

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 492 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (INVESTMENT SERVICES) (AMENDMENT) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred on the Minister by section 11 of the European Union (Withdrawal) Act 2019, the Minister has made these Regulations—

Title.

1. These Regulations may be cited as the Financial Services (Investment Services) (Amendment) (EU Exit) Regulations 2020.

Commencement.

2. These Regulations come into operation on 1st January 2021.

Amendment of the Financial Services (Investment Services) Regulations 2020.

3. The Financial Services (Investment Services) Regulations 2020 are amended as follows.

Amendment of Part 1.

4.(1) In regulation 2—

- (a) in the definition of “branch” omit “and for the purposes of this definition, all of the places of business set up in the same EEA State by an investment firm with headquarters in another EEA State are to be regarded as a single branch”;
- (b) in the definition of “CCP”, for “Regulation (EU) No 648/2012” substitute “EMIR”;
- (c) in the definition of “close links”, for “Article 22(1) and (2) of the Accounting Directive” substitute “section 276 of the Companies Act 2014”;
- (d) for the definition of “competent authority” substitute—

““competent authority” means—

- (a) in Gibraltar, the GFSC; and

(b) in another country or territory, the authority which exercises functions equivalent to those exercised by the GFSC under the relevant provisions of these Regulations;”;

(e) after the definition of “cross-selling practice” insert–

““Deposit Guarantee Scheme” means the Scheme as defined in section 196(1) of the Act;”;

(f) omit the definition of “home State”;

(g) omit the definition of “host State”;

(h) omit the definition of “local firm”;

(i) for the definition of “qualifying money market fund” substitute–

““qualifying money market fund” means a collective investment undertaking authorised in accordance with Part 18 of the Act and the Financial Services (UCITS) Regulations 2020 which satisfies all of the following conditions–

(a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors’ initial capital plus earnings;

(b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days (and may also achieve this objective by investing on an ancillary basis in deposits with credit institutions);

(c) it must provide liquidity through same day or next day settlement;

and, for the purposes of paragraph (b), a money market instrument is to be considered to be of high quality if the management/investment company performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality (and where one or more credit rating agencies registered and supervised in Gibraltar have provided a rating of the instrument, the management/investment company’s internal assessment should have regard to, among other things, those credit ratings);”;

(j) after the definition of “the Register” or “the GFSC Register” insert–

““restricted firm” has the meaning given in regulation 8(1);”

(k) omit the definition of “relevant EEA Firm”;

(l) after the definition of “structured finance products” insert–

““third country” means a country or territory other than Gibraltar;” and

(m) for the definition of “third-country firm” substitute–

““third-country firm” means a firm that would be an investment firm or a credit institution providing investment services or performing investment activities if its head office or registered office were located in Gibraltar;”.

(2) In regulation 3–

(a) in the heading, for “Delegated Acts” substitute “Technical standards;

(b) for sub-regulation (1) substitute–

“(1) A determination as to whether an activity is provided in an incidental manner for the purposes of paragraph 60 of Schedule 2 to the Act must take account of any technical standards clarifying when an activity is provided in an incidental manner; and

(c) for sub-regulation (2) substitute–

“(2) A determination as to whether an activity is to be considered as ancillary to the main business at a group level for the purposes of paragraph 62(3)(a) of Schedule 2 to the Act must take account of any criteria set out in technical standards concerning when an activity is to be considered as ancillary to the main business at a group level.”.

(3) In regulation 4–

(a) in sub-regulation (1)–

(i) after paragraph (b), insert “and”; and

(ii) omit paragraph (c); and

(b) in sub-regulation (7) omit “or by members of the European System of Central Banks performing their tasks as provided for by TFEU and by Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank or performing equivalent functions under domestic law”.

(4) In regulation 8–

(a) in the heading for “local” substitute “restricted”;

