

**EXPLANATORY MEMORANDUM TO**  
**THE MARKETS IN FINANCIAL INSTRUMENTS (CAPITAL MARKETS)**  
**(AMENDMENT) REGULATIONS 2021**

**2021 No. 774**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument amends the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (S.I. 2001/995). The instrument also amends Commission Delegated Regulation (EU) 2017/565, that supplements the Markets in Financial Instruments Regulation (MiFIR), which regulates the buying, selling and organised trading of financial securities.
- 2.2 The purpose of the instrument is to alleviate regulatory burdens on certain financial services firms, notably by removing unnecessary reporting requirements.

**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 the instrument is to the whole United Kingdom.
- 4.2 The territorial application of the instrument is to the whole United Kingdom.

**5. European Convention on Human Rights**

- 5.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding Human Rights:

“In my view the provisions of the Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 The instrument is made by the Treasury in exercise of the powers conferred by: sections 141A, 286(1) and 428(3) of the Financial Services and Markets Act 2000; and, Article 50 of, and paragraphs 1(7), 1(9) and 1(10) of Part 1 of Schedule 3 to MiFIR.

- 6.2 The instrument is part of a wider package of reforms to the UK's framework for wholesale capital markets, which will also require the enactment of primary legislation. The instrument is part of the first legislative step of that package involving a series of small, initial amendments to retained EU law and related legislation, to alleviate regulatory burdens on industry, notably by removing unnecessary reporting requirements, without compromising investor protection standards.
- 6.3 The Financial Conduct Authority (FCA) are proposing related changes to their Handbook rules pursuant to a consultation paper (CP21/9). It is intended that such changes will complement the changes introduced by the instrument.

## **7. Policy background**

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

- 7.1 The Treasury and the FCA have engaged with financial services firms to identify several obligations which MiFIR imposes on investment firms, and which are costly for firms to implement and fail to serve their intended objectives.
- 7.2 The FCA has powers to revoke and amend some of these obligations by making changes to their Handbook rules. However, revoking or amending other such obligations requires legislation or a combination of legislation and FCA rule changes. The instrument is intended to work in conjunction with FCA rule changes to give effect to these amendments to MiFIR, as follows.

### Best execution requirements

- 7.3 Together with planned FCA changes to the relevant requirements, the instrument will remove the obligation on trading and execution venues to publish reports relating to the quality of execution of orders obtained on them. Under existing rules, reports must include details about price, costs and likelihood of execution for individual financial instruments. These reports were intended to help investors make better trading decisions. However, industry engagement has revealed that firms executing orders on behalf of clients use other sources of information to monitor the quality of execution they obtain from execution venues.
- 7.4 The instrument also makes consequential amendments to reflect this measure, by removing the now obsolete obligation for investment firms who execute retail client orders to include a link in their execution policy summary to the execution quality reports published for each execution venue listed by the firm in its execution policy.
- 7.5 Together with planned FCA changes to the relevant requirements, the instrument will remove an obligation on investment firms to produce an annual report setting out the top five venues they have used for the execution of client orders, and a summary of the execution outcomes achieved.
- 7.6 These reports were intended to help investors better challenge their execution service providers. However, industry engagement has revealed that these reports are little used by clients.
- 7.7 The requirements to produce the execution quality reports and the top five reports are costly for execution venues and investment firms to produce: the FCA estimate that producing reports costs between £10,000 to £150,000 per firm per annum. As such, the FCA wish to remove these requirements on firms, and have published proposals to do so, in April 2021.

- 7.8 The requirements to produce these reports sit across both the FCA Handbook and legislation. The FCA can remove the requirements which sit in their Handbook after their consultation. They cannot remove the aspects of the requirements in legislation, which is what the instrument intends to achieve.

Service reports

- 7.9 The instrument amends an existing requirement for investment firms providing portfolio management services to inform their client whenever the overall value of the portfolio depreciates by 10% and thereafter at multiples of 10%.
- 7.10 Feedback from professional clients has been that having these reports every time their portfolios depreciate by multiples of 10% is not useful to them. They and investment firms would prefer to be allowed to agree between them what reporting is appropriate based on their specific circumstances. The instrument therefore revokes this obligation in respect of professional clients. The government plans to consult on whether this change should be extended to retail clients as well.
- 7.11 The instrument also amends an existing obligation for firms to provide detailed contract notes for trades executed on behalf of clients, and quarterly reports on portfolio management services. These requirements were designed to be useful to retail clients, but they are costly for firms to produce and wholesale clients often obtain the information they require from other sources. The instrument revokes these obligations in respect of wholesale clients. The government plans to consult on the merit of also extending this measure to retail clients, and therefore such a proposal is not included in the instrument.

