
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Markets in Financial Instruments
(Amendment) (EU Exit) Regulations 2018

PART 3

Amendment of secondary legislation: European Union (Withdrawal) Act 2018

CHAPTER 3

The Data Reporting Services Regulations 2017

The Data Reporting Services Regulations 2017

17. The Data Reporting Services Regulations 2017(1) are amended in accordance with this Chapter.

Introductory provisions

18.—(1) In regulation 2(1)—

- (a) in the definition of “APA” after “regulation 10” insert “or 12A”;
- (b) in the definition of “ARM”—
 - (i) after “regulation 10” insert “or 12A”;
 - (ii) for “competent authorities or to ESMA” substitute “the competent authority”;
- (c) after the definition of “authorised person” insert—

““Commission Delegated Regulation (EU) 2017/565” means 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;

““Commission Delegated Regulation (EU) 2017/571” means Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing [Directive 2014/65/EU](#) of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers;”;

- (d) for the definition of “credit institution”, substitute—

““credit institution” has the meaning given in Article 2.1.19 of the markets in financial instruments regulation;”;
- (e) in the definition of “CTP” after “regulation 10” insert “or 12A”;

- (f) in the definition of “data reporting service”, in sub-paragraph (b), for “competent authorities or to ESMA” substitute “the competent authority”;
 - (g) omit the definition of “ESMA”;
 - (h) in the definition of “financial instrument”, for “Article 4.1.15 of the markets in financial instruments directive”, substitute “Article 2.1.9 of the markets in financial instruments regulation”;
 - (i) omit the definition of “home Member State”;
 - (j) for the definition of “investment firm”, substitute—
 - ““investment firm” has the meaning given in Article 2.1A of the markets in financial instruments regulation;”;
 - (k) for the definition of “multilateral trading facility”, substitute—
 - ““multilateral trading facility” means a “UK multilateral trading facility” within the meaning given in Article 2.1.14A of the markets in financial instruments regulation;”;
 - (l) for the definition of “organised trading facility”, substitute—
 - ““organised trading facility” means a “UK organised trading facility” within the meaning given in Article 2.1.15A of the markets in financial instruments regulation;”;
 - (m) for the definition of “regulated market”, substitute—
 - ““regulated market” means a “UK regulated market” within the meaning of Article 2.1.13A of the markets in financial instruments regulation;”;
 - (n) for definition of “senior management” substitute—
 - ““senior management” means natural persons who exercise executive functions within an investment firm, a market operator or a data reporting services provider and who are responsible, and accountable to the management body, for the day-to-day management of the entity, including for the implementation of the policies concerning the distribution of services and products to clients by the firm and its personnel;”;
 - (o) in the definition of “systematic internaliser”, for “Article 4.1.20 in the markets in financial instruments directive” substitute “Article 2.1.12 of the markets in financial instruments regulation”;
 - (p) in the definition of “trading venue”, for “Article 4.1.24 of the markets in financial instruments directive” substitute “Article 2.1.16 of the markets in financial instruments regulation”.
- (2) In regulation 2(2), for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

Authorisation of data reporting services

19.—(1) In regulation 5—

- (a) in paragraph (1)(b), (c) and (d), for “Article 59.2 of the markets in financial instruments directive that the firm complies with Title V of that directive”, substitute “regulation 8 that the firm complies with these Regulations”;
- (b) for sub-paragraph (e), substitute—
 - “(e) a person who is authorised in Gibraltar in accordance with the law of Gibraltar relied on by Gibraltar before exit day to implement Title V of the markets in financial instruments directive, as that law is amended from time to time.”.

(2) In regulation 6, in paragraph (1)(b) for “Title V of the markets in financial instruments directive it has verified in accordance with Article 59.2 of that directive” substitute “these Regulations it has verified in accordance with regulation 8”.

(3) In regulation 7, in paragraph (5), at the end insert “which form part of retained EU law, or any technical standards made by the FCA under paragraph 34 of Schedule 3 to the markets in financial instruments regulation”.

(4) In the heading to regulation 8, for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

(5) In regulation 8—

(a) in paragraph (1)—

(i) omit “in accordance with Article 59.2 of the markets in financial instruments directive”;

(ii) for “Title V of that directive as it applies” substitute “these Regulations, as they apply”;

(b) in paragraph (2), in the opening words, for “Title V of the markets in financial instruments directive” substitute “these Regulations”;

(c) in paragraph (3), for “Title V of the markets in financial instruments directive” substitute “these Regulations”;

(d) omit paragraph (8);

(e) in paragraph (9), in sub-paragraph (a) of the modified version of regulation 11(1), for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

(6) In regulation 9, in paragraph (1)(b), for “European Union” substitute “United Kingdom”.

(7) In regulation 10, omit paragraph (11).

(8) In regulation 11, in paragraph (1)(h)—

(a) in the opening words, for “the provisions of”, substitute “requirements imposed by or under”;

(b) omit paragraph (ii).

Temporary authorisation

20. After regulation 12, insert—

“Deemed authorisation to provide a data reporting service

12A.—(1) A person to whom this regulation applies is to be treated, for the period determined in accordance with regulation 12C, as if that person is authorised to provide a data reporting service under these Regulations.

