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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 ([S.I. 2001/2188](#)) (“the principal regulations”) in order to implement in part Directive [2004/39/EC](#) of the European Parliament and of the Council of 21st April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p1) (“MiFID”). MiFID is also implemented by the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2006, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order ([S.I. 2006/3384](#)), the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2007 ([S.I. 2007/125](#)), the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006 ([S.I. 2006/3386](#)) and the Financial Services and Markets Act 2000 (EEA Passport Rights) (Amendment) Regulations 2006 ([S.I. 2006/3385](#)) and by the Financial Services Authority (“FSA”) using powers under the Financial Services and Markets Act 2000 ([c. 8](#)) (“the Act”). These Regulations also take into account amendments made to Directive [2001/34/EC](#) of the European Parliament and Council of 28th May 2001 (OJ No L 184, 6.7.01, p 1) (“the listings directive”) by Directive [2003/71/EC](#) of the European Parliament and of the Council of 4th November 2003 (OJ No L 345, 31.12.03, p 64) and Directive [2004/109/EC](#) of the European Parliament and of the Council of 15th December 2004 (OJ No L 390, 31.12.04, p 38).

Regulation 2 of the principal regulations is amended to remove references to the listings directive and to insert a definition of markets in financial instruments information.

Regulation 8 of the principal regulations is substituted so that Part 3 (disclosure of single market directive information) applies to markets in financial instruments directive information where confidential information has been received by the FSA from an EEA competent authority or a non-EEA regulatory authority.

Regulation 9 of the principal regulations is amended to provide that where information obtained from an EEA competent authority or a non-EEA regulatory authority has been made subject by that authority to a requirement not to disclose, that information can only be disclosed in accordance with that requirement unless that authority consents to other uses. This does not apply to disclosure to the Bank of England, the European Central Bank, the central bank of any country or territory outside the United Kingdom, or a body (other than a central bank) in a country or territory outside the United Kingdom having functions as a monetary authority; or responsibility for payment systems.

Regulation 11 of the principal regulations is amended to remove the restrictions from disclosure of information received by the FSA under the listings directive. New sub-paragraph (d) of that regulation provides for Part 4 of the principal regulations to apply to markets in financial instruments directive information (except where that information has been received from an EEA competent authority or a non-EEA regulatory authority and that authority has not given its express consent for disclosure under Part 4).

Regulation 17 is inserted into the principal regulations. This provides a transitional measure for confidential information that was disclosed under Council Directive [93/22/EEC](#) of 10th May 1993 on investment services in the securities field (OJ No. L 141, 11.06.1993, p 27).

The table in Part 1 of Schedule 1 to the principal regulations provides a list of bodies to which confidential information (as defined by section 348(2) of the Act) subject to directive restrictions may be disclosed and the uses to which that information may be put. The table is amended to extend the uses to which the Office of Fair Trading and the Competition Commission may put the information;

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

and to add three new bodies and the uses to which those bodies may put that information. Those bodies are: any body carrying on activities concerned with any of the matters set out in sections 14 and 16(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27) and the Financial Reporting Council and its operating bodies).

The table in Schedule 2 to the principal regulations provides a list of bodies to which confidential information not subject to directive restrictions may be disclosed and the uses to which that information may be put. The table is amended to include the Gambling Commission and its functions as such.

A transposition note has been prepared which sets out how the main elements of MiFID will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument and the other instruments transposing MiFID 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](http://www.hm-treasury.gov.uk)). Copies of both documents have been placed in the libraries of both Houses of Parliament.