

Subsidiary Legislation made under ss.11, 15 & ss.12, 61, 620, 626 & 627 of the Financial Services Act 2019

Financial Services (Perimeter Activities) (EU Exit) Regulations 2021

LN.2021/013

Commencement

1.1.2021

ARRANGEMENT OF REGULATIONS.

Regulation

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2019-01

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Financial Services (Perimeter Activities) (EU Exit) Regulations 2021

In exercise of the powers conferred on the Minister by sections 11 and 15 of the European Union (Withdrawal) Act 2019 and sections 12, 61, 620, 626 and 627 of the Financial Services Act 2019, the Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Financial Services (Perimeter Activities) (EU Exit) Regulations 2021.

Commencement.

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

Interpretation.

3.(1) In these Regulations–

the “Act” means the Financial Services Act 2019;

“authorisation” means permission under Part 7 of the Act or any other form of authorisation or approval under the Act, to carry on a specified activity and includes an exemption from authorisation;

“authorised person” means, in respect of a specified activity, a regulated firm or any other person who has authorisation to carry on the specified activity;

“general prohibition” has the meaning given in section 8(2) of the Act;

“legitimate approach” means–

(a) an approach made to an outside person which–

(i) has not been solicited by that person; or

(ii) has been solicited by that person but not in a manner that contravenes section 12 of the Act; or

(b) an approach made by or on behalf of an outside person that does not contravene section 12 of the Act;

“outside person” means a person who–

- (a) is established in an EEA State and authorised to carry on in that State an activity equivalent to a specified activity; and
- (b) carries on a specified activity but does not do so, or offer to do so, from a place of business maintained by the person in Gibraltar; and

“regulated firm” has the meaning given in section 63(4) of the Act.

(2) In these Regulations, a “specified activity” means a regulated activity to which any of the following provisions of Schedule 2 to the Act apply–

- (a) paragraph 33 (assisting in the administration and performance of insurance contracts: see paragraph (a)(iii) of the definition of “insurance distribution”);
- (b) paragraph 45(2).1 (safekeeping and administration of financial instruments as an ancillary service);
- (c) paragraph 48 (reception and transmission of orders);
- (d) paragraph 49 (execution of orders on behalf of clients);
- (e) paragraph 50 (dealing on own account);
- (f) paragraph 51 (portfolio management);
- (g) paragraph 52 (investment advice);
- (h) paragraph 53 (underwriting or placing on a firm commitment basis);
- (i) paragraph 54 (placing without a firm commitment basis);
- (j) paragraph 55 (operation of an MTF);
- (k) paragraph 56 (operation of an OTF); or
- (l) paragraph 71 (sending etc. dematerialised instructions).

Restrictions on financial promotions.

4. A communication made by an outside person in relation to a specified activity is not a prohibited promotion for the purposes of section 12 of the Act if–

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- (a) the communication is directed at an authorised person; or
- (b) the content of the communication is approved for the purposes of section 12(6)(a) of the Act by an authorised person who would be or is a party to any agreement that arises from or is linked to the communication.

Outside person carrying on a specified activity.

5.(1) An outside person without Part 7 permission who carries on a specified activity in accordance with any of sub-regulations (2) to (5) does not contravene the general prohibition.

(2) In the case of an activity specified in regulation 3(2)(e), (j) or (k), sub-regulation (1) applies where the outside person enters into the transaction for the specified activity as principal—

- (a) with or through an authorised person; or
- (b) with a person in Gibraltar, as a result of a legitimate approach.

(3) In the case of an activity specified in regulation 3(2)(c), (d), (f), or (h) to (k), sub-regulation (1) applies where the outside person enters into a transaction for the specified activity—

- (a) as agent for any person, with or through an authorised person; or
- (b) with another party (“X”), as agent for any person (“Y”), other than with or through an authorised person, unless—
 - (i) either X or Y is in Gibraltar; and
 - (ii) the transaction is the result of an approach (other than a legitimate approach) made by or on behalf of, or to, whichever of X or Y is in Gibraltar.

(4) In the case of an activity specified in regulation 3(2)(c), (d), (j) or (k), sub-regulation (1) applies where the outside person enters into a transaction for the specified activity with an authorised person as principal or agent.

(5) In the case of an activity specified in regulation 3(2)(a), (b), (g) or (l), sub-regulation (1) applies where the outside person enters into a transaction for the specified activity with a person in Gibraltar as a result of a legitimate approach.