- (b) in sub-regulation (1), in both places it occurs, for “local” substitute “restricted”;
- (c) in sub-regulation (2), in both places it occurs, for “local” substitute “restricted”;
- (d) in sub-regulation (3)–
 - (i) in the opening words, for “local” substitute “restricted”;
 - (ii) in paragraph (c), for “Article 3 of the MiFID 2 Directive” substitute “regulation 8 of these Regulations”; and
 - (iii) in paragraph (d) for “local” substitute “restricted”;
- (e) in sub-regulation (4)–
 - (i) in the opening words, for “local” substitute “restricted”;
 - (ii) in paragraph (c)–
 - (aa) in sub-paragraph (i) omit “or are otherwise authorised in accordance with the MiFID 2 Directive”;
 - (bb) in sub-paragraph (ii) omit “or are otherwise authorised in accordance with the Capital Requirements Directive”;
 - (cc) in sub-paragraph (iii), for “the MiFID 2 Directive, the Capital Requirements Regulation or the Capital Requirements Directive” substitute “these Regulations, the Capital Requirements Regulation or the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;
 - (dd) in sub-paragraph (iv) omit “or under the law of another EEA State”;
and
 - (ee) for sub-paragraph (v) substitute–

“investment companies with fixed capital, the securities of which are listed or dealt in on a regulated market.”;
- (f) omit sub-regulation (5);
- (g) in sub-regulation (6)–
 - (i) in the opening words, for “local” substitute “restricted”;
 - (ii) in paragraph (a)(i) substitute–

“(i) are exclusively local electricity undertakings within the meaning of Article 2.35 of Directive 2009/72/EC, as that Directive applied in Gibraltar immediately before IP completion day; or natural gas undertakings within the meaning of Article 2.1 of Directive 2009/73/EC as that Directive applied in Gibraltar immediately before IP completion day;”; and

(iii) in paragraph (b)(i) substitute–

“(i) are exclusively operators within the meaning of Article 3(f) of Directive 2003/87/EC, as that Directive applied in Gibraltar immediately before IP completion day;”;

(h) in sub-regulation (7) for “local” substitute “restricted”;

(i) in sub-regulation (8) for “local” substitute “restricted”;

(j) in sub-regulation (9) for “local” substitute “restricted”; and

(k) after sub-regulation (9) insert–

“(10) In sub-regulation (4), “investment companies with fixed capital” means a company–

(a) the exclusive object of which is to invest their funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets; and

(b) which offer their own shares for subscription by the public;”.

(5) In regulation 9–

(a) in sub-regulation (1)–

(i) omit paragraph (a);

(ii) omit paragraph (b);

(iii) for paragraph (c) substitute–

“(c) public bodies charged with or intervening in the management of the public debt of Gibraltar;”; and

(iv) in paragraph (d) for “established by two or more Member States which have” substitute “designated by the Minister as having”.

Amendment of Part 2.

5.(1) Omit regulation 11.

(2) In regulation 12–

(a) omit sub-regulations (4) and (5); and

(b) for sub-regulation (6) substitute–

“(6) The requirements of this Chapter are subject to any technical standards specifying–

(a) the information to be provided to the GFSC under regulation 10(2) including the programme of operations;

(b) the requirements applicable to the management of investment firms under regulation 51(7);

(c) the forms, templates and procedures for the notification or provision of information under regulations 10(2) and 72;

(d) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the GFSC’s supervisory functions, under regulation 18(1) to (4).”.

(3) In regulation 15(2) for “a deposit guarantee scheme recognised under the DGS Directive” substitute “the Deposit Guarantee Scheme”.

(4) In regulation 16–

(a) in sub-regulation (1) for “Article 91.3 of the Capital Requirements Directive” substitute “regulations 48(5) and (6) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”; and

(b) omit sub-regulation (2).

(5) In regulation 18(4)(a) for “the EEA” substitute “Gibraltar”.

(6) In regulation 20(4) for “which is already authorised in accordance with the MiFID 2 Directive” substitute “with Part 7 permission”.

Amendment of Part 3.

6.(1) In regulation 23–

(a) for sub-regulation (2) substitute–

“(2) A firm may only appoint a tied agent who is entered on the GFSC Register as a tied agent.”;

(b) in sub-regulation (3), for paragraph (c), substitute–

“(c) monitor the activities of the tied agent so as to ensure that, when the firm is acting through the agent, the firm continues to comply with provisions contained in or made under the Act;”;

(c) omit sub-regulation (4).

(2) Omit regulation 24(2).

(3) In regulation 26–

(a) in sub-regulation (2)(a) omit “or in an EEA State”; and

(b) in sub-regulation (3)–

(i) in paragraph (c), for “one of the registers referred to in regulation 23(2)” substitute “the GFSC Register”; and

(ii) in paragraph (d), for “any such register” substitute “the GFSC Register”.

(4) In regulation 29–

(a) in sub-regulation (1)(a) for “EUMAR” substitute “the Market Abuse Regulation;”;

(b) in sub-regulation (9)(b) omit “or the competent authority”; and

(c) omit sub-regulation (10).

