
STATUTORY INSTRUMENTS

2021 No. 774

FINANCIAL SERVICES

The Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021

Made - - - - 28th June 2021
Laid before Parliament 30th June 2021
Coming into force in accordance with regulation 1(2) and (3)

The Treasury, in exercise of the powers conferred by sections 141A(2), 286(1) and 428(3) of the Financial Services and Markets Act 2000⁽¹⁾ and Article 50 of, and paragraphs 1(7), 1(9) and 1(10) of Part 1 of Schedule 3 to, [Regulation \(EU\) No 600/2014](#) of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments⁽²⁾, make the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021.

(2) Subject to paragraph (3), these Regulations come into force on 26th July 2021.

(3) Regulations 2(3) and (4)(b) and 3(2) and (11) come into force on 1st December 2021.

Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001

2.—(1) The Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001⁽³⁾ is amended as follows.

(2) Omit paragraph 4C (publication of data regarding execution of transactions).

(3) In paragraph 9A(2)(a)(i) (operation of a multilateral trading facility or an organised trading facility), for “IP completion day” substitute “1st December 2021”.

(4) In paragraph 9F (specific requirements for organised trading facilities: execution of orders)—

(1) [2000 c. 8](#). Section 141A amended by section 24 of the Financial Services Act [2012 \(c. 21\)](#). Section 286(1) amended by paragraphs 2(1) and (2) of Schedule 8 to, the Financial Services Act 2012 and [S.I. 2017/1064](#).

(2) [EUR 600/2014](#), as amended by [S.I. 2018/1403](#). There are other amendments that are not relevant.

(3) [S.I. 2001/995](#), as amended by [S.I. 2006/3386](#), [2017/701](#), [2017/1064](#) and [2019/662](#). There are other amendments that are not relevant.

- (a) omit sub-paragraph (6)(c) and (d);
- (b) in sub-paragraph (9), for “IP completion day” substitute “1st December 2021”;

Commission Delegated Regulation (EU) 2017/565

3.—(1) 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⁽⁴⁾ is amended as follows.

(2) In Article 2 (definitions)—

- (a) in paragraph (14), for “IP completion day” substitute “1st December 2021”;
- (b) in paragraph (16)—
 - (i) in sub-paragraph (a)—
 - (aa) omit “the FCA or by”;
 - (bb) omit “and”;
 - (ii) after sub-paragraph (a) insert—

“(aa) as they have effect on 1 December 2021, in the case of rules made by the FCA under FSMA, and”.

(3) In Article 3 (conditions applying to the provision of information)—

- (a) in paragraph 1, after “is required to be provided in a durable medium” insert “to retail clients, or potential retail clients,”;
- (b) in paragraph 1(a), for “firm and the client” substitute “firm and the retail client, or potential retail client,”;
- (c) in paragraph 1(b), for “the person” substitute “the retail client, or potential retail client,”;
- (d) after paragraph 1 insert—

“1A. Where the client or potential client is a retail client, or potential retail client, who has requested to receive the information on paper, that information must be provided on paper and free of charge.

1B. Investment firms must provide all information required to be provided in a durable medium by this Regulation to clients or potential clients in electronic format, except where the client or potential client is a retail client, or potential retail client, when the provisions of paragraph 1 above apply.”;

- (e) in paragraph 2(b), before “the client” insert “in the case of a retail client,”.

(4) In Article 46 (general requirements for information to clients)—

- (a) in paragraph 2, for “Investment firms shall” insert “Subject to paragraph 2A, investment firms must”;
- (b) after paragraph 2 insert—

“2A. Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion—

- (a) the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and

(4) EUR 2017/565, as amended by [S.I. 2017/701](#) and [2018/1403](#).

