

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5062 GIBRALTAR Thursday 22nd June 2023

LEGAL NOTICE NO. 160 OF 2023

FINANCIAL SERVICES ACT 2019

FINANCIAL SERVICES (INVESTMENT SERVICES) REGULATIONS 2020

FINANCIAL SERVICES (INVESTMENT SERVICES) (INFORMATION TECHNICAL STANDARDS) REGULATIONS 2023

In exercise of the powers conferred on the Minister by section 626A of the Financial Services Act 2019 and regulations 36(21) and 40(16) of the Financial Services (Investment Services) Regulations 2020, the Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Financial Services (Investment Services) (Information Technical Standards) Regulations 2023.

Commencement.

2. These Regulations come into operation on the day of publication.

Amendment of Commission Delegated Regulation (EU) 2017/565.

3.(1) Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, as it forms part of the law of Gibraltar, is amended as follows.

(2) In Article 3-

(a) for paragraph 1, substitute-

“1. Where, for the purposes of this Regulation, information is required to be provided to clients, or potential clients, in a durable medium as defined in section 2(2) of the Financial Services Act 2019, investment firms must provide that information in electronic format, subject to paragraphs 1A and 1B.

1A. Where the client or potential client to whom the information is required to be provided is a retail client or potential retail client, investment firms must provide that information in electronic format if:

- (a) the retail client or potential retail client has been informed of the right to receive the information on paper instead of in electronic format; and
- (b) the retail client or potential retail client has not requested the information on paper.

1B. Where the client or potential client is a retail client, or potential retail client, who has requested to receive the information on paper, that information must be provided on paper and free of charge.”;

(b) in paragraph 2(b), before “the client” insert “in the case of a retail client,”.

(3) In Article 46–

- (a) in paragraph 2, for “Investment firms shall” substitute “Subject to paragraph 2A, investment firms must”;
- (b) after paragraph 2, insert–

“2A. Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion:

- (a) the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and
- (b) subject to meeting the conditions in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in:
 - (i) electronic format; or
 - (ii) where requested by a retail client or potential retail client, on paper,

without undue delay after the conclusion of the transaction.

2B. The conditions mentioned in paragraph 2A(b) are:

- (a) the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and

- (b) the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.”;

(c) in paragraph 3, for “paragraphs 1 and 2” substitute “paragraphs 1 to 2B”.

(4) In Article 50–

(a) in the heading, omit “(Article 24(4) of Directive 2014/65/EU)”;

(b) in paragraph 1–

(i) in the first sub-paragraph, for “pursuant to Article 24(4) of Directive 2014/65/EU” substitute “in accordance with regulation 36(5) to (7) of the Financial Services (Investment Services) Regulations 2020 (the “information requirements”);

(ii) omit the second and third sub-paragraphs;

(c) after paragraph 1, insert–

“1A.(1) Subject to sub-paragraph (2), the information requirements do not apply to services provided to professional clients.

(2) The information requirements do apply to services provided to professional clients for investment advice and portfolio management.”.

(5) In Article 54(11), at the end, insert the following sub-paragraph–

“The requirements in the first subparagraph do not apply to services provided to professional clients.”.

(6) In Article 59–

(a) in paragraph 1–

(i) in the opening words, for “on behalf of a client” substitute “on behalf of a retail client or professional client”;

(ii) in point (a), for “client” substitute “retail client or professional client (as the case may be)”;

(iii) in point (b), for “the client” substitute “a retail client”;

(b) in paragraph 3–

(i) for “of client” substitute “of retail client”;

- (ii) for “the client” substitute “the retail client”;
 - (c) in paragraph 4–
 - (i) in point (b), for “the client” substitute “the retail client”;
 - (ii) in point (m), in both places it appears, for “the client” substitute “the retail client”;
 - (iii) in point (o)–
 - (aa) for “the client’s” substitute “the retail client’s”;
 - (bb) for “the client” substitute “the retail client”;
 - (iv) in point (p), for “the client’s” substitute “the retail client’s”;
 - (v) in the second sub-paragraph, in both places it appears, for “the client” substitute “the retail client”;
 - (d) in paragraph 5, for “the client” substitute “the retail client”.
- (7) In Article 60–
- (a) in paragraph 1, for “to clients” substitute “to retail clients or professional clients”;
 - (b) in paragraph 2, after “the following information” insert “to retail clients”;
 - (c) in paragraph 3, in the first sub-paragraph–
 - (i) in the opening words, after “shall be provided” insert “to retail clients”;
 - (ii) in point (a), before “clients” insert “retail”;
 - (iii) in point (c), before “client” insert “retail”;
 - (d) in paragraph 4, before “client”, in each place it occurs, insert “retail”.
- (8) In Article 61, for “applicable to reports for retail and professional clients under Articles 49 and 59 shall apply unless investment firms enter into agreements with eligible counterparties to determine content and timing of reporting” substitute “in Articles 46 to 51 and 59 do not apply to services provided to eligible counterparties.”.
- (9) In Article 65.6, in the first sub-paragraph, for “paragraphs 2 to 9” substitute “paragraphs 2 to 8”.

Dated: 22nd June 2023.

A J ISOLA
Minister with responsibility for Financial Services

EXPLANATORY MEMORANDUM

These Regulations amend Commission Delegated Regulation 2017/565/EU as it forms part of the law of Gibraltar. The Regulations amend the information provision and reporting requirements imposed on investment firms, including allowing firms, with the client's consent, to provide costs and charges information to clients after transactions have been carried and making electronic communication the default mode of communication with clients.