
STATUTORY INSTRUMENTS

2018 No. 1403

The Markets in Financial Instruments
(Amendment) (EU Exit) Regulations 2018

PART 4

Amendment of EU Regulations

CHAPTER 2

Commission Delegated Regulation 2017/565

Application, scope and definitions

39.—(1) Before Article 1, insert—

“Article A1

Application

1. Subject to paragraph 2, this Regulation applies to—
 - (a) an investment firm which has its head office in the United Kingdom;
 - (b) a person authorised by the FCA to provide a data reporting service under the Data Reporting Services Regulations 2017(1);
 - (c) a market operator which has its registered office (or if it has no registered office, its head office) in the United Kingdom, including any UK regulated markets they operate.
 2. This Regulation does not apply to—
 - (a) any person excluded from the definition of “investment firm” in Schedule 3 to the Regulated Activities Order;
 - (b) any firm which has permission under Part 4A of FSMA to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Markets in Financial Instruments Regulations 2017.”.
- (2) In Article 1—
- (a) in paragraph 1, for the words from “in accordance with” to the end of the paragraph, substitute “in relation to the services described in paragraph 1A.”;
 - (b) after paragraph 1, insert—

“1A. The services referred to in paragraph 1 are—

 - (a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-

- by-client basis, where such portfolios include one or more of the instruments listed in Part 1 of Schedule 2 to the Regulated Activities Order⁽²⁾;
- (b) investment advice concerning one or more of the instruments referred to in subparagraph (a);
- (c) safe-keeping and administration in relation to units of collective investments undertakings; and
- (d) reception and transmission of orders in relation to financial instruments.”;
- (c) in paragraph 2, for the words from “referred to in Article 1(3)” to the end, substitute “(so far as relevant) in Chapters II to IV of this Regulation”;
- (d) after paragraph 2, insert—

“3. Chapters I, II, III and VI apply to relevant firms.

4. Chapters IV and V apply to a firm which has temporary permission to operate an organised trading facility as a branch in the United Kingdom under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018.

5. If—

- (a) a relevant firm complies with a requirement in Chapter II, III or VI of this Regulation as it applies in the EEA (“the EEA requirement”) in relation to the services it provides in the United Kingdom; and
- (b) the EEA requirement has equivalent effect to a requirement in this Regulation as it applies in the United Kingdom (“the UK requirement”),

the firm is to be treated as complying with the UK requirement.

6. For the purposes of this Article “relevant firm” means an investment firm or credit institution which has temporary permission to carry on a regulated activity which is any of the investment services and activities in the United Kingdom under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018⁽³⁾.”.

- (3) In Article 2, after point (6) insert—

“(7) “portfolio management” means managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;

(8) “retail client” means a client who is not a professional client;

(9) “limit order” means an order to buy or sell a financial instrument at its specified price limit or better and for a specified size;

(10) “management company” has the meaning given in section 237(2) of FSMA;

(11) “tied agent” means a natural or legal person, who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts—

(a) promotes investment or ancillary services to clients or prospective clients;

(b) receives and transmits instructions or orders from the client in respect of investment services or financial instruments; or

(c) places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services;

(12) “Group” has the meaning given in section 421 of FSMA;

(13) “durable medium” means any instrument which—

⁽²⁾ S.I. 2001/544. Part 1 of Schedule 2 has been amended by S.I. 2006/3384, 2017/488, and these Regulations.

⁽³⁾ S.I. 2018/1149.