- (b) subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in—
 - (i) electronic format; or
 - (ii) where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.
- 2B.** The conditions referred to in paragraph 2A(b) are—
 - (a) the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and
 - (b) the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.”;
- (c) in paragraph 3, for “paragraphs 1 and 2” substitute “paragraphs 1 to 2B”.
- (5) In Article 50 (information on costs and associated charges)—
 - (a) in paragraph 1, omit the second and third sub-paragraphs;
 - (b) after paragraph 1 insert—
 - “**1A.**—(1) Subject to sub-paragraph (2), the requirements laid down in the relevant rule do not apply to services provided to professional clients.
 - (2) The requirements laid down in the relevant rule do apply to services provided to professional clients for investment advice and portfolio management.”.
- (6) In Article 54(11) (assessment of suitability and suitability reports), after the existing text insert the following sub-paragraph—

“The requirements laid down in the first subparagraph do not apply to services provided to professional clients.”.
- (7) In Article 59 (reporting obligations in respect of execution of orders other than for portfolio management)—
 - (a) in paragraph 1—
 - (i) for “behalf of a client” substitute “behalf of a retail client or a professional client”;
 - (ii) in sub-paragraph (a), for “client” substitute “retail client or professional client, as applicable,”;
 - (iii) in sub-paragraph (b), for “the client” substitute “a retail client”;
 - (b) in paragraph 3, for “of client” substitute “of retail client”;
 - (c) in paragraphs 3 to 5, for “the client”, in each place it occurs, substitute “the retail client”.
- (8) In Article 60 (reporting obligations in respect of portfolio management)—
 - (a) in paragraph 1, after “management to” insert “retail clients or professional”;
 - (b) in paragraph 2, after “the following information” insert “to retail clients”;
 - (c) in paragraph 3, in the first sub-paragraph—
 - (i) in the first sentence, after “shall be provided” insert “to retail clients”;
 - (ii) in sub-paragraph (a), before “clients” insert “retail”;
 - (iii) in sub-paragraph (c), before “client” insert “retail”;
 - (d) in paragraph 4, before “client”, in each place it occurs, insert “retail”.

(9) In Article 61 (reporting obligations in respect of eligible counterparties), for the words after “The requirements” substitute “in Articles 46 to 51 and 59 do not apply to services provided to eligible counterparties.”.

(10) In Article 62(1) (additional reporting obligations for portfolio management or contingent liability transactions), for “portfolio management shall” substitute “portfolio management to a retail client must”.

(11) In Article 65 (duty of investment firms carrying out portfolio management and reception and transmission of orders to act in the best interests of the client)—

(a) in paragraph 6, in the first sub-paragraph—

(i) for “paragraphs 2 to 9” substitute “paragraphs 2 to 8”;

(ii) omit the words “In particular” to the end;

(b) in paragraph 8, omit “, technical standards made under Article 27(10) of [Directive 2014/65/EC](#) and rules in the Conduct of Business sourcebook which were relied on by the United Kingdom immediately before IP completion day to implement Article 27 of [Directive 2014/65/EU](#)”.

(12) In Article 66(9) (execution policy), omit text “The summary” to the end.

28th June 2021

James Morris
Michael Tomlinson
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in sections 141A(2), 286(1) and 428(3) of the Financial Services and Markets Act 2000 (c. 8) and the powers in Article 50 of, and paragraphs 1(7), 1(9) and 1(10) of Part 1 of Schedule 3 to, Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments.

They amend the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 and Commission Delegated Regulation 2017/565/EU 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.

These Regulations—

(1) remove an obligation on trading and execution venues to publish reports relating to the quality of execution of orders obtained on them;

(2) remove a requirement for investment firms providing portfolio management services to inform their professional client whenever the overall value of the portfolio depreciates by 10% and thereafter at multiples of 10%;

(3) remove an obligation for firms to provide detailed contract notes for trades executed on behalf of wholesale clients, and quarterly reports on portfolio management services;

(4) exempt investment firms providing portfolio management services to professional clients from the requirement to provide cost benefit analyses to those professional clients when they switch the instruments in which they invest;

(5) revoke the obligation for an investment firm to provide specified information relating to its services to clients before a service is carried out, where the services are provided to eligible counterparties;

(6) allow investment firms, where agreements to buy or sell financial securities are concluded via distance communication and where the client consents, to provide costs and charges information to their clients after the transaction has been carried out;

(7) make electronic communication the default mode of communication with wholesale clients.

These Regulations refer to and amend references to the sourcebook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000. The sourcebook made by the Financial Conduct Authority is available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where they are also available for inspection.

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.