(2) This regulation applies to a person—

(a) who immediately before exit day—

(i) is established in an EEA state other than the United Kingdom;

(ii) is authorised in that EEA state in accordance with Title V of the markets in financial instruments directive or is permitted to provide a data reporting service in accordance with Article 59.2 of that directive; and

(b) who has taken the steps set out in paragraph (3).

(3) The steps referred to in this paragraph are that the person has, on or after the day on which this regulation comes into force and no later than 30 working days before the day on

which exit day occurs, notified the FCA that the person wishes to be treated in accordance with paragraph (1) by—

- (a) making an application for authorisation to provide a data reporting service under these Regulations; or
 - (b) making a statement to that effect and tendering the fee (if any) prescribed under paragraph 23 of Schedule 1ZA to the Act.
- (4) For the purposes of paragraph (3)(b), the statement must—
- (a) be made in such manner, and during such period, as the FCA may direct; and
 - (b) contain, or be accompanied by, such other information as the FCA may direct.
- (5) The FCA's powers under these Regulations are exercisable in respect of a person to whom this regulation applies as they are in respect of a person who is authorised to provide a data reporting service under these Regulations, in particular in relation to the variation or cancellation of an authorisation to provide such a service.
- (6) The power to give directions under this regulation includes the power—
- (a) to give different directions in relation to different statements or categories of statements;
 - (b) to vary or revoke previous directions.

Regulator response

12B.—(1) Within 28 days beginning with the date of receipt of a notification made in accordance with regulation 12A(3)(a), the FCA must—

- (a) if it considers that the requirements of regulation 7 have been satisfied, confirm in writing to the person making the application that it constitutes a valid notification;
- (b) if it considers that those requirements are not satisfied, confirm in writing to the person making the application—
 - (i) that it does not constitute a valid application, and
 - (ii) the details of any requirements that have not been satisfied.

(2) Within 28 days beginning with the date of receipt of a notification made in accordance with regulation 12A(3)(b), the FCA must—

- (a) if it considers that the steps in regulation 12A(3) have been taken (in accordance with any direction), confirm in writing to the person making the statement that it constitutes a valid notification;
- (b) subject to paragraph (3), if it considers that the steps in regulation 12A(3) have not been taken (in accordance with any direction), confirm in writing to the person making the statement that—
 - (i) the notification was not valid; and
 - (ii) as applicable, the steps that have not been taken, or the directions that have not been complied with.

(3) Within 28 days beginning with the day of receipt of a notification made in accordance with regulation 12A(3)(b), the FCA may, if—

- (a) it considers that a direction given in accordance with regulation 12A(4) has not been complied with; and
- (b) it would not be possible or practicable for the applicant to comply with the direction in time,

waive the requirement to comply with the direction and confirm in writing to the person submitting the statement that it nevertheless constitutes a valid notification.

Period during which regulation 12A is to apply

12C.—(1) For the purpose of regulation 12A(1), the period is one that begins with exit day and ends—

- (a) after one year beginning with the day on which exit day occurs, or
- (b) if earlier, with a day determined as follows.

(2) Paragraph (3) applies to a person who has applied for authorisation to provide a data reporting service under these Regulations on or after the date on which this regulation comes into force, and not withdrawn that application.

(3) Where this paragraph applies—

- (a) if the application is granted, the period ends with the day before the date stated in the written notice (issued in accordance with regulation 10(6));
- (b) if the application is refused, the period ends with the day before the day stated in the decision notice (issued in accordance with regulation 10(9)(c)).

(4) Paragraph (5) applies to a person who has not applied for authorisation to provide a data reporting service under these Regulations on or after the date on which this regulation comes into force (or has made such an application but withdrawn it without submitting another).

(5) Where this paragraph applies, the period ends with the day before the day on which the decision notice (issued in accordance with regulation 11) takes effect.”.

Operating requirements

21.—(1) In regulation 14, in paragraph (7)—

(a) for sub-paragraph (a) substitute—

“(a) Commission Delegated Regulation (EU) 2017/571(2); and”;

(b) for sub-paragraph (b), substitute—

“(b) Commission Delegated Regulation (EU) 2017/565(3).”.

(2) In regulation 15—

(a) in paragraph (9), at the end insert “which form part of retained EU law, or which are set out in technical standards made by the FCA under paragraph 38 of Schedule 3 to the markets in financial instruments regulation”;

(b) in paragraph (12), for paragraphs (a) and (b), substitute—

“(a) Chapters II and III of Commission Delegated Regulation (EU) 2017/571; and

(b) Chapter VI of Commission Delegated Regulation (EU) 2017/565.”.

(3) In regulation 16, in paragraph (5), for “regulatory technical standards adopted by the European Commission under Article 66.5 of the markets in financial instruments directive” substitute “Chapter II of Commission Delegated Regulation (EU) 2017/571”.

(2) OJ L 87, 31.3.2017, p.126.

(3) OJ L 87, 31.3.2017, p.1.

Administration and enforcement

22. In regulation 17, in paragraph (1), for “Title V of the markets in financial instruments directive” substitute “these Regulations”.

Miscellaneous

- 23.**—(1) Omit regulation 46.
(2) In regulation 48, omit paragraph (2).