

2018 No. 786

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Prospectus and
Markets in Financial Instruments) Regulations 2018**

<i>Made</i> - - - -	<i>27th June 2018</i>
<i>Laid before Parliament</i>	<i>29th June 2018</i>
<i>Coming into force</i> - -	<i>21st July 2018</i>

The Treasury are designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018 and come into force on 21st July 2018.

Amendment of the Financial Services and Markets Act 2000

- 2.—(1) The Financial Services and Markets Act 2000^(c) is amended as follows.
- (2) In section 86(1)(e) (exempt offers to the public)^(d) for “100,000” substitute “8,000,000”.
 - (3) In section 86(7)(c) ^(e) for “Article 24” substitute “Article 30”.
 - (4) In section 354D (information under the markets in financial instruments directive)^(f)—
 - (a) in subsection (1)—
 - (i) in paragraph (b) at the end of sub-paragraph (iii) omit “and”;
 - (ii) in paragraph (c) for “Article 53.1” substitute “Article 75.1”;
 - (iii) after paragraph (c) insert—

(a) S.I. 2012/1759.

(b) 1972 c. 68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) 2000 c. 8.

(d) Section 86 was substituted by S.I. 2005/1433 and subsection (1)(e) was subsequently amended by S.I. 2012/1538.

(e) Section 86 was substituted by S.I. 2005/1433 and subsection (7) was subsequently substituted by S.I. 2012/1538.

(f) Section 354D was inserted by S.I. 2016/1095.

“; and

(d) information about, and the final judgment of the court in relation to, any convictions where the proceedings were instituted by the regulator in connection with the regulator’s functions under the markets in financial instruments directive or the markets in financial instruments regulation.”;

(b) in subsection (5)—

(i) in paragraph (a) for “Article 27.2 of the markets in financial instruments directive” substitute “Article 14 of the markets in financial instruments regulation”;

(ii) in paragraph (b)—

(aa) for “Article 4.1.14” substitute “Article 4.1.21”, and

(bb) for “Article 4.1.20(b)” substitute “Article 4.1.55(b)”;

(c) in subsection (8), in the definition of “UK investment firm”, for “Article 4.1.20(a)” substitute “Article 4.1.55(a)”.

(5) In section 354E (competent authorities under the markets in financial instruments directive: designation and co-operation)(a)—

(a) in subsection (1) in paragraph (a) for “Article 48.1” substitute “Article 67.1”;

(b) in subsection (2) for “Article 56.1” substitute “Article 79.1”;

(c) in subsection (8)—

(i) in paragraph (a) for “Article 57” substitute “Article 80”;

(ii) in paragraph (b) for “Article 58.1”, substitute “Article 81.1”;

(d) in subsection (10) for “Article 59(a), (b) or (c)” substitute “Article 83(a) or (b)”;

(e) in subsection (12) for “Article 48.1” substitute “Article 67.1”.

(6) In paragraph 9(1) of Schedule 11A to that Act (transferable securities)(b) for “5,000,000” substitute “1,000,000”.

Amendment to the Companies Act 2006

3. In section 539 (minor definitions) of the Companies Act 2006(c) in the definition of “MiFID investment firm”—

(a) in paragraph (a) at the end omit “and”;

(b) in paragraph (b) for “(S.I. 2017/XXXX);” substitute “(S.I. 2017/701), and”; and

(c) after paragraph (b) insert—

“(c) any other company which fulfils all the requirements set out in regulation 6(3) of those Regulations;”.

Amendment to the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

4. In regulation 28A (cooperation with ESMA and other competent authorities in respect of interventions to restrict, reduce, or limit positions) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(d), after paragraph (6), insert—

“(7) When a notification to ESMA and all the competent authorities of the other EEA States is made under paragraphs (1) or (5) of this regulation in relation to wholesale energy products (within the meaning of Article 4.1.58 of the markets in financial instruments

(a) Section 354E was inserted by S.I. 2016/1095.

(b) Schedule 1A was inserted by S.I. 2005/1433 and paragraph 9(1) was amended by S.I. 2005/1433, S.I. 2011/1668 and S.I. 2012/1538.

(c) 2006 c.46. Section 539 was amended by S.I. 2007/2932 and by S.I. 2017/701. There are other amendments which are not relevant.

(d) S.I. 2017/701. Regulation 28A was inserted by S.I. 2017/1255.

directive), the FCA must give a copy of the notification to the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators(a).”.

Review

5.—(1) The Treasury must from time to time—

- (a) carry out a review of regulations 2 to 4; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report under this regulation must be published on or before 21st July 2023.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(b) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how Regulation (EU) No 2017/1129 of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market(c), Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments(d) and the coming into force of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments(e) are implemented in other countries which are subject to its obligations.

*Rebecca Harris
Craig Whittaker*

27th June 2018

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Financial Services and Markets Act 2000 (c.8) (“the Act”), the Companies Act 2006 (c.46) and the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701).

Regulation 2(2) and 2(6) gives effect to Articles 1(3) and 3(2) of Regulation (EU) No 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L168 30/06/2017 p.12).

Regulation 2(2) implements Article 3(2) by amending section 86 of the Act. Section 86 provides for exemptions from the obligation to publish a prospectus in relation to offers from the public. The threshold for offers to the public that are exempt from the obligation to publish a prospectus is increased from euros 100,000 to euros 8,000,000. Regulation 2(6) implements Article 1(3) by amending Schedule 11A to the Act. Schedule 11A provides for exemptions for securities from the scope of the prospectus regime altogether and the threshold for securities exempt from the regime has been reduced from euros 5,000,000 to euros 1,000,000.

Regulation 2(3) to 2(5) makes amendments to the Act to update references following the transposition of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (“MiFID II”) and the coming into force of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and

(a) OJ No. L211 14.08.2009, p.1.

(b) 2015 (c. 26). Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12).

(c) OJ No. L168 30.06.2017, p.12.

(d) OJ No. L173 12.06.2014, p.349.

(e) OJ No. L173 12.06.2014, p.84.

amending Regulation (EU) No 648/2012 (“MiFIR”). Regulation 2(4)(a) also contains an amendment to more fully transpose Article 71(3) of MiFID II by imposing an obligation on the regulator to provide ESMA with the final judgment in any criminal convictions which have been brought about as a result of an infringement of MiFID II or MiFIR.

Regulation 3 amends the Companies Act 2006. It updates a reference to the instrument implementing MiFID II and makes a correction to the definition of “MiFID investment firm” which was erroneously omitted during implementation of MiFID II.

Regulation 4 amends the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701). It contains an amendment to more fully transpose Article 79(5) of MiFID II by imposing an obligation on the regulator to notify the Agency for the Cooperation of Energy Regulators (ACER) of restrictions on position limits and the ability of persons to enter into a commodity derivative in cases relating to wholesale energy products.

A transposition note setting out how MiFID II is transposed into UK law is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or www.gov.uk.

A full impact assessment of the effect that regulation 2(2) and 2(6) will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or www.gov.uk and is published alongside these Regulations on www.legislation.gov.uk.

A full impact assessment on the amendments relating to the implementation of MiFID II and MiFIR has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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