

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 1

Exempt investment firms

Applications to be an exempt investment firm

4.—(1) A person may apply in accordance with section 55A ^{M1} (application for permission) of the Act for a Part 4A permission to carry on regulated activities as an exempt investment firm.

(2) An authorised person may become entitled to carry on regulated activities as an exempt investment firm only by applying for a variation of its Part 4A permission in accordance with section 55H ^{M2} (variation by FCA) or 55I ^{M3} (variation by PRA) of the Act.

(3) A person may only apply for a Part 4A permission as mentioned in paragraph (1), and an authorised person may only apply for a variation of their Part 4A permission as mentioned in paragraph (2), if the person or authorised person has its relevant office in the United Kingdom.

(4) In this regulation “relevant office” means—

- (a) in relation to a body corporate, its registered office or, if it has no registered office, its head office; and
- (b) in relation to a person, or authorised person other than a body corporate, the person's head office.

Marginal Citations

M1 Section 55A was inserted by section 11(2) of the Financial Services Act 2012.

M2 Section 55H was inserted by section 11(2) of the Financial Services Act 2012 and amended by S.I. 2013/1773.

M3 Section 55I was inserted by section 11(2) of the Financial Services Act 2012.

Limitation on exempt investment firms

^{F1}5.

F1 Reg. 5 omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **8(1)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Requirements applying to exempt investment firms

6.—(1) If the appropriate regulator—

- (a) gives to a person who has applied under regulation 4(1) a Part 4A permission to carry on regulated activities as an exempt investment firm; or
- (b) varies the Part 4A permission of an authorised person who has applied as mentioned in regulation 4(2) for a variation to permit them to carry on regulated activities as an exempt investment firm,

the requirements specified in paragraph (3) (“the specified requirements”) shall be treated as being imposed under section 55L^{M4} (imposition of requirements by FCA) (where the FCA is the appropriate regulator) or 55M^{M5} (imposition of requirements by PRA) (where the PRA is the appropriate regulator) of the Act.

(2) Notwithstanding paragraph (1)—

- (a) the treatment of the specified requirement as a requirement imposed under section 55L or 55M of the Act does not—
 - (i) amount for the purpose of section 55X(1)^{M6} (determination of applications: warning notices and decision notices) of the Act to a proposal to exercise the power of the appropriate regulator under section 55L(1) or 55M(1) of the Act;
 - (ii) amount for the purpose of section 55X(4)^{M7} of the Act to a decision to exercise the power of the appropriate regulator under section 55L(1) or 55M(1) of the Act; or
 - (iii) entitle the person to refer a matter under section 55Z3(1)^{M8} (right to refer matters to the Tribunal) of the Act;
- (b) the specified requirements shall not expire until the person ceases to be an exempt investment firm; and
- (c) no application under section 55L(5) or 55M(5) of the Act to vary or cancel any of the specified requirements may be made by the person unless they inform the appropriate regulator when making the application that they wish to cease to be an exempt investment firm.

(3) The requirements are that the person—

- (a) does not hold clients' funds or securities and does not, for that reason, at any time, place themselves in debit with their clients;
- (b) does not provide any investment service other than the—
 - (i) reception and transmission of orders in transferable securities and units in collective investment undertakings; and
 - (ii) provision of investment advice in relation to the financial instruments mentioned in paragraph (i); and
- (c) in the course of providing the investment services mentioned in sub-paragraph (b), transmits orders only to—
 - [^{F2}(i) an investment firm which—
 - (aa) has a Part 4A permission to carry on regulated activities relating to investment services and activities; or
 - (bb) is authorised in accordance with the markets in financial instruments directive;]
 - [^{F3}(ii) a credit institution which—
 - (aa) has a Part 4A permission to carry on the regulated activity of accepting deposits and falls within paragraph (3A); or

(bb) is authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and investment firms;]

[^{F4}(iii) a branch of an investment firm or of a credit institution authorised in a third country and which is subject to, and complies with, prudential rules considered by the appropriate regulator to be at least as stringent as those laid down in [^{F5}Part 9C rules, CRR rules,] the markets in financial instruments directive, the capital requirements regulation, and the solvency 2 directive;]

(iv) a collective investment undertaking authorised under the law of [^{F6}the United Kingdom or of] an EEA State to market units to the public and to a manager of such an undertaking; or

(v) an investment company with fixed capital, the securities of which are listed or dealt in on [^{F7}a UK regulated market or] a regulated market in an EEA State.

