

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 493 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (MARKET ABUSE) (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 (Market Abuse) (Amendment) (EU Exit) Regulations 2020.

Commencement.

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

Amendment of the Market Abuse Regulation.

3.(1) The Market Abuse Regulation, is amended in accordance with regulation 4 to 11

(2) In these regulations, the “Market Abuse Regulation” means Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

Amendment of Chapter 1

4.(1) In Article 1–

- (a) omit “common”; and
- (b) for “Union” substitute “Gibraltar”.

(2) In Article 2–

- (a) in paragraph 1–
 - (i) in the first sub-paragraph, for points (a) to (c) substitute–

- (a) financial instruments admitted to trading on a Gibraltar regulated market, UK regulated market or EU regulated market or for which a request for admission to trading on such a regulated market has been made;
 - (b) financial instruments traded on a Gibraltar MTF, UK MTF or EU MTF, admitted to trading on such an MTF or for which a request for admission to trading on such an MTF has been made;
 - (c) financial instruments traded on a Gibraltar OTF, UK OTF or EU OTF;”;
and
 - (ii) in the second sub-paragraph–
 - (aa) omit “on an auction platform authorised as a regulated market”; and
 - (bb) omit “, pursuant to Regulation (EU) No 1031/2010”; and
 - (b) in paragraph 4, for “Union” substitute “Gibraltar”.
- (3) In Article 3(1)–
- (a) in point (1) for “means a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU” substitute “has the meaning given in paragraph 44(1) of Schedule 2 to the Financial Services Act 2019”;
 - (b) in point (2) for “means an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU” substitute “has the meaning given in section 2(2) of the Financial Services Act 2019”;
 - (c) in point (3) for “means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013” substitute “has the meaning given in section 2(2) of the Financial Services Act 2019”;
 - (d) for point (4) substitute–
- “(4) ‘financial institution’ means a financial institution as defined in–
- (a) Regulation (EU) No 575/2013 as that Regulation forms part of the law of Gibraltar by virtue of section 6 of the European Union (Withdrawal) Act 2019;
 - (b) Regulation (EU) No 575/2013 as that Regulation forms part of the law of the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 of the United Kingdom; or
 - (c) Regulation (EU) No 575/2013 as that Regulation applies in the European Union;”;

(e) in point (5), for “means a market operator as defined in point (18) of Article 4(1) of Directive 2014/65/EU” substitute “has the meaning given in paragraph 1 of Schedule 2 to the Financial Services Act 2019”;

(f) for points (6) to (8) substitute—

“(6) ‘regulated market’ means a multilateral system operated or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments (in the system and in accordance with its non-discretionary rules) in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems, and which—

- (a) in Gibraltar, is authorised and functions regularly in accordance with provisions contained in or made under the Financial Services Act 2019 (a “Gibraltar regulated market”);
- (b) in the United Kingdom, is a UK regulated market within the meaning of Article 2.1(13A) of Regulation (EU) No 600/2014 as it applies in the United Kingdom after IP completion day (a “UK regulated market”); or
- (c) in an EU State, is authorised and functions regularly in accordance with Title III of Directive 2014/65/EU (an “EU regulated market”);

(7) ‘multilateral trading facility’ or ‘MTF’ means a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way that results in a contract and—

- (a) in Gibraltar, complies with provisions contained in or made under the Financial Services Act 2019 (a “Gibraltar MTF”);
- (b) in the United Kingdom, complies with the requirements of Article 2.1(14A)(b) of Regulation (EU) No 600/2014 as it applies in the United Kingdom after IP completion day (a “UK MTF”); or
- (c) in an EU State, complies with Title III of Directive 2014/65/EU (an “EU MTF”);

(8) ‘organised trading facility’ or ‘OTF’ means a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that that results in a contract and—

- (a) in Gibraltar, complies with provisions contained in or made under the Financial Services Act 2019 (a “Gibraltar OTF”);

