
STATUTORY INSTRUMENTS

2017 No. 701

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

PART 2

Exempt and third-country investment firms

CHAPTER 2

Third country investment firms

FCA power to intervene in relation to third country firms registered with ESMA

12.—(1) The FCA may exercise its power of intervention in relation to a third country firm registered with ESMA where it considers that —

- (a) the firm has acted, or is acting, in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of the markets; or
- (b) the firm has seriously infringed provisions—
 - (i) applicable to the firm in the country in which it is established; and
 - (ii) on the basis of which the Commission has adopted a decision under Article 47.1 in relation to the country.

(2) Section 197 (procedure on exercise of power of intervention) applies to the exercise by the FCA of its power of intervention under paragraph (1) as it does to the exercise by the FCA of its power of intervention under Part 13 of the Act generally.

(3) Where it appears to the FCA that the power of intervention is exercisable under paragraph (1) in relation to a third country firm registered with ESMA the FCA must give—

- (a) ESMA written notice of its concerns; and
- (b) the firm written notice of its concerns which—
 - (i) requires the firm to put an end to the conduct which gives rise to the concern;
 - (ii) states that the FCA's power of intervention will become exercisable in accordance with this regulation; and
 - (iii) indicates any requirements that the FCA proposes to impose on the firm in exercise of its power of intervention in the event the power becomes exercisable.

(4) The FCA may then only exercise its power of intervention under paragraph (1) if—

- (a) the FCA considers a reasonable time has elapsed since it gave the written notices under paragraph (3);
- (b) the firm has not put an end to the concerning conduct;
- (c) ESMA has not withdrawn the registration of the firm under Article 49 (withdrawal of registration) of the markets in financial instruments regulation; and

- (d) the FCA considers the exercise of its power of intervention is not inconsistent with any course of action ESMA has given the FCA written notice it has taken, is taking, or will take under the markets in financial instruments regulation in relation to the notice of the FCA's concerns given to ESMA by the FCA under paragraph (3)(a).
- (5) If the FCA exercises its power of intervention under paragraph (1) in relation to a third country firm registered with ESMA it must at the earliest opportunity inform ESMA of—
 - (a) the fact that it has exercised that power in relation to the firm; and
 - (b) any requirements it has imposed on the firm in the exercise of the power.
- (6) For the purposes of paragraph (4)(a) a reasonable time includes a reasonable time for ESMA to take the steps referred to in Article 49.1(c) and (d) (withdrawal of registration) of the markets in financial instruments regulation.