paragraph 13(1)(a) of Schedule 3 or a regulator’s notice under paragraph 14(1)(b) of Schedule 3 in relation to an instrument specified in the first column in table 3 in Schedule 7 to these Regulations, or
- (b) notice of change under regulation 4(4) or 5(3) 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,

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

(5) If this regulation conflicts with any law of an EEA investment firm's home state, the law of the firm's home state shall prevail.

(6) In this regulation—

“EEA investment firm” means an EEA firm falling within paragraph 5(a) of Schedule 3 (before its amendment by these Regulations);

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

“home state” in relation to an EEA investment firm means the EEA State which is the firm's home Member State for the purposes of the markets in financial instruments directive.”.

(3) In paragraph (3) of regulation 7 omit the words from “and the ancillary service” to the end of the paragraph.

(4) After regulation 7 insert—

“Transitional provision: investment research and financial analysis

7A.—(1) This regulation applies where a UK investment firm on or before 15th August 2007 has given—

(a) notice of intention under paragraph 19(2) or 20(1) of Schedule 3, or

(b) 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 (investment advice concerning one or more of the instruments listed in Section B).

(2) The Authority may during the period starting on 1st September 2007 and ending on 31st October 2007 give notice to the UK investment firm's host state regulator (within the meaning of paragraph 11 of Schedule 3) that from 1st November 2007 the firm will offer the ancillary service specified in paragraph 5 of Section B of Annex I to the markets in financial instruments directive (investment research and financial analysis).

(3) Regulation 11 or 12 of the EEA Passport Rights Regulations does not apply where the Authority has given a notice in accordance with paragraph (2).

(4) Where the UK investment firm concerned gave written notice to the Authority on or before 31st August 2007 to that effect, this regulation shall not apply to him.”.

(5) After regulation 9D insert—

“Transitional provision in relation to client classification

9E.—(1) Any person who immediately before 1st November 2007 had a Part IV permission containing a limitation or requirement—

(a) in relation to the carrying on of any regulated activity except an activity mentioned in paragraph (2); and

(b) described by reference to a category of clients specified in the first column in the table in Schedule 9,

is from 1st November 2007 to be treated as having a Part IV permission to carry on that regulated activity subject to the same limitation or requirement described by reference to the category of clients specified in the second column of that table opposite.

(2) The activities are—

(a) an insurance mediation activity (within the meaning of paragraph 2(5) of Schedule 6 to the Act) carried on in relation to a contract of insurance (within the meaning of article 3(1) of the principal Order) which is not a life policy (within the meaning of the Glossary (Conduct of Business and Other Sourcebooks) Instrument 2007 (2007/32) made by the Authority under the Act on 24th May 2007); and

- (b) activities of the kind specified in any of the following provisions of the principal Order—
- (i) article 25A (arranging regulated mortgage contracts),
 - (ii) article 25B (arranging regulated home reversion plans),
 - (iii) article 25C (arranging regulated home purchase plans),
 - (iv) article 53A (advising on regulated mortgage contracts),
 - (v) article 53B (advising on regulated home reversion plans),
 - (vi) article 53C (advising on regulated home purchase plans),
 - (vii) article 61 (entering into and administering regulated mortgage contracts),
 - (viii) article 63B (entering into and administering regulated home reversion plans),
and
 - (ix) article 63F (entering into and administering regulated home purchase plans).

(3) 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.”.

(6) In Schedule 7—

- (a) for the shoulder note substitute “Regulations 6A and 7”;
- (b) in the fourth entry in the first column of table 1, for “discriminatory” substitute “discretionary”.

(7) After Schedule 8 insert—

“SCHEDULE 9

Regulation 9E

TRANSITIONAL PROVISION IN RELATION TO CLIENT CLASSIFICATION

<i>Category of clients in limitation or requirement in Part IV permission immediately before 1st November 2007</i>	<i>Category of clients in limitation or requirement in Part IV permission from 1st November 2007</i>
Private customers only	Retail clients only
Intermediate customers only	Professional clients only
Private and intermediate customers only	Retail and professional clients only
Intermediate customers and market counterparties only	Professional clients and eligible counterparties only”.

Alan Campbell
Frank Roy

24th July 2007

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which amend the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126) (“the principal 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, p.1) (“the Directive”). The Directive is also implemented by other statutory instruments including the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384) and by the Financial Services Authority (“the FSA”) using powers under the Financial Services and Markets Act 2000 (c. 8) (“the Act”).

Regulation 2(2) inserts transitional provision into the principal Regulations for investment firms authorised in other EEA States exercising the right to provide services or establish a branch in the United Kingdom similar to the transitional provision in regulation 7 of the principal Regulations for UK investment firms. This transitional provision enables an investment firm to continue to provide the same investment services in the United Kingdom on and after 1st November 2007 (the date on which the Directive has effect) without the need for any action on the part of a firm, its home State competent authority or the FSA. The transitional provision will not apply where it conflicts with any law in the home State of the investment firm.

Regulation 2(4) partially replaces the transitional provision made in regulation 7(3) of the principal Regulations for UK investment firms authorised to passport the non-core service of investment advice under Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ No L 141, 11.6.1993, p. 27). Unless they opt out, investment firms authorised to passport this service will, from 1st November 2007, be authorised to passport under the Directive the ancillary service of investment research and financial analysis where the FSA has notified the competent authority of the State concerned.

Permissions under Part 4 of the Act of firms authorised to carry on activities regulated under the Act in the United Kingdom often contain a limitation under section 42(7)(a) of the Act or requirement under section 43 of the Act as to the category of clients in relation to which the activities can be carried on. The Directive introduces new categories of clients for investment firms (retail clients, professional clients and eligible counterparties) which differ slightly from the categories currently used in relation to investment and other firms in the United Kingdom. Regulation 2(5) and (7) contain transitional provision to amend the permissions under Part 4 of the Act of investment firms and certain other types of firms so that “client category” limitations or requirements refer to the categories specified in the Directive, without the need for the firm to make an application or for the FSA to amend the permission. There is provision for a firm to opt out of the amendment to its permission by giving notice to the FSA.

The Regulations also make minor amendments to regulation 7 of the principal Regulations (transitional provision in relation to United Kingdom investment firms exercising passport rights under the investment services directive) and to Schedule 7 to the principal Regulations (exercise of passport rights under the investment services directive).

A transposition note has been prepared which sets out how the main elements of the Directive are transposed into United Kingdom 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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