

2012 No. 916

FINANCIAL SERVICES AND MARKETS

The Financial Services (Omnibus 1 Directive) Regulations 2012

Made - - - - 22nd March 2012

Laid before Parliament 23rd March 2012

Coming into force - - 16th April 2012

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to matters specified in the Schedule to these Regulations.

The Treasury, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972, make the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Financial Services (Omnibus 1 Directive) Regulations 2012 and come into force on 16th April 2012.

Amendments to the Financial Services and Markets Act 2000

2.—(1) The Financial Services and Markets Act 2000(b) is amended as follows.

(2) After section 54 insert—

“Notification

Notification of ESMA

54A. The Authority must notify ESMA of—

- (a) the giving of a Part IV permission to an investment firm, where the regulated activities to which the permission relates are investment services and activities,
- (b) the giving of a Part IV permission to a management company (as defined in section 237(2)), where the regulated activities to which the permission relates fall within paragraph 8 of Schedule 2,

(a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

(b) 2000 c.8; relevant amendments are as follows. Sections 87A to 87R were inserted by regulation 2(1) of and Schedule 1, paragraph 5 to S.I. 2005/1433; section 100A was inserted by section 1271 of the Companies Act 2006 (c.46); sections 194A and 195A were inserted by regulation 3(1) of and Schedule 1 paragraphs 1 and 2 to S.I. 2007/126 and section 195A was substituted by regulation 2(8) of S.I. 2011/ 1613; section 199 was amended by regulation 2(9) of S.I. 2011/ 1613; sections 312B and 313C were inserted by S.I. 2007/126; and paragraph 19(12ZA) of Schedule 3 was inserted by regulation 2(33)(h) of S.I. 2011/ 1613.

- (c) the cancellation of a Part IV permission of a description falling within paragraph (b), or
- (d) the cancellation of a Part IV permission under section 45(2A)(b) to (d).

Notification of EBA

54B.—(1) The Authority must notify EBA of—

- (a) the giving of a Part IV permission to a credit institution, where the regulated activity to which the permission relates falls within paragraph 4 of Schedule 2, or
- (b) the cancellation of a Part IV permission of a description falling within paragraph (a).

(2) “Credit institution” has the meaning given in section 138(1B).”.

(3) In section 87E (transfer by competent authority of application for approval) in subsection (2) after “the transferee authority” insert “and notify ESMA”.

(4) In section 87H (prospectus approved in another EEA State)—

- (a) in subsection (1) after “unless that authority has” insert “notified ESMA and”;
- (b) after subsection (3) insert—

“(3A) The competent authority must publish on its website a list of certificates of approval provided to it in accordance with this section.

(3B) The list referred to in subsection (3A) must—

- (a) be kept up-to-date,
- (b) retain items on it for a period of at least 12 months, and
- (c) include hyperlinks to any certificate of approval and prospectus published on the website of—
 - (i) the competent authority of the EEA State which provided the certificate,
 - (ii) the issuer, or
 - (iii) the regulated market where admission to trading is sought.”.

(5) In section 87I (provision of information to host Member State) after subsection (1) insert—

“(1A) If the competent authority supplies a certificate of approval to the competent authority of the specified EEA State, it must also supply a copy of that certificate to ESMA.”.

(6) In section 100A (exercise of powers where UK is a host Member State)—

- (a) for subsection (3) substitute—

“(3) If the authority finds that there has been such an infringement, it must—

- (a) give a notice to that effect to the competent authority of the person’s home State requesting it—
 - (i) to take all appropriate measures for the purpose of ensuring that the person remedies the situation that has given rise to the notice, and
 - (ii) to inform the authority of the measures it proposes to take or has taken or the reasons for not taking such measures, and
- (b) notify ESMA.”;

- (b) in subsection (5) after “the competent authority of the person’s home State” insert “and ESMA”; and

- (c) in subsection (6) after “the Commission” insert “and ESMA”.