- (a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
 - (b) allows the unchanged reproduction of the information stored;
- (14) references in this Regulation to a sourcebook are to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by that Authority under FSMA as the sourcebook has effect on exit day;
- (15) references in this Regulation to the PRA rulebook are to the rulebook published by the PRA containing rules made by that Authority under FSMA as the rulebook has effect on exit day;
- (16) References to “UK law on markets in financial instruments” are to the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement [Directive 2014/65/EU](#) and its implementing measures—
 - (a) as they have effect on exit day, in the case of rules made by the FCA or by the PRA under FSMA, and
 - (b) as amended from time to time, in all other cases.
- (17) In this Regulation—
 - (a) any expression which is used in Regulation (EU) No 600/2014 (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018) has the same meaning as in that Regulation;
 - (b) subject to point (a), any expression which is used in the Markets in Financial Instruments Regulations 2017 (as so amended) has the same meaning as in those Regulations;
 - (c) subject to point (a), any expression which is used in the Data Reporting Services Regulations 2017 (as so amended) has the same meaning as in those Regulations.”
- (4) In Article 3, in paragraph 1, omit “as defined in Article 4(1) point (62) of [Directive 2014/65/EU](#)”.
- (5) In Article 4—
 - (a) omit the sub-heading in brackets;
 - (b) in the opening words, for “the exemption in point (c) of Article 2(1) of [Directive 2014/65/EU](#)” substitute “section 327(4) of FSMA and the exemption in paragraph 1(c) of Schedule 3 to the Regulated Activities Order”.
- (6) In Article 5—
 - (a) omit the sub-heading in brackets;
 - (b) in the opening words of paragraph 1, for “Section C(6) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order”;
 - (c) in paragraphs 3, 4, 5, 6 and 7, for “Section C(6) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order”.
- (7) In Article 6—
 - (a) omit the sub-heading in brackets;
 - (b) in paragraphs, 1, 2 and 3 for “Section C(6) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order”.
- (8) In Article 7—
 - (a) omit the sub-heading in brackets;
 - (b) in paragraph 1—

- (i) in the opening words, for “Section C(7) of Annex 1 to [Directive 2014/65/EU](#)” substitute “paragraph 7 of Part 1 of Schedule 2 to the Regulated Activities Order”;
 - (ii) for point (a)(i), substitute—
 - “(i) it is traded on a third country trading venue which is a regulated market, an MTF or an OTF (as defined by Article 2(1)(13), (14) and (15) respectively of the markets in financial instruments regulation);”
 - (iii) in point (a)(ii), for “a regulated market, an MTF, an OTF”, substitute “a UK regulated market, a UK MTF, a UK OTF (as defined by Article 2(1)(13A), (14A) and (15A) respectively of the markets in financial instruments regulation);”
 - (iv) in sub-paragraph (a)(iii), for “a regulated market, MTF, an OTF”, substitute “a UK regulated market, a UK MTF, a UK OTF”;
- (c) in paragraph 3, for “Section C(10) of Annex 1 to [Directive 2004/39/EC](#) of the European Parliament and of the Council” substitute “paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order”;
- (d) in paragraph 4—
- (i) in the opening words—
 - (aa) for “Section C(7) of Annex I to [Directive 2014/65/EU](#)” substitute “paragraph 7 of Part 1 of Schedule 2 to the Regulated Activities Order”;
 - (bb) for “Sections C(7) and (10) of that Annex” substitute “paragraphs 7 and 10 of Part 1 of Schedule 2 to the Regulated Activities Order”.
- (9) In Article 8—
- (a) in the heading, for “Section C(10) of Annex I to [Directive 2014/65/EU](#)” substitute “paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order”;
 - (b) omit the sub-heading in brackets;
 - (c) in the opening words—
 - (i) for “Section C(10) of Annex I to [Directive 2014/65/EU](#)” substitute “paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order”;
 - (ii) for “that Section”, both time it appears, substitute “that Part”;
 - (d) in point (d), for “Section C(4) of Annex I to [Directive 2014/65/EU](#)” substitute “paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order”;
 - (e) in point (e), for “units recognised for compliance with the requirements of [Directive 2003/87/EC](#) of the European Parliament and of the Council” substitute “emission allowances referred to in paragraph 11 of Part 1 of Schedule 2 to the Regulated Activities Order”.
- (10) In Article 9—
- (a) omit the sub-heading in brackets;
 - (b) in the opening paragraph, for the words from the beginning to “[Directive 2014/65/EU](#)” substitute—

“For the purposes of the list of investment services and activities in Part 3 of Schedule 2 to the Regulated Activities Order, “investment advice” means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments.

For these purposes”.
- (11) In Article 10, in paragraph 1, for “Section C(4) of Annex I to [Directive 2014/65/EU](#)”, substitute “paragraph 4 of Part 1 of the Schedule 2 to the Regulated Activities Order”.

(12) In Article 11—

- (a) omit the sub-heading in brackets;
- (b) renumber the existing paragraph as paragraph 1;
- (c) in paragraph 1, as renumbered, omit “in accordance with Article 4(1)(17) of [Directive 2014/65/EU](#),”;
- (d) after paragraph 1, insert—

“**2.** For the purposes of this Article, “money market instruments” means those classes of instruments which are normally dealt with on the money market, excluding instruments of payment.”