
STATUTORY INSTRUMENTS

2012 No. 916

The Financial Services (Omnibus 1 Directive) Regulations 2012

Amendments to the Financial Services and Markets Act 2000

- 2.—(1) The Financial Services and Markets Act 2000(1) is amended as follows.
(2) After section 54 insert—

“Notification

Notification of ESMA

54A. The Authority must notify ESMA of—

- (a) the giving of a Part IV permission to an investment firm, where the regulated activities to which the permission relates are investment services and activities,
- (b) the giving of a Part IV permission to a management company (as defined in section 237(2)), where the regulated activities to which the permission relates fall within paragraph 8 of Schedule 2,
- (c) the cancellation of a Part IV permission of a description falling within paragraph (b), or
- (d) the cancellation of a Part IV permission under section 45(2A)(b) to (d).

Notification of EBA

54B.—(1) The Authority must notify EBA of—

- (a) the giving of a Part IV permission to a credit institution, where the regulated activity to which the permission relates falls within paragraph 4 of Schedule 2, or
 - (b) the cancellation of a Part IV permission of a description falling within paragraph (a).
- (2) “Credit institution” has the meaning given in section 138(1B).”

(3) In section 87E (transfer by competent authority of application for approval) in subsection (2) after “the transferee authority” insert “and notify ESMA”.

(4) In section 87H (prospectus approved in another EEA State)—

- (a) in subsection (1) after “unless that authority has” insert “notified ESMA and”;
- (b) after subsection (3) insert—

“(3A) The competent authority must publish on its website a list of certificates of approval provided to it in accordance with this section.

(3B) The list referred to in subsection (3A) must—

(1) 2000 c.8; relevant amendments are as follows. Sections 87A to 87R were inserted by regulation 2(1) of and Schedule 1, paragraph 5 to [S.I. 2005/1433](#); section 100A was inserted by section 1271 of the Companies Act 2006 (c.46); sections 194A and 195A were inserted by regulation 3(1) of and Schedule 1 paragraphs 1 and 2 to [S.I. 2007/126](#) and section 195A was substituted by regulation 2(8) of [S.I. 2011/ 1613](#); section 199 was amended by regulation 2(9) of [S.I. 2011/ 1613](#); sections 312B and 313C were inserted by [S.I. 2007/126](#); and paragraph 19(12ZA) of Schedule 3 was inserted by regulation 2(33)(h) of [S.I. 2011/ 1613](#).

- (a) be kept up-to-date,
 - (b) retain items on it for a period of at least 12 months, and
 - (c) include hyperlinks to any certificate of approval and prospectus published on the website of—
 - (i) the competent authority of the EEA State which provided the certificate,
 - (ii) the issuer, or
 - (iii) the regulated market where admission to trading is sought.”.
- (5) In section 87I (provision of information to host Member State) after subsection (1) insert—
- “(1A) If the competent authority supplies a certificate of approval to the competent authority of the specified EEA State, it must also supply a copy of that certificate to ESMA.”.
- (6) In section 100A (exercise of powers where UK is a host Member State)—
- (a) for subsection (3) substitute—

“(3) If the authority finds that there has been such an infringement, it must—

 - (a) give a notice to that effect to the competent authority of the person’s home State requesting it—
 - (i) to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and
 - (ii) to inform the authority of the measures it proposes to take or has taken or the reasons for not taking such measures, and
 - (b) notify ESMA.”;
 - (b) in subsection (5) after “the competent authority of the person’s home State” insert “and ESMA”; and
 - (c) in subsection (6) after “the Commission” insert “and ESMA”.
- (7) In section 194A (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: Authority primarily responsible for securing compliance) —
- (a) in subsection (7) after “the firm’s home state regulator” insert “, ESMA”; and
 - (b) after subsection (7) insert—

“(8) If the firm has failed to put an end to the contravention as described in subsection (5)(b), the Authority may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority(2))).”.
- (8) In section 195A (contravention by relevant EEA firm or EEA UCITS of directive requirements: home state regulator primarily responsible for securing compliance)—
- (a) in subsection (11) after “inform” insert “ESMA and”; and
 - (b) after subsection (11) insert—

“(11A) If circumstances exist which enable the Authority to exercise its power of intervention under subsection (6), the Authority may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November

2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).”.

- (9) In section 199 (additional procedure for EEA firms in certain cases)—
- (a) in subsection (7) after “the firm’s home state regulator” insert “, ESMA”;
 - (b) in subsection (10) after “the Authority must inform” insert “ESMA and”; and
 - (c) after subsection (10) insert—

“(11) If, in the case of a home state regulator of an incoming EEA firm exercising EEA rights under the UCITS directive, the Authority is satisfied as mentioned in subsection (5), it may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).”.
- (10) In section 297 (revoking recognition) after subsection (5) insert—
- “(6) Where the Authority makes an order revoking the recognition order for a body that is a recognised investment exchange, it must notify ESMA.”.
- (11) In section 312B (removal of passport rights from EEA market operator)—
- (a) in subsection (10) after “the Commission” insert “and ESMA”; and
 - (b) after subsection (12) insert—

“(13) If the Authority is satisfied as mentioned in subsection (5), it may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).”.
- (12) In section 313C (notification in relation to suspension or removal of a financial instrument from trading) in subsection (1)(b) after “inform” insert “ESMA and”.
- (13) In section 391 (publication) after subsection (7) insert—
- “(7A) Where the Authority publishes information under subsection (4) or (5) in respect of a final notice or a supervisory notice which relates to a contravention of a requirement falling within subsection (7B) at the same time as it publishes the information it must notify ESMA that it has done so.
- (7B) A requirement falls within this subsection if it is imposed—
- (a) by or under any provision made by or under this Act which implements Directive [2003/6/EC](#) of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),
 - (b) by any directly applicable EU regulation made under that directive,
 - (c) by or under any provision made by or under this Act which implements the markets in financial instruments directive, or
 - (d) by any directly applicable EU regulation made under the markets in financial instruments directive.”.
- (14) In section 417 (definitions) in subsection (1)—
- (a) after the definition of “documents” insert—

““EBA” means the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority(3));”;

(b) after the definition of “electronic commerce directive” insert—

““ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority);”.

(15) In Schedule 3 (EEA passport rights) in paragraph 19(12ZA) after “the Authority must inform” insert “ESMA and”.