(7) In section 194A (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: Authority primarily responsible for securing compliance)—

- (a) in subsection (7) after “the firm’s home state regulator” insert “, ESMA”; and

- (b) after subsection (7) insert—
- “(8) If the firm has failed to put an end to the contravention as described in subsection (5)(b), the Authority may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority(a))).”.
- (8) In section 195A (contravention by relevant EEA firm or EEA UCITS of directive requirements: home state regulator primarily responsible for securing compliance)—
- (a) in subsection (11) after “inform” insert “ESMA and”; and
- (b) after subsection (11) insert—
- “(11A) If circumstances exist which enable the Authority to exercise its power of intervention under subsection (6), the Authority may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).”.
- (9) In section 199 (additional procedure for EEA firms in certain cases)—
- (a) in subsection (7) after “the firm’s home state regulator” insert “, ESMA”;
- (b) in subsection (10) after “the Authority must inform” insert “ESMA and”; and
- (c) after subsection (10) insert—
- “(11) If, in the case of a home state regulator of an incoming EEA firm exercising EEA rights under the UCITS directive, the Authority is satisfied as mentioned in subsection (5), it may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).”.
- (10) In section 297 (revoking recognition) after subsection (5) insert—
- “(6) Where the Authority makes an order revoking the recognition order for a body that is a recognised investment exchange, it must notify ESMA.”.
- (11) In section 312B (removal of passport rights from EEA market operator)—
- (a) in subsection (10) after “the Commission” insert “and ESMA”; and
- (b) after subsection (12) insert—
- “(13) If the Authority is satisfied as mentioned in subsection (5), it may refer the matter to ESMA (and ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)).”.
- (12) In section 313C (notification in relation to suspension or removal of a financial instrument from trading) in subsection (1)(b) after “inform” insert “ESMA and”.
- (13) In section 391 (publication) after subsection (7) insert—
- “(7A) Where the Authority publishes information under subsection (4) or (5) in respect of a final notice or a supervisory notice which relates to a contravention of a requirement falling within subsection (7B) at the same time as it publishes the information it must notify ESMA that it has done so.
- (7B) A requirement falls within this subsection if it is imposed—

(a) O.J. No. L331, 15.12.2010 p.84

- (a) by or under any provision made by or under this Act which implements Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),
- (b) by any directly applicable EU regulation made under that directive,
- (c) by or under any provision made by or under this Act which implements the markets in financial instruments directive, or
- (d) by any directly applicable EU regulation made under the markets in financial instruments directive.”.

(14) In section 417 (definitions) in subsection (1)—

(a) after the definition of “documents” insert—

““EBA” means the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority(**a**));”;

(b) after the definition of “electronic commerce directive” insert—

““ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority);”.

(15) In Schedule 3 (EEA passport rights) in paragraph 19(12ZA) after “the Authority must inform” insert “ESMA and”.

Amendments to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

3.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**b**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) before the definition of “the Act” insert—

“ACER” means the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No. 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators(**c**);”;

(b) omit the definition of “directive restrictions”;

(c) after the definition of “EEA regulatory authority” insert—

““ESRB” means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board(**d**);

“ESAs” means the European Supervisory Authorities established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)(**e**) and Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority);”;

(a) O.J. No. L331, 15.12.2010 p.12

(b) S.I. 2001/2188, amended by S.I. 2001/3624, S.I. 2003/1473, S.I. 2003/2066, S.I. 2004/1862, S.I. 2004/3379, S.I. 2006/3413, S.I. 2006/3221, S.I. 2006/3413, S.I. 2007/3255 and S.I. 2011/1613; there are other amending instruments but none is relevant.

