

**2006 No. 3413**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) (Amendment) Regulations 2006**

*Made* - - - - - *19th December 2006*

*Laid before Parliament* *19th December 2006*

*Coming into force in accordance with regulation 1(2)*

The Treasury make these Regulations in exercise of the powers conferred on them by sections 349(1), (2) and (3), 417(1)(a) and 428(3) of the Financial Services and Markets Act 2000(b):

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) (Amendment) Regulations 2006.

(2) These Regulations come into force—

- (a) for the purposes of regulations 3(a)(ii), (b) and (c), 8 and 9 on 20th January 2007; and
- (b) for all other purposes on 1st November 2007.

(3) In these Regulations, “the principal regulations” means the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(c).

**Amendment of the principal regulations**

2. The principal regulations are amended as follows.

**Amendment of regulation 2**

3. In regulation 2(d) (interpretation)—

- (a) in the definition of “directive restrictions”—
  - (i) for “article 25 of the investment services directive” substitute “articles 54 and 58 of the markets in financial instruments directive”;
  - (ii) omit “, article 107 of the listing particulars directive”;
- (b) in the definition of “EEA competent authority” omit “, or the listing particulars directive”;
- (c) omit the definition of “listing particulars directive”;

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(a) See definition of “prescribed”.

(b) 2000 c.8.

(c) S.I. 2001/2188.

(d) Relevant amending instruments are S.I. 2001/3624, 2003/693, 1473 and 2066, and 2004/1862 and 3379.

- (d) after the definition of “former regulated person” insert—
  - ““markets in financial instruments directive information” means confidential information received by the Authority in the course of discharging its functions as an EEA competent authority under the markets in financial instruments directive;”;
- (e) in the definition of “single market directive information” after “single market directives” insert “(except for the markets in financial instruments directive)”.

### **Substitution of regulation 8**

4. For regulation 8(a) (application of this Part) substitute—

#### **“Application of this Part**

8. This Part applies to—

- (a) single market directive information; and
- (b) markets in financial instruments directive information, where that information has been received from—
  - (i) an overseas regulatory authority under a cooperation agreement referred to in article 63 of the markets in financial instruments directive; or
  - (ii) an EEA competent authority under article 58.1 of the markets in financial instruments directive.”.

### **Amendment of regulation 9**

5. In regulation 9(b) (disclosure by the Authority or Authority workers to certain other persons)—

- (a) in paragraph (1) for “and (3)” substitute “, (3) and (3A)”;
- (b) for paragraph (2)(a) substitute—
  - “(a) article 63 of the markets in financial instruments directive;”;
- (c) in paragraph (3)(b) omit paragraph (i);
- (d) after paragraph (3) insert—

“(3A) Paragraph (1) does not permit disclosure of markets in financial instruments information to a person specified in the first column of Schedule 1 other than a person listed in paragraph (3B) where that information—

- (a) was obtained from an EEA competent authority under article 58.1 of the markets in financial instruments directive (“the directive”) or an overseas regulatory authority under a cooperation agreement referred to in article 63 of the directive, and
- (b) that authority indicated at the time of communication that such information must not be disclosed,

unless that authority has given its express consent to the disclosure.

(3B) The persons are—

- (a) the Bank of England,
- (b) the European Central Bank,
- (c) the central bank of any country or territory outside the United Kingdom, or
- (d) a body (other than a central bank) in a country or territory outside the United Kingdom having—

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(a) The relevant amending instrument is S.I. 2003/2066.  
 (b) Relevant amending instruments are S.I. 2004/3379 and 2003/693.

- (i) functions as a monetary authority; or
- (ii) responsibility for overseeing payment systems.”.

**Amendment of regulation 11**

6. In regulation 11(a) (application of this Part)—

- (a) omit sub-paragraph (c);
- (b) at the end insert—

“(d) markets in financial instruments directive information, where that information has been received from—

- (i) an overseas regulatory authority under a cooperation agreement referred to in article 63 of the markets in financial instruments directive; or
- (ii) an EEA competent under article 58.1 of the markets in financial instruments directive,

unless that authority has given its express consent for disclosure that is covered by this Part.”.

**Insertion of regulation 17**

7. After regulation 16 (disclosure by recognised self-regulating organisations) insert—

**“Investment services directive information: transitional provision**

17. In these Regulations confidential information received by the Authority in the course of discharging its functions as an EEA competent authority under Council Directive 93/22/EEC of 10th May 1993 on investment services in the securities field(b) shall be deemed to have been received by the Authority in the course of discharging its functions as an EEA competent authority under the markets in financial instruments directive.”.

**Amendment of Part 1 of Schedule 1**

8.—(1) In the table in Part 1 of Schedule 1(c) (disclosure of information whether or not subject to directive restrictions)—

- (a) in the second column at the sixth entry (Office of Fair Trading), in paragraph (b) after sub-paragraph (ii), insert “; or (iii) financial organisations within the meaning of article 30.5 of the banking consolidation directive”;
- (b) in the second column at the seventh entry (Competition Commission), in paragraph (b) after sub-paragraph (ii), insert “; or (iii) financial organisations within the meaning of article 30.5 of the banking consolidation directive”.

(2) At the end of the table in Part 1 of Schedule 1 add—

“Any body carrying on activities concerned with any of the matters set out in section 16(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004(d)	Its functions as such
Any body carrying on activities concerned with any of the matters set out in section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004	Its functions as such
The Financial Reporting Council and its	Their supervisory functions in relation to the

(a) Relevant amending instruments are S.I. 2003/2066 and 2001/3624.

(b) OJ. No. L 141, 11.06.1993 p 23.

(c) Relevant amending instruments are S.I. 2001/3437, 2001/3624, 2003/2174 and 2003/2817.

(d) 2004 c. 27.

operating bodies	exercise by an actuary of his professional duties, the conduct of disciplinary proceedings and determining whether to institute or terminate such proceedings”.
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**Amendment of Schedule 2**

9. At the end of the table in Schedule 2(a) (disclosure of confidential information not subject to directive restrictions), add—

“The Gambling Commission	Its functions as such”.
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19th December 2006

*Claire Ward*  
*Dave Watts*  
Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) Relevant amending instruments are S.I. 2001/3642 and 2003/2174.

## 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/....), the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2006 (S.I. 2006/....), the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006 (S.I. 2006/....) and the Financial Services and Markets Act 2000 (EEA Passport Rights) (Amendment) Regulations 2006 (S.I. 2006/....) 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; 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.

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