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STATUTORY INSTRUMENTS

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**2017 No. 701**

**FINANCIAL SERVICES AND MARKETS**

The Financial Services and Markets Act 2000  
(Markets in Financial Instruments) Regulations 2017

*Made - - - - 21st June 2017*

*Laid before Parliament 22nd June 2017*

*Coming into force in accordance with regulation 1*

THE FINANCIAL SERVICES AND MARKETS ACT 2000  
(MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2017

PART 1

Introductory provisions

1. Citation and commencement
2. Interpretation
3. Designation of competent authorities

PART 2

Exempt and third-country investment firms

CHAPTER 1

Exempt investment firms

4. Applications to be an exempt investment firm
5. Limitation on exempt investment firms
6. Requirements applying to exempt investment firms
7. Transitional provision: exempt investment firms
8. Meaning of “exempt investment firm” in Chapter 1

CHAPTER 2

Third country investment firms

9. Third country firms with an EEA branch: provision of services

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10. FCA power to intervene in relation to third country firms with an EEA branch
11. Third country firms registered with ESMA: provision of services
12. FCA power to intervene in relation to third country firms registered with ESMA
13. Third country firms: provision of services to eligible counterparties or clients considered to be professionals
14. Third country firms: financial promotions
15. Interpretation of Chapter 2

### PART 3

#### Position limits and position management controls in commodity derivatives

16. FCA duty to establish position limits
17. Exemption for non-financial entities
18. Content of position limits
19. FCA duty to use ESMA methodology to establish position limits and to review if market changes
20. ESMA opinions on position limits
21. Position limits affecting multiple EEA jurisdictions
22. Cooperation with other competent authorities regarding position limits affecting multiple EEA jurisdictions
23. General requirements for position limits
24. FCA duty to notify ESMA of established position limits and position management controls
25. Procedure in exceptional cases
26. Effect of position limits established by the FCA or other competent authorities in the EEA
27. FCA power to require information
28. FCA power to intervene
29. Interpretation of Part 3

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#### Algorithmic trading etc by members of trading venues covered by certain exemptions from the markets in financial instruments directive

30. Algorithmic trading
31. Provision of information to the FCA concerning algorithmic trading
32. Direct electronic access
33. Provision of information to the FCA concerning direct electronic access
34. Acting as a general clearing member
35. Synchronisation of business clocks
36. FCA power to impose requirements
37. Interpretation of Part 4

### PART 5

#### Removal of persons from the management board of an investment firm, credit institution, or recognised investment exchange

38. FCA and PRA power to remove a person from a management board
39. Right to refer matters to the Tribunal
40. Removal of persons from management boards: procedure

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Miscellaneous FCA functions in relation to the markets in financial instruments directive and markets in financial instruments regulation

41. Provision of FCA record of recognised investment exchanges to ESMA and other competent authorities
42. Provision of information to ESMA about multilateral trading facilities etc
43. Provision to ESMA of reports by recognised investment exchanges of infringements of the exchange's rules, disorderly trading, suspected market abuse, and systems disruptions
44. Authorisation of members of management bodies to hold additional non-executive directorship
45. Provision of information to ESMA regarding sanctions and measures imposed for the purposes of the markets in financial instruments directive
46. Provision of information to other competent authorities regarding persons engaged in algorithmic trading or providing direct electronic access
47. Notifications, reports, and applications relating to the markets in financial instruments directive or the markets in financial instruments regulation

## PART 7

Miscellaneous

48. Refund of fees by the Gambling Commission
49. Administration and enforcement of the Regulations
50. Amendments to legislation
51. Review  
Signature

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SCHEDULE 1 — Administration and enforcement of Parts 3, 4, and 5

PART 1 — Interpretation

1. Interpretation of Schedule 1
2. Directly applicable EU regulations

PART 2 — The FCA and the PRA

*Functions of the FCA and the PRA*

3. Functions of the FCA
4. Functions of the PRA

*Supervision*

5. Monitoring and enforcement
6. Co-operation
7. Guidance
8. Reporting requirements

PART 3 — Administrative sanctions and offences

*Administrative sanctions*

9. Interpretation of Part 3
10. Public censure
11. Financial penalties

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12. Warning notice
13. Decision notice
14. Statements of policy
15. Statements of policy: procedure

### *Offences*

16. Misleading the FCA or PRA
17. Restriction on penalties
  - PART 4 — Application of the Act for the purposes of the Regulations
18. Application of Part 9 of the Act (hearings and appeals)
19. Application of Part 11 of the Act (information gathering and investigations)
20. Restrictions on disclosure of information
21. Application of Part 25 of the Act (injunctions and restitution)
22. Application of Part 26 of the Act (notices)
23. Application of Part 27 of the Act (offences)
24. Application of section 413 of the Act (protected items)
25. FCA: penalties, fees and exemption from liability in damages
26. PRA: penalties, fees and exemption from liability in damages
  - PART 5 — Application of secondary legislation for the purposes of the Regulations
27. Service of notices
28. Disclosure of confidential information
29. Communications by auditors