(5) In regulation 30(7)(a) omit “and other competent authorities”.

(6) In regulation 32–

(a) in sub-regulation (1)(b) for “authorised in accordance with the Capital Requirements Directive” substitute “which has Part 7 permission to carry on the regulated activity of accepting deposits in paragraph 3 of Schedule 2 to the Act”; and

(b) for sub-regulation (2) substitute–

“(2) Sub-regulation (1) does not apply to a credit institution with Part 7 permission to carry on the regulated activity of accepting deposits in paragraph 3

of Schedule 2 to the Act, in relation to deposits within the meaning of the Capital Requirements Directive, held by that institution.”.

(7) In regulation 35–

(a) in sub-regulation (1)(a)(iv) for “EUMAR” substitute “the Market Abuse Regulation”;

(b) for sub-regulation (2) substitute–

“(2) An investment firm that engages in algorithmic trading in Gibraltar using a trading venue in Gibraltar as a member or participant must promptly notify the GFSC.”;

(c) omit sub-regulation (5);

(d) in sub-regulation (6) for “to (5)” substitute “to (4)”;

(e) in sub-regulation (10)(d)(iii) for “EUMAR” substitute “the Market Abuse Regulation”;

(f) for sub-regulation (14) substitute–

“(14) An investment firm that provides direct electronic access to a trading venue must notify the GFSC.”;

(g) for sub-regulation (15) substitute–

“(15) The GFSC may require an investment firm to provide it, on a regular basis or at its request, with–

(a) a description of the systems and controls referred to in sub-regulation (10); and

(b) evidence that they have been applied.”; and

(h) for sub-regulation (18) substitute–

“(18) This regulation applies subject to any technical standards specifying–

(a) the details of organisational requirements laid down in this regulation to be imposed on investment firms providing different investment services or activities and ancillary services or combinations thereof, whereby the specifications in relation to the organisational requirements laid down in sub-regulations (10) to (16) must set out specific requirements for direct market access and for sponsored access in such a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access;

- (b) the circumstances in which an investment firm would be obliged to enter into the market making agreement referred to in sub-regulation (8)(b) and the content of such agreements, including the proportion of the trading venue's trading hours laid down in sub-regulation (8);
- (c) the situations constituting exceptional circumstances referred to in sub-regulation (8), including circumstances of extreme volatility, political and macroeconomic issues, system and operational matters, and circumstances which contradict the investment firm's ability to maintain prudent risk management practices as laid down in sub-regulation (1);
- (d) the content and format of the approved form referred to in sub-regulation (7) and the length of time for which such records must be kept by the investment firm."

(8) In regulation 36–

- (a) in sub-regulation (9), for “European Union law other than the MiFID 2 Directive” substitute “any other enactment.”;

- (b) for sub-regulation (19) substitute–

“(19) In applying sub-regulations (17) and (18), investment firms must have regard to any guidance on the assessment and supervision of cross-selling practices issued by the GFSC in accordance with Article 24.11 of the MiFID 2 Directive.”; and

- (c) for sub-regulation (21) substitute–

“(21) This regulation applies subject to any technical standards which supplement the principles set out in this regulation.”.

(9) For Regulation 37(11) substitute–

“(11) In applying this regulation, investment firms must take account of the requirements relating to costs and associated charges in regulation 36(6)(c) and in Article 50 of Commission Delegated Regulation (EU) 2017/565, as that Regulation forms part of the law of Gibraltar after IP completion day.”.

(10) In regulation 39(11)(b) omit “established in the EEA”.

(11) In regulation 40–

- (a) in sub-regulation (8)(a)(iv), after “Regulation (EU) No 583/2010” insert “as it forms part of the law of Gibraltar after IP completion date”; and

(b) for sub-regulation (16) substitute–

“(16) This regulation applies–

- (a) subject to any technical standards which supplement the principles set out in sub-regulations (3) to (14); and
- (b) having regard to any guidance issued by the GFSC in accordance with Articles 25.9 to 25.11 of the MiFID 2 Directive.”.

