
STATUTORY INSTRUMENTS

2006 No. 3414

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Appointed Representatives) (Amendment) Regulations 2006

Made - - - - *19th December 2006*
Laid before Parliament *19th December 2006*
Coming into force - - *1st November 2007*

The Treasury makes these Regulations in exercise of the powers conferred on them by sections 39(1), 417(1) and 428(3) of the Financial Services and Markets Act 2000(1):

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Appointed Representatives) (Amendment) Regulations 2006 and come into force on 1st November 2007.

Amendment of the Appointed Representatives Regulations

2. The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001(2) are amended as follows.

3. In regulation 1, after the definition of “contract of long-term care insurance”, insert—
““EEA credit institution” means a credit institution authorised under the banking consolidation directive which has its relevant office in an EEA State other than the United Kingdom;
“EEA investment firm” means an investment firm as defined in section 424A of the Act(3) which has its relevant office in an EEA State other than the United Kingdom;”.

4. In regulation 2—
(a) after paragraph (1) insert—
“(1A) In its application to a contract with a principal who is an EEA investment firm or an EEA credit institution, the list in paragraph (1) shall be treated as including in addition—

(1) 2000 c.8.
(2) S.I. 2001/1217, amended by S.I. 2001/2508, S.I. 2003/1475, S.I. 2003/1476, S.I. 2004/453 and S.I. 2004/2737.
(3) Section 424A was inserted by S.I. 2006/2975.

- (a) the activity of placing financial instruments,
- (b) the activity of providing advice to clients or potential clients in relation to the placing of financial instruments.

(1B) In paragraph (1A), “clients” and “financial instruments” have the meanings given in, respectively, paragraphs 1.10 and 1.17 of Article 4 of the markets in financial instruments directive.”;

- (b) omit paragraphs (2) and (3).

5. In regulation 3—

- (a) in paragraph (1), for the words from the beginning to “representative”, where it first occurs, substitute “Except where paragraph (1A) applies to a contract between a principal and a representative, it is a prescribed requirement for the purposes of section 39(1)(a)(ii) of the Act that such a contract”;

- (b) after paragraph (1) insert—

“(1A) This paragraph applies to a contract where the principal is an EEA investment firm or an EEA credit institution.”;

- (c) after paragraph (5) insert—

“(6) In the case of a representative to whom subsection (1A) of section 39 of the Act applies, it is a prescribed requirement for the purposes of subsection (1)(a)(ii) of that section, except where paragraph (1A) applies, that the contract between the principal and the representative must contain a provision that the representative is only permitted to provide the services and carry on the activities referred to in Article 4.1.25 of the markets in financial instruments directive while he is entered on the applicable register.”.

*Claire Ward
Dave Watts*

Two of the Lords Commissioners of Her Majesty’s Treasury

19th December 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which amend the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) (“the principal regulations”), implement in part Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (OJ No L 145, 30.4.2004, p1) (“the Directive”). The Directive is also implemented by other statutory instruments including the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126) (“the MiFI Regulations”), the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2007 (S.I. 2007/125), the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384), 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 using powers under the Financial Services and Markets Act 2000 (c. 8) (“the Act”).

The amendments made to regulation 2 of the principal regulations have the effect that where appointed representatives are appointed by investment firms and credit institutions based in EEA States other than the United Kingdom the representatives are exempt from the general prohibition in respect of placing financial instruments and advising in connection with such placing.

The amendments made to regulation 3 of the principal regulations add a new requirement that the contract between an authorised person who is an investment firm or credit institution (other than a firm or institution based in another EEA State) and an appointed representative must contain a provision requiring the representative to be entered on the register that is applicable to the representative under section 39 of the Act as amended by the MiFI Regulations. Taken with sections 39 and 39A of the Act, these amendments implement the requirement in Article 23 of the Directive that tied agents must be registered in the EEA State where they are established or, in some circumstances, where their principal is established.

A transposition note has been prepared which sets out how the main elements of the Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument and the other instruments transposing the Directive 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). Copies of both documents have been placed in the libraries of both Houses of Parliament.