Switching

- 7.12 Switching occurs when a client sells an instrument and buys another or when they exercise a right to make a change in an existing financial instrument. This instrument exempts investment firms providing portfolio management services from the requirement to provide cost benefit analyses to professional clients when they switch the instruments in which they invest.
- 7.13 In recent industry engagement, feedback from professional investors has been that these requirements are superfluous to existing suitability requirements and the obligation to act in the client's best interest. The instrument therefore revokes this obligation as it applies for professional clients but maintains it for retail clients.

Delayed disclosure of costs and charges information; disclosure of information to eligible counterparties

- 7.14 The instrument amends an existing requirement for an investment firm to provide specified information relating to its services to clients before a service is carried out. This specified information concerns the investment firm and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges.
- 7.15 Engagement with industry has revealed concerns that the requirement in respect of costs and charges disclosures can work against the best interests of the client by causing delays to firms' ability to execute a client order when the client contacts the firm by means of distance communication, such as by telephone.

- 7.16 The instrument revokes 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.
- 7.17 In addition, where agreements to buy or sell financial securities are concluded via distance communication, the instrument allows investment firms, where the client consents and the investment firm has given the client the option of delaying the conclusion of the transaction until the client has received the information, to provide costs and charges information to clients after the transaction has been concluded. However, the firm must provide the client the option of receiving the information by telephone before the conclusion of the transaction.

#### Electronic communications

- 7.18 The instrument makes electronic communication with wholesale clients the default mode of communication. This amendment is being introduced because under existing rules, paper is considered the default means of communication in most cases.
- 7.19 This requirement is outdated and no longer reflects the way in which businesses communicate with their clients. Feedback from firms also suggests that they are keen to always be able to communicate with their wholesale clients electronically to reduce the costs associated with paper communications. The government plans to consult on the merit of also extending this measure to retail clients, and therefore such a proposal is not included in the instrument.

### **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act.

### **9. Consolidation**

- 9.1 There are currently no plans to consolidate the relevant legislation.

### **10. Consultation outcome**

- 10.1 HM Treasury has not undertaken a formal consultation on the instrument but has engaged extensively with the FCA and with relevant industry stakeholders.

### **11. Guidance**

- 11.1 No further guidance is being published alongside the instrument.

### **12. Impact**

- 12.1 There is no, or no significant, additional cost on business, charities or voluntary bodies. The provisions in the instrument are expected to reduce costs on certain businesses.
- 12.2 The impact on the public sector is that the instruments being amended impact the FCA rules. Where required, impact assessments for the individual instruments being amended by the instrument are published on [legislation.gov.uk](https://www.legislation.gov.uk).
- 12.3 An Impact Assessment has not been prepared for the instrument because, in line with Better Regulation guidance, HM Treasury considers that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de minimis impact assessment has been carried out.

### **13. Regulating small business**

- 13.1 The legislation applies to small businesses. However, it does not introduce new regulatory requirements for small businesses, but instead removes or reduces existing regulatory burdens.

### **14. Monitoring & review**

- 14.1 The instrument does not include a statutory review clause, and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to the Treasury (John Glen MP) has made the following statement:

“The Economic Secretary to the Treasury considers that inserting a review provision is not appropriate, because the expected net annualised impact on business is below zero, which means that the instrument will reduce costs to businesses, and that the expense associated with conducting a review would be disproportionate.”

### **15. Contact**

- 15.1 Felix Grenfell Bozek at HM Treasury (Email: [Felix.GrenfellBozek@hmtreasury.gov.uk](mailto:Felix.GrenfellBozek@hmtreasury.gov.uk)) can be contacted with any queries regarding the instrument.
- 15.2 Tom Duggan, Deputy Director for Financial Services at HM Treasury, can confirm that this explanatory memorandum meets the required standard.
- 15.3 John Glen MP, Economic Secretary to the Treasury, can confirm that this explanatory memorandum meets the required standard.