- (b) in the United Kingdom, complies with the requirements of Article 2.1(15A)(b) of Regulation (EU) No 600/2014 as it applies in the United Kingdom after IP completion day (a “UK OTF”); or
- (c) in an EU State, complies with the requirements of Title III of Directive 2014/65/EU (an “EU OTF”);
- (g) in point (9), for “a competent authority” substitute “the GFSC”;
- (h) for point (10) substitute—
 - “(10) ‘trading venue’ means a regulated market, MTF or OTF and—
 - (a) ‘Gibraltar trading venue’ means a Gibraltar regulated market, Gibraltar MTF or Gibraltar OTF;
 - (b) ‘UK trading venue’ means a UK regulated market, UK MTF or UK OTF; and
 - (c) ‘EU trading venue’ means an EU regulated market, EU MTF or EU OTF;”;
- (i) in point (11) for “means SME growth market as defined in point (12) of Article 4(1) of Directive 2014/65/EU” substitute “has the meaning given in regulation 66(1) of the Financial Services (Investment Services) Regulations 2020;”;
- (j) for point (12) substitute—
 - “(12) ‘competent authority’ means—
 - (a) in Gibraltar, the GFSC;
 - (b) in relation to the United Kingdom, the Financial Conduct Authority or Prudential Regulation Authority;
 - (c) in relation to an EU State, the authority which has been designated by that State as its competent authority for the purposes of Article 22 of this Regulation as it was in force before IP completion day; and
 - (d) in relation to any other country or territory, the supervisory authority which exercises functions equivalent to those exercised by the GFSC in accordance with this Regulation as it was in force before IP completion day;”;
- (k) in point (17), for “Articles 21 to 27 of Directive 2012/30/EU of the European Parliament and of the Council” substitute “Articles 60 to 66 of Directive (EU) 2017/1132 and, in the case of Gibraltar or the UK, as those Articles were given effect in Gibraltar or the UK (as the case may be) before IP completion day”;

- (l) in point (18), for “means algorithmic trading as defined in point (39) of Article 4(1) of Directive 2014/65/EU” substitute “has the meaning given in paragraph 44(1) of Schedule 2 to the Financial Services Act 2019”;
 - (m) in point (19), for “means emission allowance as described in point (11) of Section C of Annex I to Directive 2014/65/EU” substitute “has the meaning given in paragraph 46(11) of Schedule 2 to the Financial Services Act 2019”;
 - (n) in point (25)–
 - (i) for “issuer,” substitute “issuer or”;
 - (ii) omit “or another entity referred to in Article 19(10),”;
 - (o) for point (27), substitute–

“(27) ‘data traffic records’ means records of any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof;”
 - (p) in point (30), for “means a market maker as defined in point (7) of Article 4(1) of Directive 2014/65/EU” substitute “has the meaning given in paragraph 44(1) of Schedule 2 to the Financial Services Act 2019”;
 - (q) in point (33) for “as defined in point (40) of Article 4(1) of Directive 2014/65/EU” substitute “means the application of a high-frequency algorithmic trading technique within the meaning of paragraph 44(1) of Schedule 2 to the Financial Services Act 2019”;
 - (r) after point (35) insert–

“(36) ‘GFSC’ means the Gibraltar Financial Services Commission within the meaning of section 21(1) of the Financial Services Act 2019;

(37) ‘the Minister’ means the Minister with responsibility for financial services;

(38) ‘technical standards’ means technical standards set out in regulations made by the Minister under section 626A of the Financial Services Act 2019;

(39) references to a ‘third country’ (including in expressions including the words ‘third country’) are to be read as references to a country or territory other than Gibraltar.”.
- (4) In Article 4–
- (a) in paragraph 1–

