
STATUTORY INSTRUMENTS

2021 No. 774

The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021

Commission Delegated Regulation (EU) 2017/565

3.—(1) Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive⁽¹⁾ is amended as follows.

(2) In Article 2 (definitions)—

(a) in paragraph (14), for “IP completion day” substitute “1st December 2021”;

(b) in paragraph (16)—

(i) in sub-paragraph (a)—

(aa) omit “the FCA or by”;

(bb) omit “and”;

(ii) after sub-paragraph (a) insert—

“(aa) as they have effect on 1 December 2021, in the case of rules made by the FCA under FSMA, and”.

(3) In Article 3 (conditions applying to the provision of information)—

(a) in paragraph 1, after “is required to be provided in a durable medium” insert “to retail clients, or potential retail clients,”;

(b) in paragraph 1(a), for “firm and the client” substitute “firm and the retail client, or potential retail client,”;

(c) in paragraph 1(b), for “the person” substitute “the retail client, or potential retail client,”;

(d) after paragraph 1 insert—

1A. Where the client or potential client is a retail client, or potential retail client, who has requested to receive the information on paper, that information must be provided on paper and free of charge.

1B. Investment firms must provide all information required to be provided in a durable medium by this Regulation to clients or potential clients in electronic format, except where the client or potential client is a retail client, or potential retail client, when the provisions of paragraph 1 above apply.”;

(e) in paragraph 2(b), before “the client” insert “in the case of a retail client,”.

(4) In Article 46 (general requirements for information to clients)—

(a) in paragraph 2, for “Investment firms shall” insert “Subject to paragraph 2A, investment firms must”;

(1) EUR 2017/565, as amended by [S.I. 2017/701](#) and [2018/1403](#).

(b) after paragraph 2 insert—

“**2A.** Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion—

- (a) the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and
- (b) subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in—
 - (i) electronic format; or
 - (ii) where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.

2B. The conditions referred to in paragraph 2A(b) are—

- (a) the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and
 - (b) the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.”;
 - (c) in paragraph 3, for “paragraphs 1 and 2” substitute “paragraphs 1 to 2B”.
- (5) In Article 50 (information on costs and associated charges)—
- (a) in paragraph 1, omit the second and third sub-paragraphs;
 - (b) after paragraph 1 insert—

“**1A.**—(1) Subject to sub-paragraph (2), the requirements laid down in the relevant rule do not apply to services provided to professional clients.

(2) The requirements laid down in the relevant rule do apply to services provided to professional clients for investment advice and portfolio management.”.

(6) In Article 54(11) (assessment of suitability and suitability reports), after the existing text insert the following sub-paragraph—

“The requirements laid down in the first subparagraph do not apply to services provided to professional clients.”.

(7) In Article 59 (reporting obligations in respect of execution of orders other than for portfolio management)—

- (a) in paragraph 1—
 - (i) for “behalf of a client” substitute “behalf of a retail client or a professional client”;
 - (ii) in sub-paragraph (a), for “client” substitute “retail client or professional client, as applicable,”;
 - (iii) in sub-paragraph (b), for “the client” substitute “a retail client”;
 - (b) in paragraph 3, for “of client” substitute “of retail client”;
 - (c) in paragraphs 3 to 5, for “the client”, in each place it occurs, substitute “the retail client”.
- (8) In Article 60 (reporting obligations in respect of portfolio management)—
- (a) in paragraph 1, after “management to” insert “retail clients or professional”;
 - (b) in paragraph 2, after “the following information” insert “to retail clients”;
 - (c) in paragraph 3, in the first sub-paragraph—

- (i) in the first sentence, after “shall be provided” insert “to retail clients”;
 - (ii) in sub-paragraph (a), before “clients” insert “retail”;
 - (iii) in sub-paragraph (c), before “client” insert “retail”;
 - (d) in paragraph 4, before “client”, in each place it occurs, insert “retail”.
- (9) In Article 61 (reporting obligations in respect of eligible counterparties), for the words after “The requirements” substitute “in Articles 46 to 51 and 59 do not apply to services provided to eligible counterparties.”.
- (10) In Article 62(1) (additional reporting obligations for portfolio management or contingent liability transactions), for “portfolio management shall” substitute “portfolio management to a retail client must”.
- (11) In Article 65 (duty of investment firms carrying out portfolio management and reception and transmission of orders to act in the best interests of the client)—
- (a) in paragraph 6, in the first sub-paragraph—
 - (i) for “paragraphs 2 to 9” substitute “paragraphs 2 to 8”;
 - (ii) omit the words “In particular” to the end;
 - (b) in paragraph 8, omit “, technical standards made under Article 27(10) of [Directive 2014/65/EC](#) and rules in the Conduct of Business sourcebook which were relied on by the United Kingdom immediately before IP completion day to implement Article 27 of [Directive 2014/65/EU](#)”.
- (12) In Article 66(9) (execution policy), omit text “The summary” to the end.