(12) For regulation 42(15) substitute–

“(15) This regulation applies subject to any technical standards adopted concerning–

- (a) the criteria for determining the relative importance of the different factors that, in accordance with sub-regulations (1) to (4), may be taken into account for determining the best possible result taking into account the size and type of order and the retail or professional nature of the client;
- (b) factors that may be taken into account by an investment firm when reviewing its execution arrangements and the circumstances under which changes to such arrangements may be appropriate. In particular, the factors for determining which venues enable investment firms to obtain on a consistent basis the best possible result for executing client orders;
- (c) the nature and extent of the information to be provided to clients on their execution policies, in accordance with sub-regulations (9) to (11);
- (d) the content, format and periodicity of data relating to the quality of execution to be published in accordance with sub-regulations (6) and (7), taking into account the type of execution venue and the type of financial instrument concerned;
- (e) the content and format of information to be published by investment firms in accordance with sub-regulation (12).”.

(13) For regulation 43(5) substitute–

“(5) This regulation applies subject to any technical standards specifying–

- (a) the conditions and nature of the procedures and arrangements which result in the prompt, fair and expeditious execution of client orders and the situations in which or types of transactions for which investment firms may reasonably deviate from prompt execution so as to obtain more favourable terms for clients;

- (b) the different methods through which an investment firm can be deemed to have met its obligations to disclose not immediately executable client limit order to the market.”.

(14) In regulation 44–

(a) in sub-regulation (3)–

(i) for paragraph (d) substitute–

“(d) an authorised UCITS scheme, within the meaning of section 289 of the Act, or its management company;”;

(ii) in paragraph (f) for “European Union law or the national law of an EEA State” substitute “any other enactment”; and

(b) for sub-regulation (6) substitute–

“(6) Sub-regulation (3) applies subject to any technical standards specifying the procedures for requesting treatment as clients under sub-regulation (4).”.

(15) In regulation 46–

(a) omit sub-regulation (9);

(b) in sub-regulation (12)(a)(i) substitute–

“(i) members or participants are only permitted to provide those services if they are investment firms with Part 7 permission to carry on any of the regulated activities in paragraphs 48 to 56 of Schedule 2 to the Act or credit institutions with Part 7 permission to carry on the regulated activity of accepting deposits in paragraph 3 of Schedule 2 to the Act;”;

(c) for sub-regulation (18) substitute–

“(18) This regulation applies–

(a) subject to any technical standards specifying–

(i) the requirements to ensure trading systems of regulated markets are resilient and have adequate capacity;

(ii) the ratio referred to in sub-regulation (10), taking into account factors such as the value of unexecuted order in relation to the value of executed transactions;

- (iii) the controls concerning direct electronic access in such as a way as to ensure that the controls applied to sponsored access are at least equivalent to those applied to direct market access;
- (iv) the requirements to ensure that co-location services and fee structures are fair and non-discriminatory and that fee structures do not create incentives for disorderly trading conditions or market abuse;
- (v) the determination of where a regulated market is material in terms of liquidity in that financial instrument;
- (vi) the requirements to ensure that market making schemes are fair and non-discriminatory and to establish minimum market making obligations that regulated markets must provide for when designing a market making scheme and the conditions under which the requirement to have in place a market making scheme is not appropriate, taking into account the nature and scale of the trading on that regulated market, including whether the regulated market allows for or enables algorithmic trading to take place through its systems;
- (ii) the requirements to ensure appropriate testing of algorithmic trading systems including high-frequency algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market; and

(b) having regard to any guidance issued by the GFSC in accordance with Article 48.13 of the MiFID 2 Directive.”.

(16) In regulation 47–

- (a) in sub-regulation (1)(a), for “relevant adopted” substitute “technical”;
- (b) in sub-regulation (1)(b), for “an adopted” substitute “technical”; and
- (c) for sub-regulation (3) substitute–

“(3) In sub-regulation (1) a reference to technical standard is to any technical standards specifying–

- (a) in the case of sub-regulation (1)(a), minimum tick sizes or tick size regimes for specific shares, depositary receipts, exchange-traded funds, certificates, and other financial instruments; and
- (b) in the case of sub-regulation (1)(b), minimum tick sizes or tick size regimes for specific financial instruments other than those covered in (3)(a).”.