(c) O.J. No. L211, 14.08.2009 p.1

(d) O.J. No. L331, 15.12.2010 p.1

(e) O.J. No. L331, 15.12.2010 p.48

(d) for the definition of “single market directive information” substitute—

““single market information” means confidential information received by the Authority in the course of discharging its functions as the competent authority under any of the single market directives except for the market in financial instruments directive or the conglomerates directive and as the competent authority under Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) and Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and article 8 of Regulation (EU) No. 1092/2010 of the European Parliament and the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;”;

(e) after the definition of “single market information” insert—

““single market restrictions” means the restrictions imposed on the disclosure of information by—

- (a) articles 54 and 58 of the markets in financial instruments directive;
- (b) section 2 of Chapter 1 of Title 5 of the banking consolidation directive;
- (c) articles 16 and 17 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance as amended by the conglomerates directive;
- (d) article 16 of the third non-life directive;
- (e) articles 24 to 30 of the reinsurance directive;
- (f) article 102 of the UCITS directive;
- (g) article 9 of the insurance mediation directive;
- (h) article 70 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority);
- (i) article 70 of Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority);
- (j) article 70 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority); and
- (k) article 8 of Regulation (EU) No. 1092/2010 of the European Parliament and the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;”.

(3) In regulation 3 (disclosure by and to the Authority, the Secretary of State and the Treasury etc.) in paragraph (3) for “directive restrictions” substitute “single market restrictions”.

(4) In regulation 5 (disclosure for the purposes of certain other proceedings) in paragraph (5) for “directive restrictions” substitute “single market restrictions”.

(5) In the heading of Part 3 for “SINGLE MARKET DIRECTIVE INFORMATION” substitute “SINGLE MARKET INFORMATION”.

(6) In regulation 8 (application of Part 3) in paragraph (a) for “single market directive information” substitute “single market information”.

(7) In regulation 9 (disclosure by the Authority or Authority workers to certain other persons) in paragraph (3B)—

- (a) In sub-paragraph (c) omit “or”; and

(b) after sub-paragraph (d) insert—

“(e) ESMA, or

(f) the ESRB,”.

(8) In the heading of Part 4 for “DIRECTIVE RESTRICTIONS” substitute “SINGLE MARKET RESTRICTIONS”.

(9) In regulation 11 (application of Part 4) in paragraph (a) for “single market directive information” substitute “single market information”.

(10) In regulation 14 (disclosure of pre-commencement information) in paragraph (2)(b) for “directive restrictions” substitute “single market restrictions”.

(11) In regulation 15 (disclosure of transitional information)—

(a) in paragraph (4)—

(i) for “directive restrictions imposed by the single market directives” substitute “single market restrictions”; and

(ii) for “single market directive information” substitute “single market information”; and

(b) in paragraph (5) for “directive restrictions” substitute “single market restrictions”.

(12) In the heading of Schedule 1 for “DIRECTIVE RESTRICTIONS” substitute “SINGLE MARKET RESTRICTIONS”.

(13) At the end of the table in Part 1 of Schedule 1 (disclosure of confidential information whether or not subject to single market restrictions) insert—

“ACER

Its functions under Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency^(a)

ESAs

Their functions under Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) and Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)

ESRB

Its functions under Regulation (EU) No. 1092/2010 of the European Parliament and the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board”.

(14) In the heading of Schedule 2 for “DIRECTIVE RESTRICTIONS” substitute “SINGLE MARKET RESTRICTIONS”.

(15) In Schedule 2 omit the entry relating to a person specified in the first column as “The Gas and Electricity Markets Authority”.

(a) O.J. No. L326, 08.12.2011 p.1

Amendments to the Financial Conglomerates and Other Financial Groups Regulations 2004

4.—(1) The Financial Conglomerates and Other Financial Groups Regulations 2004(a) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation) in paragraph (2) for the definition of “the Financial Conglomerates Committee” substitute—

““the Joint Committee of the ESAs” means the Joint Committee of the European Supervisory Authorities established by Articles 54 of Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), of Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) and of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority);”.

(3) In regulation 2 (notification of identification as a financial conglomerate and choice of co-ordinator) in paragraph (1)(d) for “the Commission” substitute “the Joint Committee of the ESAs”.