- (i) in the first sub-paragraph—
 - (aa) before “regulated markets” insert “Gibraltar”;
 - (bb) for “an MTF or an OTF” substitute “a Gibraltar MTF or a Gibraltar OTF”;
 - (cc) for “competent authority of the trading venue” substitute “GFSC”;
 - (ii) in the second sub-paragraph, for “competent authority of the trading venue” substitute “GFSC”;
 - (iii) omit the fourth sub-paragraph;
- (b) for paragraph 2 substitute—
- “2. The GFSC shall publish notifications received under paragraph 1 on its website in the form of a list without delay. The GFSC shall update that list without delay following receipt of a notification under paragraph 1. The list shall not limit the scope of this Regulation.”;
- (c) in paragraph 3—
- (i) in point (a), for “regulated markets, MTFs and OTFs” substitute “Gibraltar regulated markets, Gibraltar MTFs and Gibraltar OTFs”;
 - (ii) in point (c), for “trading venues” substitute “Gibraltar trading venues”;
- (d) for paragraphs 4 substitute—
- “4. The Minister may make technical standards specifying:
- (a) the content of the notifications referred to in paragraph 1;
 - (b) the manner and conditions of the compilation, publication and maintenance of the list referred to in paragraph 3; and
 - (c) the timing, format and template for the submission of notifications under paragraph 1.”; and
- (e) omit paragraph 5.
- (5) In Article 5—
- (a) in paragraph 1—

- (i) in point (b), for “competent authority of the trading venue” substitute “GFSC or appropriate UK regulator or relevant European regulator”; and
 - (ii) in point (d), omit “regulatory”;
- (b) for paragraph 3 substitute–
- “3. In order to benefit from the exemption in paragraph 1, where shares have been admitted to trading or are traded on–
- (a) a Gibraltar trading venue, the issuer must report to the GFSC each transaction relating to the buy-back programme, including the information specified in Article 25(1) and (2) and Article 26(1), (2) and (3) of MIFIR (and for that purpose, the obligation in Article 26(2)(a) MIFIR is to be treated as only applying to financial instruments which are admitted to trading or traded on a Gibraltar trading venue);
 - (b) a UK trading venue, the issuer must report transactions to the appropriate UK regulator in accordance with Article 5.3 of the UK market abuse regulation; or
 - (c) an EU trading venue, the issuer must make the reports to the must report transactions to the relevant European regulator in accordance with Article 5(3) of the EU Market Abuse Regulation.”;
- (c) in paragraph 4–
- (i) for point (b) substitute–
“(b)relevant information about the stabilisation is disclosed and notified–
 - (i) where the securities or associated instruments are traded on a Gibraltar trading venue, to the GFSC in accordance with paragraph 5;
 - (i) where the securities or associated instruments are traded on a UK trading venue, to the appropriate UK regulator in accordance with Article 5.5 of the UK market abuse regulation; or
 - (iii) where the securities or associated instruments are traded on an EU trading venue, to the relevant European regulator in accordance with Article 5(5) of the EU Market Abuse Regulation.”;
- (ii) in point (d), omit “regulatory”;
- (d) for paragraph 5 substitute–
- “5. The details of all stabilisation transactions shall be notified by issuers, offerors, or entities undertaking the stabilisation, whether or not they act on behalf of such

persons, to the GFSC (where the securities or associated instruments are traded on a Gibraltar trading venue) no later than the end of the seventh daily market session following the date of execution of such transactions.”; and

(e) for paragraph 6 substitute–

“6. The technical standards referred to in this paragraph are–

(a) Commission Delegated Regulation (EU) 2016/1052–

(i) as that Regulation forms part of domestic law, where the trading takes place on a Gibraltar trading venue;

(ii) as that Regulation forms part of the law of the United Kingdom, where the trading takes place on a UK trading venue; or

(iii) as that Regulation applies in the European Union, where the trading takes place on an EU trading venue;

(b) any technical standards made by the Minister under paragraph 7, where the trading takes place on a Gibraltar trading venue;

(c) any technical standards made by the appropriate UK regulator under Article 5.7 of the UK market abuse regulation, where the trading takes place on a UK trading venue;

(d) any other regulatory technical standards adopted by the European Commission under Article 5(6) of the EU Market Abuse Regulation as it has effect in the European Union, where the trading takes place on an EU trading venue.

7. The Minister may make technical standards specifying the conditions that buy-back programmes and stabilisation measures referred to in paragraphs 1 and 4 must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.

8. In this Article, ‘European regulator’ means the authority which has been designated by an EU State as its competent authority for the purposes of Article 22 of the EU Market Abuse Regulation.”.