(17) In regulation 48–

- (a) in sub-regulation (5), in both places it occurs, for “European Union” substitute “Gibraltar”;
- (b) in sub-regulation (6)(b) omit “EU”; and
- (c) for sub-regulation (8) substitute–

“(8) This regulation applies subject to any technical standards which–

- (a) specify the characteristics of different classes of financial instruments to be taken into account by the regulated market when assessing whether a financial instrument is issued in a manner consistent with the conditions laid down in sub-regulation (2) for admission to trading on the different market segments which it operates;
- (b) clarify the arrangements that the regulated market is required to implement so as to be considered to have fulfilled its obligation to verify that the issuer of a transferable security complies with its obligations under applicable law in respect of initial, ongoing or ad hoc disclosure obligations;
- (c) clarify the arrangements that the regulated market has to establish in accordance with sub-regulation (5) in order to facilitate its members or participants in obtaining access to information which has been made public under the conditions established by applicable law.”.

(18) In regulation 49(1), for “another EEA State” substitute “Gibraltar”.

(19) In regulation 50, for “EUMAR” substitute “the Market Abuse Regulation”.

Amendment of Part 4.

7.(1) In regulation 51–

- (a) in sub-regulation (1), for “Articles 88 and 91 of the Capital Requirements Directive” substitute “regulations 45 and 48 of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”;
- (b) omit sub-regulation (2) substitute; and
- (c) in sub-regulation (4), for “Article 88.1 of the Capital Requirements Directive” substitute “regulation 45(1) to (3) of the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020”.

(2) In regulation 53–

- (a) in sub-regulation (9) omit “or the MiFID 2 Directive”; and
 - (b) in sub-regulation (19)(h) omit “or other relevant competent authority”.
- (3) In regulation 54–
- (a) in sub-regulation (2) for “MiFID 2 Directive” substitute “Act”;
 - (b) in sub-regulation (5) for “MiFID 2 Directive” substitute “Act”;
 - (c) in sub-regulation (6)(a) for “MiFID 2 Directive” substitute “Act”; and
 - (d) in sub-regulation (7) omit “EU”.
- (4) For regulation 56(5) substitute–
- “(5) This regulation applies subject to any technical standards specifying–
- (a) the steps that investment firms might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when providing various investment and ancillary services and combinations thereof;
 - (b) the appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the clients or potential clients of the investment firm.”
- (5) In regulation 57–
- (a) in sub-regulation (1)–
 - (i) in paragraph (b)(iv) for “EUMAR” substitute “the Market Abuse Regulation”; and
 - (ii) in paragraph (d)(iv) for “EUMAR” substitute “the Market Abuse Regulation”;
 - (b) omit sub-regulations (2) and (3); and
 - (c) for sub-regulation (5) substitute–

“(5) This regulation applies subject to any technical standards concerning the circumstances that trigger an information requirement under sub-regulation 1(d).”.
- (6) In regulation 58–

- (a) for sub-regulation (8) substitute–
- “(8) The GFSC may decide to allow a management body member to hold one non- executive directorship beyond the limit specified in sub-regulation (6)(a) or (b).”; and
- (b) for sub-regulation (18) substitute–
- “(18) This regulation must be applied having regard to any guidance issued by the GFSC in accordance with Article 45.9 of the MiFID 2 Directive.”.
- (7) In regulation 61–
- (a) in sub-regulation (3) for “authorised under the Capital Requirements directive” substitute “with Part 7 permission to carry on the regulated activity of accepting deposits in paragraph 3 of Schedule 2 to the Act”;
- (b) omit sub-regulations (6) to (8); and
- (c) in sub-regulation (9) omit “and that list must include the information which the GFSC needs in order to comply with sub-regulation (8)(c)”.
- (8) In regulation 62–
- (a) in sub-regulation (1)(b)(iv) for “EUMAR” substitute “the Market Abuse Regulation”;
- (b) in sub-regulation (2)(d) for “EUMAR” substitute “the Market Abuse Regulation”;
- (c) omit sub-regulations (3) and (4); and
- (d) for sub-regulation (6) substitute–
- “(6) This regulation applies subject to any technical standards concerning the circumstances that trigger an information requirement under sub-regulation (2).”.
- (9) In regulation 63–
- (a) omit sub-regulation (9); and
- (b) for sub-regulation (10) substitute–
- “(10) This regulation applies subject to any technical standards concerning the content and format of the description and notification under sub-regulation (7).”.
- (10) In regulation 66–

- (a) in sub-regulation (2)–
 - (i) in paragraph (c)(ii) omit “EU”;
 - (ii) in paragraph (e) for “EUMAR” substitute “the Market Abuse Regulation”; and
 - (iii) in paragraph (g) for “EUMAR” substitute “the Market Abuse Regulation”.
- (b) omit sub-regulation (6); and
- (c) for sub-regulation (9) substitute–

“(9) This regulation applies subject to any technical standards further specifying the requirements under sub-regulation (2) and taking into account–

- (a) the need for the requirements to maintain high levels of investor protection to promote investor confidence in those markets while minimising the administrative burdens for issuers on the market;
- (b) that de-registrations do not occur nor that registrations be refused as a result of a merely temporary failure to meet the conditions under sub-regulation (2)(a).”.

