

**EXPLANATORY MEMORANDUM TO**  
**THE MARKETS IN FINANCIAL INSTRUMENTS**  
**(SWITZERLAND EQUIVALENCE) REGULATIONS 2021**

**2021 No. 28**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument is being made in order to specify that the legal and supervisory framework for stock exchanges in Switzerland meet at least equivalent outcomes to the UK's corresponding regime.
- 2.2 It will allow all investment firms subject to the trading obligation as set out in Article 23(1) of the Markets in Financial Instruments Regulation, as it forms part of retained EU law (MiFIR) to trade shares that fall within scope of the share trading obligation on Swiss trading venues that have been recognised as equivalent.
- 2.3 This decision is being made under powers in Article 51(1) of, and paragraph 8(1) of Schedule 3 to, MiFIR, following an assessment of the legal and supervisory framework applicable to Swiss trading venues.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 Article 23(1) MiFIR requires investment firms to trade shares that are in scope of the share trading obligation, on regulated markets, multilateral trading facilities, systematic internalisers, or equivalent third-country trading venues.

- 6.2 For third country trading venues to be recognised as equivalent for the purposes of Article 23(1) MiFIR, the Treasury must be satisfied under Article 23(4) MiFIR that the legal and supervisory framework of the third country is equivalent to the UK's regime for trading venues, as set out in Regulation (EU) No 596/2014, Title II of Regulation (EU) No 600/2014, Title III of Directive 2014/65/EU, and Directive 2004/109/EC. Third country trading venues must also be subject to effective supervision and enforcement in the third country.
- 6.3 A third country's legal and supervisory framework may be considered equivalent where the framework fulfils the following conditions: (a) markets are subject to authorisation and effective supervision and enforcement on an ongoing basis; (b) markets have clear and transparent rules regarding the admission of securities and trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable; (c) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection, and; (d) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.
- 6.4 At the end of the Transition Period, the European Union (Withdrawal) Act 2018 converted into UK domestic law the existing body of EU law that was directly applicable and in force before the end of the Transition Period (retained EU law). This included MiFIR, as amended by various EU exit instruments.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Investment firms are any legal person whose regular occupation is the provision of investment services to third parties and/or the performance of investment activities on a professional basis.
- 7.2 Trading venues are facilities in which multiple third-party buying and selling trading interests in financial instruments are able to interact. There are three types of trading venues in UK law:
- (1) regulated markets (RM), where a market operator brings together, or facilitates the bringing together of, multiple third-party buying and selling interests in financial instruments, in accordance with non-discretionary rules;
  - (2) multilateral trading facilities (MTF), where an investment firm or a market operator brings together, or facilitates the bringing together of, multiple third-party buying and selling interests in financial instruments in accordance with non-discretionary rules, and;
  - (3) organised trading facilities (OTF), where multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract.
- 7.3 Systematic internalisers are investment firms which, on an organised, frequent systematic and substantial basis, deal on own account when executing client orders outside an RM, MTF or OTF (without operating a multilateral system).
- 7.4 The share trading obligation requires UK investment firms to trade shares on authorised UK trading venues, UK systemic internalisers or equivalent third country venues, only. Shares that are non-systematic, ad hoc, irregular and infrequent, are not subject to the share trading obligation.

- 7.5 Trading services can only be provided by venues in a third country if they have been deemed equivalent by HM Treasury through the procedure set out in MiFIR.
- 7.6 HM Treasury has received technical advice from the Financial Conduct Authority (FCA) as part of HM Treasury's decision-making process. In its advice, the FCA advised that it considered Switzerland's legal and supervisory framework for trading venues, as it relates to stock exchanges, to be equivalent to the UK's.
- 7.7 HM Treasury is satisfied that the legal and supervisory framework for trading venues as it relates to stock exchanges in Switzerland meets at least equivalent outcomes to the ones provided in the UK's corresponding regime. When HM Treasury's equivalence decision for Swiss trading venues enters into force on 3 February 2021, UK firms will be able to use BX Swiss AG and SIX Swiss Exchange AG to fulfil the share trading obligation.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This decision is not related to the UK's withdrawal from the EU.
- 9. Consolidation**
- 9.1 This instrument does not consolidate any other instrument.
- 10. Consultation outcome**
- 10.1 HM Treasury has not undertaken a consultation on the instrument.
- 11. Guidance**
- 11.1 HM Treasury does not propose to provide any guidance in relation to these Regulations. The Bank of England and the FCA have the power to issue guidance in relation to MiFIR.
- 12. Impact**
- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full impact assessment has not been prepared for this instrument because, in line with Better Regulation guidance, HM Treasury considers that the net impact of this instrument on businesses will be less than £5 million Equivalent Annual Net Direct Costs to Business. Due to this limited impact, a de minimis impact assessment has been carried out, a copy of which is published alongside this Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.
- 13. Regulating small business**
- 13.1 These Regulations will give all businesses greater choice about where they can trade shares that are in scope of the share trading obligation.
- 14. Monitoring & review**
- 14.1 As set out in the Memorandum of Understanding between HM Treasury, the Bank of England, the Prudential Regulation Authority and the FCA, HM Treasury may review the equivalence determination periodically or at any time, or in response to

changes to the applicable framework.<sup>1</sup> This does not prejudice HM Treasury's ability to revoke the equivalence determination at any time.

- 14.2 Each regulator may also recommend to HM Treasury that a review of the equivalence determination is undertaken in response to material changes in the applicable framework. Furthermore, each regulator may request a review of the equivalence determination if they have concerns arising from their statutory objectives.

## **15. Contact**

- 15.1 Cassie McGoldrick at HM Treasury Telephone: 07733302765 or email: [cassie.mcgoldrick@HMTreasury.gov.uk](mailto:cassie.mcgoldrick@HMTreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Tom Duggan, Deputy Director for Securities, Markets and Banking, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 John Glen, Economic Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.

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<sup>1</sup> <https://www.gov.uk/government/publications/memorandum-of-understanding-equivalence-and-exemptions>