(6) In Article 6–

(a) in paragraph 1–

(i) in point (a), for “a Member State”, substitute “Gibraltar (including any department of the Government)”;

(ii) omit point (b);

(iii) for point (c), substitute—

“(c) a ministry, agency or special purpose vehicle of—

(i) Gibraltar; or

(ii) Gibraltar and the United Kingdom or one or more EU States;

(ca) a person acting on behalf of a ministry, agency or special purpose vehicle referred to in point (c);”;

(iv) omit point (d);

(b) for paragraph 2, substitute—

“2. This Regulation does not apply to transactions, orders or behaviour carried out in pursuit of public debt management policy by an international financial institution established by Gibraltar and the United Kingdom or one or more EU States which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems.”;

(c) in paragraph 3, for “This Regulation does not apply to the activity” substitute “The Minister may by regulations make provision for this Regulation not to apply to the activity”;

(d) in paragraph 4, for “This Regulation does not apply to the activities” substitute “The Minister may by regulations make provision for this Regulation not to apply to the activities”;

(e) for paragraph 5 substitute—

“5. The Minister may by regulations extend the exemption referred to in paragraph 1 to transactions, orders or behaviour which are carried out by—

(a) the United Kingdom or an EU State;

(b) members of the ESCB;

(c) a ministry, agency or special purpose vehicle of the United Kingdom or one or more EU States, or a person acting on their behalf;

(d) in the case of an EU State that is a federal state, a member making up the federation;

(e) certain public bodies and central banks of third countries.”;

(f) after paragraph 5 insert–

“5A. The Minister may by regulations extend the exemption referred to in paragraph 2 to transactions, orders or behaviour which are carried out by–

- (a) the European Commission or any other officially designated body, or any person acting on their behalf;
- (b) the European Union;
- (c) a special purpose vehicle of the United Kingdom or one or more EU States;
- (d) the European Investment Bank;
- (e) the European Financial Stability Facility;
- (f) the European Stability Mechanism;
- (g) an international financial institution established by–
 - (i) the United Kingdom and one or more EU States; or
 - (ii) two or more EU States,

which has the purpose of mobilising funding and providing financial assistance for the benefit of its members that are experiencing or threatened by severe financial problems.”;

(g) omit paragraph 6.

Amendment of Chapter 2.

5.(1) In Article 7–

- (a) in paragraph 1(b), for “at the Union or national level” substitute “applicable in Gibraltar, the United Kingdom, the European Union or an EU State”;
- (b) in paragraph 4, in the second sub-paragraph, for “second subparagraph” substitute “second or fourth subparagraphs”;
- (c) omit paragraph 5.

(2) In Article 8–

- (a) in paragraph 1, omit “that are held pursuant to Regulation (EU) No 1031/2010”;

- (b) in paragraph 5, omit “, in accordance with national law,”.
- (3) In Article 9, in paragraph 6, for “competent authority” substitute “GFSC”.
- (4) In Article 11–
- (a) in paragraph 3, for “competent authority” substitute “GFSC”;
 - (b) in paragraph 5, in the second sub-paragraph, for “competent authority” substitute “GFSC”;
 - (c) in paragraph 6, in the second sub-paragraph, for “competent authority” substitute “GFSC”;
 - (d) for paragraph 9 substitute–
- “9. The Minister may make technical standards specifying:
- (a) appropriate arrangements, procedures and record keeping requirements for persons to comply with the requirements of paragraphs 4, 5, 6 and 8; and
 - (b) the systems and notification templates to be used by persons to comply with the requirements established by those paragraphs and, in particular–
 - (i) the precise format of the records referred to in paragraphs 4 to 8; and
 - (ii) the technical means for appropriate communication of the information referred to in paragraph 6 to the person receiving the market sounding.”; and
 - (e) omit paragraphs 10 and 11.
- (5) In Article 12–
- (a) in paragraph 2–
 - (i) in sub-paragraph (c), in the opening words, for “trading venue” substitute “Gibraltar trading venue, UK trading venue or an EU trading venue”; and
 - (ii) in sub-paragraph (e), for “held pursuant to Regulation (EU) No 1031/2010” substitute “of such emission allowances or related derivatives”;
 - (b) in paragraph 4, omit “, in accordance with national law,”; and

- (c) in paragraph 5, for “Commission shall be empowered to adopt delegated acts in accordance with Article 35 specifying” substitute “Minister may by regulations specify”.