- (11) For regulation 67(2) substitute–

“(2) Clocks to which sub-regulation (1) applies must be synchronised in accordance with any technical standards specifying the level of accuracy to which clocks are to be synchronised in accordance with international standards.”.

- (12) In regulation 68–

- (a) for sub-regulation (3) substitute–

“(3) Any position limits established by the GFSC must be based on the methodology for calculating positions (“the calculation methodology”) set out in technical standards.”;

- (b) in sub-regulation (6)(c) omit “ESMA”;
- (c) omit sub-regulations (7) to (11);
- (d) in sub-regulation (14) omit “, and the GFSC must provide ESMA with that information and the details of the position limits which the GFSC has established.”;
- (e) for sub-regulation (16) substitute–

“(16) Where the GFSC imposes more restrictive position limits in accordance with sub-regulation (15) it must publish details of those position limits on its website.”;

(f) omit sub-regulation (18);

(g) for sub-regulation (20) substitute–

“(20) The GFSC, in respect of infringements of position limits set in accordance with this regulation, may impose sanctions under the Act or these Regulations on a person situated or operating in Gibraltar who holds a position which exceeds the limits on commodity derivative contracts the GFSC has set in relation to contracts on trading venues situated or operating in Gibraltar or economically equivalent OTC contracts.”; and

(h) for sub-regulation (21) substitute–

“(21) This regulation applies subject to any technical standards on the calculation methodology referred to in sub-regulation (3) or technical standards specifying–

- (a) the criteria and methods for determining whether a position qualifies as reducing risks directly relating to commercial activities;
- (b) the methods to determine when positions of a person are to be aggregated within a group;
- (c) the criteria for determining whether a contract is an economically equivalent OTC contract to that traded on a trading venue, referred to in sub-regulation (1), in a way that facilitates the reporting of positions taken in equivalent OTC contracts to the GFSC;
- (d) the definition of what constitutes the same commodity derivative and significant volumes under sub-regulation (8);
- (e) the methodology for aggregating and netting OTC and on-venue commodity derivatives positions to establish the net position for purposes of assessing compliance with the limits. Such methodologies shall establish criteria to determine which positions may be netted against one another and shall not facilitate the build-up of positions in a manner inconsistent with the objectives set out in sub-regulations (1) and (2);
- (f) the procedure setting out how persons may apply for the exemption under sub-regulation (4) and how the GFSC will approve such applications;

- (g) the method for calculation to determine the venue where the largest volume of trading in a commodity derivative takes place and significant volumes under sub-regulation (8).”.

(13) In regulation 69–

- (a) in sub-regulation (1)(b) omit “and ESMA”;

- (b) for sub-regulation (2) substitute–

“(2) Sub-regulations (1)(a) and (b) only apply where both the number of persons and their open positions exceed the minimum thresholds specified in technical standards.”;

- (c) in sub-regulation (3), in the opening words, for “relevant competent authority” substitute “the GFSC”;

- (d) omit sub-regulation (4);

- (e) in sub-regulation (6)–

- (i) in paragraph (c)–

- (aa) in sub-paragraph (i), for “Solvency 2 Directive” substitute “Financial Services (Insurance Companies) Regulations 2020”; and

- (bb) in sub-paragraph (ii), for “the IORP 2 Directive” substitute “Part 26 of the Act”;

- (ii) in paragraph (e), after “Directive 2003/87/EC” insert “, as that Directive applied in Gibraltar immediately before IP completion day”; and

- (f) for sub-regulation (9) substitute–

“(9) This regulation applies subject to any technical standards specifying–

- (a) the format of the reports referred to in sub-regulation (1)(a) and (b) and of the breakdowns referred to in sub-regulations (3) and (4);

- (b) the thresholds referred to in sub-regulation (2), having regard to the total number of open positions and their size and the total number of persons holding a position.”.

Amendment of Part 6.