### SCHEDULE 2 — Amendments to the Financial Services and Markets Act 2000

1. The Act is amended as follows.
2. Amendments to Part 3 (authorisation and exemption)
3. (1) Section 39A (certain tied agents operating outside the United...
4. Amendments to Part 4A (permission to carry on regulated activities)
5. (1) Section 55R (persons connected with an applicant) is amended...
6. Amendments to Part 6 (official listing)
7. (1) Section 102A (meaning of “securities” etc) is amended as...
8. In section 103(1) (interpretation of Part 6) in the definition...
9. Amendments to Part 8 (provisions relating to market abuse)
10. (1) Section 122I (power to suspend trading in financial instruments)...
11. After section 122I insert— Power to suspend auctioning of auctioned...
12. In section 123(1)(c)(i) (power to impose penalties or issue censure)...
13. (1) Section 123A (power to prohibit individuals from managing or...
14. In section 123B(1)(c) (suspending permission to carry on regulated activities...
15. In section 124(10) (statement of policy) in paragraph (c)(i) of...
16. (1) Section 129 (power of the court to impose administrative...
17. In section 131AB (interpretation)— (a) in the definition of “financial...
18. Amendments to Part 9A (rules and guidance)
19. Amendments to Part 12 (control over authorised persons)
20. Amendments to Part 13 (incoming firms: intervention by FCA or PRA)
21. (1) Section 195A (contravention by relevant EEA firm etc of...
22. Amendments to Part 14 (disciplinary measures)
23. Amendments to Part 15 (the financial services compensation scheme)
24. In section 214(1)(general)— (a) in paragraph (a)—
25. (1) Section 215 (rights of the scheme in insolvency) is...
26. (1) Section 218A (regulators power to require information) is amended...

27. (1) Section 220 (scheme manager’s power to inspect information held...
28. (1) Section 224 (scheme manager’s power to inspect documents held...
29. Amendments to Part 18 (recognised investment exchanges and clearing houses)
30. After section 287 (application by an investment exchange) insert—  
Application...
31. In section 290(1A) (recognition orders)— (a) for “Community” substitute “EU”;
32. In section 292(3) (overseas investment exchanges and overseas clearing houses),...
33. In section 301E(4)(a) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.
34. (1) Section 312A (exercise of passport rights by EEA market...
35. (1) Section 312B (removal of passport rights from EEA market...
36. (1) Section 312C (exercise of passport rights by recognised investment...
37. In section 312D (interpretation of Chapter 3A of Part 18)—...
38. In section 313(1) (interpretation of Part 18)—
39. Amendments to Part 18A (suspension and removal of financial instruments from trading)
40. Omit section 313C (notification in relation to suspension or removal...
41. After section 313C insert— Suspension or removal of financial instruments...
42. (1) Section 313D (interpretation of Part 18A) is amended as...
43. Amendments to Part 20 (provision of financial services by members of the professions)
44. Amendments to Part 23 (public record, disclosure of information and co-operation)
45. Amendments to Part 26 (notices)
46. After section 391C (publication: special provisions relating to the UCITs...
47. After section 395(13)(bbza) (the FCA’s and PRA’s procedures) insert—
48. Amendments to Part 27 (offences)
49. Amendments to Part 28 (miscellaneous)
50. Omit sections 412A (approval and monitoring of trade-matching and reporting...
51. Amendments to Part 29 (interpretation)
52. In section 422A(4)(a) (disregarded holdings) for “4.1(8)” substitute “4.1.7”.
53. In section 424A(5)(b) (investment firm) for “4.1.20” substitute “4.1.55”.
54. Amendments to Schedule 3 (EEA passport rights)
55. Amendments to Schedule 10A (liability of issuers)

SCHEDULE 3 — Amendments to secondary legislation made under the Financial Services and Markets Act 2000

1. The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001
2. Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
3. Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001
4. Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001
5. Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001
6. Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

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7. Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013
8. Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 2013
9. Financial Services and Markets Act 2000 (Ring-Fenced Bodies and Core Activities) Order 2014

SCHEDULE 4 — Amendments to other primary legislation

1. Building Societies Act 1986
2. Finance Act 1991
3. Friendly Societies Act 1992
4. Data Protection Act 1998
5. Competition Act 1998
6. Terrorism Act 2000
7. Proceeds of Crime Act 2002
8. Income Tax (Trading and Other Income) Act 2005
9. Companies Act 2006
10. Income Tax Act 2007
11. Counter-Terrorism Act 2008
12. Corporation Tax Act 2010
13. Finance Act 2010
14. Finance Act 2011
15. Financial Services (Banking Reform) Act 2013

SCHEDULE 5 — Amendments to other secondary legislation

1. Income Tax (Manufactured Overseas Dividends) Regulations 1993
2. Financial Markets and Insolvency (Settlement Finality) Regulations 1999
3. Uncertificated Securities Regulations 2001
4. Insurers (Reorganisation and Winding Up) Regulations 2004
5. Credit Institutions (Reorganisation and Winding Up) Regulations 2004
6. Occupational Pension Schemes (Investment) Regulations 2005
7. Authorised Investment Funds (Tax) Regulations 2006
8. Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007
9. Payment Services Regulations 2009
10. Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009
11. Offshore Funds (Tax) Regulations 2009
12. Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010
13. Electronic Money Regulations 2011
14. Recognised Auction Platforms Regulations 2011
15. Investment Trust (Approved Company) (Tax) Regulations 2011
16. Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors' Reports) (Authorised Person) Order 2012
17. Unauthorised Unit Trusts (Tax) Regulations 2013
18. Capital Requirements Regulations 2013
19. Stamp Duty and Stamp Duty Reserve Tax (Exchange Traded Funds) (Exemption) Regulations 2014
20. Financial Services Act 2012 (Relevant Functions in Relation to Complaints Scheme) Order 2014
21. Public Interest Disclosure (Prescribed Persons) Order 2014
22. Reports on Payments to Governments Regulations 2014

23. Public Contracts Regulations 2015

Explanatory Note