(6) In Article 13–

- (a) in paragraph 1, for “in accordance with this Article.” substitute–

“:

- (a) in relation to a Gibraltar market in accordance with this Article;
- (b) in relation to a UK market, in accordance with Article 13 of the UK market abuse regulation; or
- (c) in relation to a market in an EU State, in accordance with Article 13 of the EU Market Abuse Regulation.”;

- (b) in paragraph 2–

- (i) in the opening words, for “A competent authority” substitute “The GFSC”;
- (ii) in sub-paragraph (a), for “to the market” substitute “to the Gibraltar market”;
- (iii) in sub-paragraph (b), after “market forces” insert “in Gibraltar markets”;
- (iv) in sub-paragraph (c), before “market liquidity” insert “Gibraltar”;
- (v) in sub-paragraph (d), for “relevant market” substitute “relevant Gibraltar market”;
- (vi) in sub-paragraph (e), for “within the Union” substitute “in Gibraltar”;
- (vii) in sub-paragraph (f)–
 - (aa) for “any competent authority or by another authority” substitute “the GFSC”;
 - (bb) for “concerns the relevant market” substitute “concerns the relevant Gibraltar market”;
 - (cc) for “within the Union” substitute “in Gibraltar”;
- (viii) in sub-paragraph (g), in both places it occurs, for “relevant market” substitute “relevant Gibraltar market”; and

- (ix) omit the final sentence;
 - (c) omit paragraphs 3 to 6;
 - (d) for paragraph 7 substitute—

“7. The Minister may make technical standards specifying the criteria, the procedure and the requirements for establishing an accepted market practice under paragraph 2 and the requirements for maintaining it, terminating it, or modifying the conditions for its acceptance.”;
 - (e) in paragraph 8—
 - (i) for “Competent authorities” substitute “The GFSC”;
 - (ii) for “they have” substitute “it has”; and
 - (iii) for “relevant market” substitute “relevant Gibraltar market”;
 - (f) in paragraph 9—
 - (i) for “ESMA” substitute “The GFSC”; and
 - (ii) omit “and in which Member States they are applicable”; and
 - (g) omit paragraphs 10 and 11 and the final paragraph.
- (7) In Article 16—
- (a) in paragraph 1—
 - (i) for “trading venue” substitute “Gibraltar trading venue”;
 - (ii) for “Articles 31 and 54 of Directive 2014/65/EU” substitute “Regulations 57 and 62 of the Financial Services (Investment Services) Regulations 2020”; and
 - (iii) for “competent authority of the trading venue” substitute “GFSC”;
 - (b) in paragraph 2—
 - (i) for “trading venue” substitute “Gibraltar trading venue”; and
 - (ii) for “competent authority as referred to in paragraph 3” substitute “GFSC”;
 - (c) for paragraph 3 substitute—

“3. Persons professionally arranging or executing transactions shall be subject to the rules of notification of Gibraltar where they are registered or have their head office in Gibraltar, or, in the case of a branch, where the branch is situated in Gibraltar. The notification shall be addressed to the GFSC.”;

(d) omit paragraph 4; and

(e) for paragraph 5 substitute–

“5. The Minister may make technical standards specifying:

(a) appropriate arrangements, systems and procedures for persons to comply with the requirements established in paragraphs 1 and 2; and

(b) the notification templates to be used by persons to comply with the requirements established in paragraphs 1 and 2.”.

Amendment of Chapter 3.