8.(1) For regulation 74(3) substitute–

“(3) In the application of Part 9 of the Act to investment firms, section 122 of the Act is subject to any technical standards specifying the information to be included by proposed acquirers in their notification.”.

(2) In regulation 76–

(a) in sub-regulation (1), for “Any person authorised within the meaning of the Audit Directive performing in an investment firm or regulated market the task described in Article 34 of the Accounting Directive or Article 73 of the UCITS Directive” substitute “A statutory auditor or audit firm approved in accordance with section 474 of the Act performing in an investment firm or regulated market the task described in section 258 of the Companies Act 2014”; and

(b) for sub-regulation (2) substitute–

“(2) A statutory auditor or audit firm approved in accordance with section 474 of the Act must also report any fact or decision of which the statutory auditor or audit firm becomes aware in carrying out any of the tasks mentioned in sub-regulation (1) in an undertaking which has close links with the investment firm within which the statutory auditor or audit firm is carrying out that task.”.

Amendment of Part 7.

9.(1) In Part 7 for the heading substitute “THIRD COUNTRY FIRMS”.

(2) Omit Chapters 1 to 3.

(3) In the heading preceding regulation 99 omit “Chapter 4 Third country firms”.

(4) In regulation 99–

(a) for sub-regulation (3) substitute–

“(3) A branch of a third-country firm is subject to the supervision of the GFSC and must comply with the requirements of–

(a) regulations 35, 36, 40, 42, 43(1), 52, 56, and 63 to 75;

(b) Articles 3 to 26 of MiFIR, including any technical standards made in accordance with those provisions; and

(c) any conditions imposed on the third-country firm’s Part 7 permission.”; and

(b) in sub-regulation (4), for “EEA” substitute “Gibraltar”.

Amendment of Part 8.

10.(1) In regulation 101(1), for “the Act, these Regulations, MiFIR and the MiFID 2 Directive” substitute “the Act, these Regulations and MiFIR”.

(2) In regulation 107–

(a) omit sub-regulation (9); and

(b) for sub-regulation (10) substitute–

“(10) This regulation applies subject to any technical standards concerning the procedures and forms for submitting information under this regulation.”.

(3) Omit regulation 108 and the cross-heading preceding that regulation.

(4) Omit regulation 109.

Amendment of Part 9.

11.(1) In regulation 110(2)–

(a) in paragraph (c) omit “other than those established in an EEA State”; and

(b) in paragraph (d) omit “for which Gibraltar is the home State”.

(2) Omit regulation 111(4).

(3) In regulation 114–

(a) in the cross-heading preceding that regulation omit “and notifying ESMA”; and

(b) omit sub-regulation (2).

(4) Omit regulation 116.

(5) Omit regulation 117 and the cross-heading preceding that regulation.

(6) Omit regulations 118 to 121.

(7) For regulation 122(3) substitute–

“(3) Any transfer of personal data under this regulation must be carried out in accordance with the data protection legislation and, where relevant, with Regulation (EC) No 2018/1725.”

(8) In regulation 123(5) omit “of another EEA State”.

(9) Omit regulation 124.

(10) For regulation 125(1) substitute–

“(1) An investment firm that provides investment services and activities in the United Kingdom must include the following statement, in a prominent location, in its client agreements and written or visual promotional material for the United Kingdom–

“[Name of firm] is authorised and regulated by the Gibraltar Financial Services Commission to conduct investment services and activities, and is covered by the Gibraltar Investor Compensation Scheme (GICS).

In relation to investment services and activities, GICS’ maximum level of compensation is the lesser of the value of 90% of eligible investments or the sterling equivalent of €20,000. Further information about compensation arrangements is available from GICS.

That level is lower than the compensation available under the UK Financial Services Compensation Scheme. Further details are available from the UK Scheme.””.

Amendment of Schedule 1.

12.(1) In Schedule 1–

- (a) in Section I: Categories of client who are considered to be professionals, in paragraph (1), omit “entities authorised by an EEA State under a Directive, entities authorised and regulated by an EEA State without reference to a Directive, and”; and
- (b) in Section II: Clients who may be treated as professionals on request, in the fifth paragraph, for “licensed under Directives” substitute “with Part 7 permission”.

Dated: 24th December 2020.

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These regulations are made under the European Union (Withdrawal) Act 2019 and address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar's withdrawal from the European Union. The regulations amend the Financial Services (Investment Services) Regulations 2020, which give effect in Gibraltar to Directive 2014/65/EU.