(4) In regulation 8 (supervision of third-country financial conglomerates)—

(a) in paragraph (1)(a) after “third-country financial conglomerate;” insert “and”; and

(b) for paragraphs (1)(b) and (1)(c) substitute—

“(b) take into account any applicable guidelines prepared through the Joint Committee of the ESAs in accordance with Articles 16 and 56 of Regulation (EU) No. 1093/2010, of Regulation (EU) No. 1094/2010 and of Regulation (EU) No. 1095/2010.”.

Michael Fabricant
Angela Watkinson

22nd March 2012

Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE

ORDERS SPECIFYING MATTERS IN RELATION TO WHICH THE TREASURY ARE DESIGNATED

<i>Designation Order</i>	<i>Relevant matters</i>
The European Communities (Designation) (No. 4) Order 1992(b)	Measures relating to the publication of information about developments in the sphere of activity of a company or undertaking, whose securities are admitted to trading on a market, which may affect the price of that company’s or undertaking’s securities.
The European Communities (Designation) (No. 3) Order 1993(c)	Measures relating to investment firms and to the provision of investment services and to the operation of regulated markets and clearing or settlement systems.

(a) S.I. 2004/1862 to which there are amendments not relevant to these Regulations.

(b) S.I. 1992/2870.

(c) S.I. 1993/2661.

The European Communities (Designation) Order 1994(a)	Measures relating to the movement of capital and to payments, between Member States and between Member States and countries which are not Member States.
The European Communities (Designation) (No. 4) Order 2000(b)	Measures relating to securities and rights in securities.
The European Communities (Designation) (No. 3) Order 2001(c)	Credit and financial institutions and the taking of deposits or other repayable funds from the public.
The European Communities (Designation) (No. 4) Order 2002(d)	Authorisation and regulation of insurance intermediaries. Collective investment in transferable securities and other liquid assets.
The European Communities (Designation) (No. 3) Order 2003(e)	The provision of cash, securities and interests in securities as collateral.
The European Communities (Designation) (No.5) Order 2004(f)	Insider dealing and market manipulation.
The European Communities (Designation) (No. 7) Order 2004(g)	The listing of securities on a stock exchange and information concerning listed securities. Prospectuses on offers of transferable securities to the public and admission of securities to trading on a regulated market.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part Directive 2010/78/EU of the European Parliament and the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), European Supervisory Authority (European Insurance and Occupational Pensions Authority) and European Supervisory Authority (European Securities and Markets Authority) (“Omnibus 1”) (O.J. No. L331, 15.12.2010 p.120). A transposition note setting out how the relevant elements of this Directive are transposed into UK law is available on the Treasury’s website (www.hm-treasury.gov.uk).

Regulation 2 makes amendments to the Financial Services and Markets Act 2000 (c.8) to set out some of the circumstances in which information must be provided to one of the European Supervisory Authorities (“ESAs”), some of the circumstances in which one of the ESAs may settle a disagreement between competent authorities and to provide a definition of two of the ESAs.

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- (a) S.I. 1994/757.
 - (b) S.I. 2000/3057.
 - (c) S.I. 2001/3495.
 - (d) S.I. 2002/2840.
 - (e) S.I. 2003/1888.
 - (f) S.I. 2004/2642.
 - (g) S.I. 2004/3328.

Regulation 3 amends the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2888) (“the Gateway Regulations”) to ensure that there are no legal obstacles to the information sharing obligations set out in the sectoral legislation. Regulation 3 also makes amendments to the Gateway Regulations to ensure that information can be shared with another European agency, the Agency for the Cooperation of Energy Regulators.

Regulation 4 makes amendments to the Financial Conglomerates and Other Financial Groups Regulations 2004 (S.I. 2004/1862). A definition of the Joint Council of the ESAs is provided and references to the Financial Conglomerates Committee are replaced with references to the Joint Council which has inherited the role of the Financial Conglomerates Committee.

An impact assessment has not been produced for this instrument as no impact on the costs of business or voluntary sector is foreseen.

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STATUTORY INSTRUMENTS

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