6.(1) In Article 17–

(a) in paragraph 1–

(i) in the second sub-paragraph, for “Article 21 of Directive 2004/109/EC of the European Parliament and of the Council” substitute “section 377 of the Financial Services Act 2019”; and

(ii) for the third sub-paragraph substitute–

“This Article shall apply to–

(a) issuers who have requested or approved admission of their financial instruments to trading on a Gibraltar regulated market;

(b) in the case of instruments only traded on a Gibraltar MTF or Gibraltar OTF, issuers who have approved trading of their financial instruments on a Gibraltar MTF or Gibraltar OTF or have requested admission to trading of their financial instruments on a Gibraltar MTF; and

(c) emission allowance market participants registered in Gibraltar.”;

(b) in paragraph 2–

(i) in the third sub-paragraph, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 35 establishing” substitute “The Minister may by regulations establish”;

(ii) after that sub-paragraph, insert–

“For the purposes of the second sub-paragraph, “minimum threshold” means:

- (a) the thresholds set out in regulations made by the Minister under this paragraph; or
- (b) if such regulations have not been made, the thresholds set out in Article 5 of Commission Delegated Regulation (EU) 2016/522.”.
- (c) omit paragraph 3;
- (d) in paragraph 4, for the last sub-paragraph substitute–

“Where an issuer or emission allowance market participant has delayed the disclosure of inside information under this paragraph, it shall inform the GFSC that disclosure of the information was delayed, immediately after the information is disclosed to the public. At the GFSC’s request, the issuer or emission allowance market participant shall provide a written explanation of how the conditions set out in this paragraph were met.”;

- (e) in paragraph 5, in point (d), for “competent authority specified under paragraph 3” substitute “GFSC”;
- (f) in paragraph 6–
 - (i) for the first sub-paragraph substitute–

“6. For the purposes of points (a) to (d) of paragraph 5, an issuer shall notify the GFSC of its intention to delay the disclosure of the inside information and provide evidence that the conditions set out in points (a), (b) and (c) of paragraph 5 are met. The GFSC shall consult the Minister and the Ministry of Finance, as appropriate.”.

- (ii) in the second sub-paragraph, in both places it occurs, for “competent authority specified under paragraph 3” substitute “GFSC”;
- (iii) in the third sub-paragraph, for “competent authority specified under paragraph 3” substitute “GFSC”; and
- (iv) omit the last sub-paragraph;
- (g) in paragraph 9–
 - (i) for “the trading venue’s” substitute “the Gibraltar trading venue’s”; and
 - (ii) for “the trading venue” substitute “the Gibraltar trading venue”;
- (h) for paragraph 10 substitute–

“10. The Minister may make technical standards specifying:

- (a) the technical means for appropriate public disclosure of inside information as referred to in paragraphs 1, 2, 8 and 9; and
- (b) the technical means for delaying the public disclosure of inside information as referred to in paragraphs 4 and 5.”; and

(i) omit paragraph 11.

(2) In Article 18–

(a) in paragraph 1, in point (c), for “competent authority” substitute “GFSC”;

(b) in paragraph 6, in point (b), for “competent authority” substitute “GFSC”;

(c) in paragraph 7–

(i) for “regulated market in a Member State” substitute “Gibraltar regulated market”;

(ii) in both places it occurs, for “an MTF or an OTF” substitute “a Gibraltar MTF or Gibraltar OTF”; and

(iii) for “an MTF in a Member State” substitute “a Gibraltar MTF”;

(d) for paragraph 8 substitute–

“8. Paragraphs 1 to 5 of this Article shall also apply to emission allowance market participants registered in Gibraltar in relation to inside information concerning emission allowances that arises in relation to the physical operations of that emission allowance market participant.”; and

(e) for paragraph 9 substitute–

“9. The Minister may make technical standards specifying the precise format of insider lists and the format for updating insider lists referred to in this Article.”.

(3) In Article 19–

(a) in paragraph 1, in the opening words, for “competent authority referred to in the second sub-paragraph of paragraph 2” substitute “GFSC”;

(b) for paragraph 2 substitute–

“2. For the purposes of paragraph 1, and without prejudice to notification obligations under the law of Gibraltar other than those referred to in this Article, all transactions conducted on the own account of the persons referred to in paragraph 1 shall be

notified by those persons, within three working days of the transaction date, to the GFSC.