[^{F8}(3A) A credit institution falls within this paragraph if—

- (a) it has its head office in the United Kingdom; and
- (b) it is not a credit union within the meaning of the Credit Unions Act 1979 or the Credit Unions (Northern Ireland) Order 1985, or a friendly society within the meaning of section 417(1) of the Act.]

[^{F9}(4) In paragraph (3), “investment company with fixed capital” means a company—

- (a) the exclusive object of which is to invest its funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving its shareholders the benefit of the results of the management of their assets; and
- (b) which offers its own shares for subscription by the public.]

[^{F10}(5)

[^{F11}(6) In this regulation—

“appropriate regulator” means the appropriate regulator for the purposes of section 55A in relation to an application under regulation 4(1);

[^{F12}“the capital requirements regulation” means [Regulation \(EU\) No. 575/2013](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;]

[^{F13}“CRR rules” has the meaning given in section 144A of the Act;]

[^{F13}“Part 9C rules” has the meaning given in section 143F(1) of the Act;]

“the solvency 2 directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).]

F2 Reg. 6(3)(c)(i) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **8(2)(a)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F3 Reg. 6(3)(c)(ii) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **8(2)(a)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F4 Reg. 6(3)(c)(iii) substituted (2.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(No.2\) Regulations 2017](#) (S.I. 2017/1255), regs. 2(a), **14(a)**

Changes to legislation: The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, CHAPTER 1 is up to date with all changes known to be in force on or before 01 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F5** Words in reg. 6(3)(c)(iii) inserted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **11(a)** (with regs. 24-26)
- F6** Words in reg. 6(3)(c)(iv) inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **8(2)(a)(iii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in reg. 6(3)(c)(v) inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **8(2)(a)(iv)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Reg. 6(3A) inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **8(2)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Reg. 6(4) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **8(2)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Reg. 6(5) omitted (31.12.2020) by virtue of The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **8(2)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Reg. 6(6) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **14(b)**
- F12** Words in reg. 6(6) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **22**
- F13** Words in reg. 6(6) inserted (17.8.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 (S.I. 2022/838), regs. 1(2), **11(b)** (with regs. 24-26)

Marginal Citations

- M4** Section 55L was inserted by section 11(2) of the Financial Services Act 2012.
- M5** Section 55M was inserted by section 11(2) of the Financial Services Act 2012.
- M6** Section 55X(1) was inserted by section 11(2) of the Financial Services Act 2012.
- M7** Section 55X(4) was inserted by section 11(2) of the Financial Services Act 2012.
- M8** Section 55Z3 was inserted by section 11(2) of the Financial Services Act 2012.

Transitional provision: exempt investment firms

- 7.—(1) An authorised person who immediately before 3rd January 2018 was—
- an exempt investment firm by virtue of regulation 9A ^{M9}(transitional provision: exempt investment firms) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007; or
 - permitted to carry on regulated activities as an exempt investment firm in accordance with permission granted in accordance with regulation 4C ^{M10} (requirements to be applied to exempt investment firms) of those Regulations,

becomes an exempt investment firm with effect from that day as if they had applied as mentioned in regulation 4(1) or (2) ^{M11} and had been granted the permission or variation on that day.

Marginal Citations

- M9** S.I. 2007/126; regulation 9A was inserted by S.I. 2007/763.
- M10** Regulation 4C was inserted by S.I. 2007/263 and was amended by S.I. 2013/472 and 2013/3115.

M11 Regulation 4(1) and (2) were amended by S.I. 2013/472.

Meaning of “exempt investment firm” in Chapter 1

8. In this Chapter “exempt investment firm” means an authorised person who—
- (a) is an investment firm; and
 - (b) has a Part 4A permission;

[^{F14}but to whom the appropriate regulator has granted exemption from authorisation and operating conditions which usually apply to investment firms.]

F14 Words in reg. 8 substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018](#) (S.I. 2018/1403), regs. 1(3), **8(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 15A inserted by [2023 c. 29 Sch. 2 para. 45](#)
- reg. 16(1A)(1B) omitted by [2023 c. 29 Sch. 2 para. 46\(4\)](#)