

STATUTORY INSTRUMENTS

2017 No. 701

The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

PART 6 **U.K.**

Miscellaneous FCA functions in relation to the markets in financial instruments directive and markets in financial instruments regulation

Provision of FCA record of recognised investment exchanges to ESMA and other competent authorities **U.K.**

41. The FCA must—

- (a) provide ESMA and all the competent authorities of the other EEA States with a copy of the part of the record maintained by the FCA under section 347^{M1} (the record of authorised persons etc) which contains entries relating to recognised investment exchanges made for the purposes of subsection (1)(e) of that section; and
- (b) inform ESMA and those competent authorities of any change to that part of the record.

Marginal Citations

M1 Section 347 was amended by S.I. 2007/126 paragraph 16(2), (3), (4)(a) and (b) and (5) of the Financial Services Act 2012, section 34(2)(a) and (b), (3) and (4) of, and paragraph 11 of Schedule 5 to, the Financial Services (Banking Reform) Act (c.33) 2013, S.I. 2013/1388, and S.I. 2015/910.

Provision of information to ESMA about multilateral trading facilities etc **U.K.**

42.—(1) The FCA must notify ESMA when a recognised investment exchange is permitted to operate a multilateral trading facility or an organised trading facility (as defined by Article 4.1.23 (definitions) of the markets in financial instruments directive) under the Part 18 of the Act.

(2) If an investment firm, credit institution, or recognised investment exchange provides the FCA with any of the information specified in paragraph (3) about a multilateral trading facility operated by the firm, institution, or exchange the FCA must, on request, give the information to ESMA.

(3) The specified information for the purposes of paragraph (2) is—

- (a) a detailed description of the functioning of the facility;
- (b) any links to another trading venue owned by the same exchange or to a systematic internaliser owned by the same exchange; and
- (c) a list of the facility's members, participants and users.

(4) The FCA must as soon as reasonably practicable notify ESMA if the FCA—

- (a) registers a multilateral trading facility operated by a recognised investment exchange, credit institution, or recognised investment exchange as an SME growth market for the

Status: Point in time view as at 29/06/2017.

Changes to legislation: The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 6 is up to date with all changes known to be in force on or before 10 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

purposes of Article 33 (SME growth markets) of the markets in financial instruments directive; or

(b) deregisters such a facility as an SME growth market.

(5) In this regulation “SME growth market” has the same meaning as in Article 4.1.12 (definitions) of the markets in financial instruments directive.

Provision to ESMA of reports by recognised investment exchanges of infringements of the exchange's rules, disorderly trading, suspected market abuse, and systems disruptions U.K.

43.—(1) If the FCA receives a report from a recognised investment exchange informing the FCA of—

- (a) significant infringements of the exchange's rules;
- (b) disorderly trading conditions;
- (c) conduct that may indicate behaviour which is prohibited under the market abuse regulation; or
- (d) system disruptions in relation to a financial instrument;

on, or related to, a trading venue operated by the exchange, the FCA must communicate that information to ESMA and the competent authorities of all the other EEA States.

(2) But where the report informs the FCA of conduct that may indicate behaviour which is prohibited under the market abuse regulation the FCA must be satisfied such behaviour is being, or has been, carried out before it communicates the information to ESMA and the competent authorities of all the other EEA States.

Authorisation of members of management bodies to hold additional non-executive directorship U.K.

44.—(1) Where a relevant recognition requirement limits the number of non-executive directorships a member of the management body of an exchange may hold at the same time, the FCA may authorise that member to hold one additional directorship.

(2) In paragraph (1)—

“management body” has the meaning given by regulation 3 (interpretation) of Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 ^{M2}; and

“relevant recognition requirement” means a requirement set out in paragraph 2B(1)(a)(i) or (ii) of the Schedule to those Regulations.

(3) The FCA must regularly inform ESMA of—

- (a) any authorisation given by the FCA under paragraph (1); and
- (b) any direction given by the FCA under section 138A ^{M3} (modification or waiver of rules) of the Act for the purposes of Article 9.2 (management body) of the markets in financial instruments directive.

Marginal Citations

M2 [S.I. 2001/995](#); there are amendments to regulation 3 but none is relevant.

M3 [Section 138A](#) was inserted by section 24(1) of the Financial Services Act 2012 and amended by paragraph 8 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 and [S.I. 2013/1388](#).

Provision of information to ESMA regarding sanctions and measures imposed for the purposes of the markets in financial instruments directive U.K.

45.—(1) The FCA must annually provide ESMA with aggregated information in respect of sanctions and measures imposed by the competent authorities designated under regulation 3.

(2) In paragraph (1) “aggregated information in respect of sanctions and measures” means the aggregated information mentioned in Article 71.4 (publication of decisions) of the markets in financial instruments directive.

Provision of information to other competent authorities regarding persons engaged in algorithmic trading or providing direct electronic access U.K.

46.—(1) If the FCA is the competent authority of a person (“P”)—

- (a) engaging in algorithmic trading on a trading venue; or
- (b) providing direct electronic access to a trading venue;

the FCA must, on request, provide any competent authority of an EEA State which is the competent authority of the trading venue concerned any specified information it has received from P.

(2) The specified information for the purposes of paragraph (1) is—

- (a) if P is engaging in algorithmic trading on a trading venue, any information referred to in the second sub-paragraph of Article 17.5 concerning the person's algorithmic trading on the trading venue mentioned in paragraph (1)(a) and the systems used for that trading; or
- (b) if P is providing direct electronic access to a trading venue—
 - (i) any information referred to in the first sub-paragraph of Article 17.5 of the markets in financial instruments directive on the systems and controls that the person has put in place in respect of the provision of direct electronic access to the trading venue mentioned in paragraph (1)(b); and
 - (ii) any evidence that those systems and controls have been applied.

Notifications, reports, and applications relating to the markets in financial instruments directive or the markets in financial instruments regulation U.K.

47.—(1) The FCA may direct the manner in which a person must—

- (a) notify the FCA, for the purposes of Article 2.1(j)(exemptions) of the markets in financial instruments directive, that the person is making use of the exemption under Article 2.1(j) of that directive;
- (b) report to the FCA, for the purposes of the final point of Article 2.1(j) (exemptions) of the markets in financial instruments directive, the basis on which a person considers an activity under that Article to be ancillary to that person's main business;
- (c) make an application for—
 - (i) a waiver under Article 4 (waivers for equity instruments) of the markets in financial instruments regulation;
 - (ii) an authorisation under Article 7 (authorisation of deferred publication) of the markets in financial instruments regulation;
 - (iii) a waiver under Article 9 (waivers for non-equity instruments) of the markets in financial instruments regulation; and
 - (iv) an authorisation under Article 11 (authorisation of deferred publication) of the markets in financial instruments regulation.

Status: Point in time view as at 29/06/2017.

Changes to legislation: The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 6 is up to date with all changes known to be in force on or before 10 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(2) An application mentioned in paragraph (1)(c) must contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application mentioned in paragraph (1)(c) and before determining it the FCA may require the applicant to provide the FCA with such further information as the FCA reasonably considers necessary to enable the FCA to determine the application.

(4) The FCA may give different directions, and may impose different requirements, in relation to different applications.

Status:

Point in time view as at 29/06/2017.

Changes to legislation:

The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 6 is up to date with all changes known to be in force on or before 10 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.