(c) in paragraph 3–

(i) in the first sub-paragraph, for “the implementing technical standards referred to in point (a) of Article 17(10)” substitute–

“:

(a) Commission Implementing Regulation (EU) 2016/1055; and

(b) technical standards made by the Minister under Article 17(10)(a).”;

(ii) in the second sub-paragraph–

(aa) for “throughout the Union” substitute “in Gibraltar”;

(bb) for “Article 21 of Directive 2004/109/EC” substitute “section 377 of the Financial Services Act 2019”;

(iii) omit the third sub-paragraph;

(d) for paragraph 4, substitute–

“4. This Article applies to–

(a) issuers who–

(i) have requested or approved admission of their financial instruments to trading on a Gibraltar regulated market; or

(ii) in the case of an instrument only traded on a Gibraltar MTF or Gibraltar OTF, have approved trading of their financial instruments on a Gibraltar MTF or Gibraltar OTF or have requested admission to trading of their financial instruments on a Gibraltar MTF; and

(b) emission allowance market participants registered in Gibraltar.”;

(e) in paragraph 7(c), for “defined in accordance with” substitute “referred to in Article 2(3)(a) of”;

(f) for paragraphs 9 and 10 substitute–

“9. The GFSC, with the consent of the Minister, may increase the threshold set out in paragraph 8 to €20,000.

10. The GFSC must publish the thresholds which apply in accordance with this Article and the justification for any decision taken under paragraph 9 on its website.”;

(g) in paragraph 11(b), for “national law” substitute “the law of Gibraltar”;
and

(h) for paragraph 13 to 15 substitute—

“13. The Minister may by regulations specify:

(a) the circumstances under which trading during a closed period may be permitted by the issuer, as referred to in paragraph 12, including the circumstances that would be considered as exceptional and the types of transaction that would justify the permission for trading; and

(b) the types of transactions that would trigger the requirement referred to in paragraph 1.

14. The Minister may make technical standards specifying the format and template in which the information referred to in paragraph 1 is to be notified and made public.”.

(4) In Article 20, for paragraph 3 substitute—

“3. The Minister may make technical standards specifying the technical arrangements for the categories of person referred to in paragraph 1, for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest.

4. The technical arrangements laid down in—

(a) Commission Delegated Regulation (EU) 2016/958; and

(b) technical standards made by the Minister under paragraph 3,

shall not apply to journalists who are subject to equivalent appropriate regulation in the Gibraltar, the United Kingdom or the European Union, including equivalent appropriate self-regulation, provided that such regulation achieves similar effects as those technical arrangements.”.

Amendment of Chapter 4.

7.(1) For the Chapter heading substitute “COOPERATION, PROFESSIONAL SECRECY AND DATA PROTECTION”.

(2) For Article 22 substitute—

**“Article 22
GFSC’s functions**

The GFSC shall ensure that the provisions of this Regulation are applied in Gibraltar, regarding all actions carried out in Gibraltar, and actions carried out abroad relating to instruments admitted to trading on a regulated market, for which a request for admission to trading on such market has been made, auctioned or which are traded on an MTF or an OTF or for which a request for admission to trading has been made on an MTF operating in Gibraltar.”.

(3) For Article 23 substitute—

**“Article 23
Interaction with other provisions**

1. This Regulation is without prejudice to laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies.

2. A person making information available to the GFSC in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification.”.

(4) Omit Article 24.

(5) For Article 25 substitute—

**“Article 25
Cooperation and exchange of information**

1. The GFSC may cooperate and exchange information with relevant national and third-country regulatory authorities responsible for the related spot markets where it has reasonable grounds to suspect that acts, which constitute insider dealing, unlawful disclosure of information or market manipulation infringing this Regulation, are being, or have been, carried out. Such cooperation shall ensure a consolidated overview of the financial and spot markets, and shall detect and impose sanctions for cross-market and cross-border market abuses.

2. In relation to emission allowances, the cooperation and exchange of information provided for under paragraph 1 may also take place with:

- (a) the auction monitor, with regard to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010; and

- (b) competent authorities, registry administrators, including the Central Administrator, and other public bodies in the EU charged with the supervision of compliance under Directive 2003/87/EC.”.

