

Financial Services (Insurance Companies)

TRANSPARENCY OF SECURITIES FINANCING TRANSACTIONS AND REUSE REGULATIONS 2017

1987-10
Repealed
Subsidiary
2017/142

Subsidiary Legislation made under s.118 of the Financial Services (Insurance Companies) Act, s.53 of the Financial Services (Investment and Fiduciary Services) Act, s.79 of the Financial Services (Banking) Act, s.62 of the Financial Services (Markets in Financial Instruments) Act 2006, s.4 of the Financial Services (Occupational Pensions Institutions) Act 2006 and s.53 of the Financial Services (Collective Investment Schemes) Act 2011.

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Repealed by LN.2020/017 as from 15.1.2020

(LN. 2017/142)

Commencement **13.7.2017**

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In exercise of the powers conferred upon the Minister by section 118 of the Financial Services (Insurance Companies) Act, section 53 of the Financial Services (Investment and Fiduciary Services) Act, section 79 of the Financial Services (Banking) Act, section 62 of the Financial Services (Markets in Financial Instruments) Act 2006, section 4 of the Financial Services (Occupational Pensions Institutions) Act 2006 and section 53 of the Financial Services (Collective Investment Schemes) Act 2011, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and upon the Government by section 23(g)(ii) of that Act and of all other enabling powers, and in order to implement Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012, the Minister and the Government have made the following Regulations.

PART 1 **PRELIMINARY**

Title and commencement.

1.(1) These Regulations may be cited as the Transparency of Securities Financing Transactions and Reuse Regulations 2017.

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

Interpretation.

2.(1) In these Regulations-

“SFTR entity” means a person of a type referred to in Article 2(1) of the SFTR Regulation;

“the SFTR Regulation” means Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012, as amended from time to time; and

“the FSC” means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007.

(2) Expressions used in these Regulations that are also used in the SFTR Regulation have the same meaning in these Regulations as they have in the SFTR Regulation.

Scope.

3. These Regulations provide for the implementation of the SFTR Regulation.

**PART 2
ENFORCEMENT AND SANCTIONS**

Sanctions for infringements.

4.(1) The FSC may take any of the actions specified in regulations 5 to 10 if it is satisfied that an infringement of Article 4 or 15 of the SFTR Regulation has occurred.

(2) The action may be taken against the following persons –

- (a) the SFTR entity which committed the infringement;
- (b) an individual responsible for the infringement, where that individual is a manager or director of the SFTR entity.

Public statement.

5.(1) The FSC may publish a statement specifying–

- (a) the nature of the infringement; and
- (b) the identity of the person.

(2) Publication under this regulation may take any form, or combination of forms, that the FSC thinks appropriate.

Cease and desist order.

6. The FSC may order the person–

- (a) to cease any conduct which constitutes an infringement; and
- (b) to desist from any repetition of that conduct.

Withdrawal of authorisation.

7.(1) Where the person has an authorisation, the FSC may withdraw that authorisation.

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(2) In this regulation and in regulation 8, “authorisation” means any authorisation or licence granted by the FSC under–

- (a) the Financial Services (Insurance Companies) Act;
- (b) the Financial Services (Investment and Fiduciary Services) Act;
- (c) the Financial Services (Banking) Act;
- (d) the Financial Services (Markets in Financial Instruments) Act 2006;
- (e) the Financial Services (Occupational Pensions Institutions) Act 2006; and
- (f) the Financial Services (Collective Investment Schemes) Act 2011.

Temporary suspension of authorisation.

8.(1) Where the person has an authorisation, the FSC may temporarily suspend that authorisation.

- (2) The suspension must not exceed 12 months.
- (3) The FSC may-
 - (a) withdraw a suspension; or
 - (b) vary a suspension so as to reduce the period for which it has effect.

Temporary prohibition on person exercising management functions.

9.(1) The FSC may temporarily prohibit a person from exercising management functions in a SFTR entity.

- (2) The prohibition must not exceed 12 months.
- (3) The FSC may-
 - (a) withdraw a prohibition; or
 - (b) vary a prohibition so as to reduce the period for which it has effect.

Civil penalty.

10.(1) The FSC may impose a penalty for an infringement.

(2) The maximum penalty is three times the amount of profits gained or loss avoided by the infringement, even if this exceeds the amounts set out in sub-regulation (3) or (4).

(3) For an individual, the maximum penalty is EUR 5,000,000 (or the Sterling equivalent based upon the exchange rate as at 12 January 2016).

(4) For a person who is not an individual, the maximum penalty is—

(a) in respect of an infringement under Article 4 of the SFTR Regulations, the greater of -

(i) EUR 5,000,000 (or the Sterling equivalent based upon the exchange rate as at 12 January 2016); or

(ii) 10% of the total annual turnover of the person according to the most recent approved set of accounts;

(b) in respect of an infringement under Article 15 of the SFTR Regulations, the greater of -

(i) EUR 15,000,000 (or the Sterling equivalent based upon the exchange rate as at 12 January 2016); or

(ii) 10% of the total annual turnover of the person according to the most recent approved set of accounts.

(5) Where the person is a-

(a) parent undertaking; or

(b) subsidiary undertaking;

which has to prepare consolidated annual accounts in accordance with Directive 2013/34/EU, then total turnover (for the purposes of sub-regulation (4)) is to be calculated in accordance with those consolidated accounts.

(6) A penalty imposed under this regulation may be enforced in the same manner as a debt owed to the FSC.

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Criteria for exercise of enforcement powers.