(6) In Article 26–

(a) in paragraph 1–

- (i) for “competent authorities of Member States” substitute “GFSC”;
- (ii) for “competent authorities to carry out their” substitute “GFSC to carry out its”;
- (iii) omit the second sub-paragraph;

(b) omit paragraph 2;

(c) in paragraph 3–

- (i) for “competent authorities shall’ substitute “GFSC may”; and
- (ii) for “those competent authorities” substitute “the GFSC”.

(7) In Article 27–

(a) in paragraph 2–

- (i) for “competent authorities” substitute “the GFSC and competent authorities”; and
- (ii) for “competent authority” substitute “authority from whom the information is received”; and

(b) in paragraph 3–

- (i) in the three places it occurs, for “competent authority” substitute “GFSC”; and
- (ii) for “Union or national law” substitute “the law of Gibraltar”.

(8) In Article 28, for the first paragraph substitute–

“Nothing in this Regulation is to be taken as authorising a disclosure of personal data in contravention of the data protection legislation (within the meaning of the Data Protection Act 2004).”.

(9) For Article 29 substitute–

**“Article 29
Disclosure of personal data to third countries**

1. The GFSC may transfer personal data to a third country where the transfer does not contravene the data protection legislation, but such transfer may only be made on a case-by-case basis. The GFSC shall ensure that the transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the GFSC.

2. Where a cooperation agreement provides for the exchange of personal data, it shall comply with the data protection legislation.”.

Amendment of Chapter 5.

8.(1) In the heading for “ADMINISTRATIVE MEASURES” substitute “ENFORCEMENT”.

(2) Omit Article 30.

(3) For Article 31 substitute—

“1. The GFSC may exercise any of the powers set out in Schedule 26 to the Financial Services Act 2019 for the purpose of supervising or investigating compliance with, or imposing sanctions for contravention of, this Regulation.

2. Paragraph 1 applies without limiting any criminal sanctions or the GFSC’s supervisory powers under Article 23.”.

(4) For Article 32 substitute—

**“Article 32
Reporting of contraventions.**

The GFSC must, in accordance with paragraph 10 of Schedule 26 to the Financial Services Act 2019, establish appropriate arrangements for the reporting of contraventions and potential contraventions of this Regulation.”.

(5) Omit Article 33.

(6) Omit Article 34.

Amendment of Chapter 6.

9.(1) For the heading of Chapter 6 substitute “Regulations”.

(2) For Article 35 substitute—

**“Article 35
Regulations**

Any regulations made by the Minister under this Regulation may–

- (a) contain incidental, supplemental, consequential and transitional provision; and
- (b) make different provision for different purposes.”.

(3) Omit Article 36.

Amendment of Chapter 7.

10.(1) Omit Article 38.

(2) In Article 39, omit paragraphs 3 and 4.

(3) After Article 39, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States”.

Amendment of Annex 1.

11. In Annex 1, in each place it occurs, for “competent authorities” substitute “the GFSC”.

Amendment of Commission Delegated Regulation (EU) 2016/522.

12.(1) Commission Delegated Regulation (EU) 2016/522 is amended as follows.

(2) In this regulation, “Commission Delegated Regulation (EU) 2016/522” means Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions.

(3) In Article 1, omit point (4).

(4) Omit Article 2.

(5) Omit Article 6.

(6) In Article 10–

- (a) in paragraph 1, for “competent authority” substitute “GFSC”;

(b) in paragraph 2, in point (m), for “Article 1 of Directive 2011/61/EU of the European Parliament and of the Council” substitute “regulation 3 of the Financial Services (Alternative Investment Fund Managers) Regulations 2020”.

(7) After Article 11, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States”.

Dated: 24th December 2020

A J ISOLA,
Minister with responsibility for financial services.

EXPLANATORY MEMORANDUM

These Regulations are made in exercise of the powers in section 11 of the European Union (Withdrawal) Act 2019, in order to address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar’s withdrawal from the European Union. They amend the Regulation (EU) 596/2014 of the European Parliament and of the Council on market abuse and Commission delegated regulation (EU) 2016/522 supplementing Regulation (EU) No 596/2014