11. The FSC must ensure that the type and level of any enforcement action is effective, proportionate and dissuasive, taking account of all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person against whom the enforcement power is being exercised;
- (c) the financial strength of the person, for example as indicated by turnover or annual income;
- (d) in so far as they can be determined –
 - (i) the importance of the profits gained or losses avoided by virtue of the infringement;
 - (ii) the losses sustained by others as a result of the infringement;
 - (iii) where applicable, the damage to the functioning of markets or the wider economy;
- (e) the level of cooperation with the FSC by the person;
- (f) previous infringements by the person;
- (g) measures taken after the infringements by the person to prevent its repetition.

Warning notices.

12.(1) Before taking action under these Regulations in respect of an infringement, the FSC must give the person concerned a warning notice, stating the action proposed and the reasons for it.

(2) Sub-regulation (1) does not apply if the FSC is satisfied that a warning notice—

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken;
or

(c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

(3) A warning notice–

(a) must give the recipient not less than 14 days to make representations; and

(b) must specify a period within which the recipient may decide whether to make oral representations.

(4) The period for making representations may be extended by the FSC.

Decision notices.

13.(1) This regulation applies where the FSC has–

(a) issued a warning notice; or

(b) dispensed with the requirement to give a warning notice in accordance with regulation 12(2).

(2) After considering any representations made in accordance with regulation 12, the FSC must issue–

(a) a decision notice stating that the FSC will take the action specified in the warning notice;

(b) a discontinuance notice stating that the FSC does not propose to take that action; or

(c) a combined notice consisting of a decision notice stating that the FSC will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.

(3) A decision notice takes effect, and the specified action may be taken–

(a) at the end of the period for bringing an appeal if no appeal is brought; or

(b) when any appeal is finally determined or withdrawn.

Appeals.

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14.(1) The person on whom a decision notice is served may appeal to the Supreme Court.

(2) An appeal must be brought within 28 days of the date of the decision notice.

Publication of enforcement action.

15.(1) Subject to regulations 16 and 17, the FSC must immediately publish on its website details of any action taken under this Regulation in respect of an infringement.

(2) The information published must include at least –

- (a) the identity of the person against whom the action has been taken; and
- (b) the type and nature of the infringement.

(3) The FSC must ensure that any publication is of proportionate duration and remains on its website for a minimum of five years, but that personal data is only retained on the website for so long as is necessary, in accordance with the Data Protection Act 2004.

Restrictions on publication.

16.(1) The FSC must take one of the steps in sub-regulation (2) where–

- (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish, in accordance with regulation 15, the identity of the person, or personal data of an individual; or
- (b) it considers that publication, in accordance with regulation 15, would jeopardise the stability of financial markets or an ongoing investigation.

(2) Those steps are–

- (a) to defer publication until the reasons for non-publication cease to exist;
- (b) to publish on an anonymous basis if doing so ensures effective protection of the personal data concerned; or

- (c) not to publish if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure –
 - (i) that the stability of the financial markets would not be put in jeopardy; or
 - (ii) the proportionality of the publication with regard to measures which are deemed to be of a minor nature.

(3) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

Publication and appeals.

17. Where a decision to take one of the actions specified in regulations 5 to 10 is appealed, the FSC must–

- (a) immediately publish on its website the fact that the decision is being appealed; and
- (b) when the appeal is concluded, immediately publish the outcome of the appeal.

PART 3
INVESTIGATIONS, INFORMATION GATHERING AND CO-OPERATION

Investigations.

18.(1) Where the FSC have reasonable grounds for suspecting that an infringement of Article 4 or 15 of the SFTR Regulation is being or has been committed, it may take any steps that it considers appropriate to establish whether or not an infringement is being or has been committed.

(2) A person who is or may be able to give information to the FSC in respect of an investigation under sub-regulation (1) must–

- (a) produce to the FSC any document in the person's possession or control which appears to be relevant to the FSC's investigation;
- (b) produce to the FSC, at a time and place it may specify, any document it may specify which appears to it to be relevant to its investigation;

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- (c) give the FSC all assistance in connection with the investigation which that person is reasonably able to give.

(3) In this regulation “document” includes information recorded in any form and, where information is not recorded in legible form, the power to require its production includes the requirement to produce a copy of it in legible form.

(4) The FSC may take copies of or extracts from any document produced under this regulation.

(5) A statement made by a person in compliance with a requirement imposed under this regulation may only be used in evidence in criminal proceedings against that person if—

- (a) the person has introduced the statement in evidence; or
- (b) the proceedings concern the prosecution of the person for –
 - (i) failing or refusing to produce documents or give assistance in accordance with sub-regulation (2);
 - (ii) omitting to disclose information which should have been disclosed; or
 - (iii) providing an untruthful statement.

(6) A person is not required to produce a document or disclose information under this regulation if the person—

- (a) would be entitled to refuse to produce or disclose it on the grounds of legal professional privilege in proceedings in the Supreme Court;
- (b) owes an obligation of confidence in respect of that document or information by virtue of carrying on the business of banking, except where –
 - (i) the person to whom the obligation of confidence is owed consents in writing to the production or disclosure; or
 - (ii) the making of the requirement was authorised by the Minister with responsibility for financial services.

(7) A person (P) commits an offence if P –

- (a) without reasonable excuse—
 - (i) fails or refuses to comply with a requirement imposed under sub-regulation (2); or
 - (ii) omits to disclose material which P should have disclosed in accordance with this regulation;
- (b) in purported compliance with a requirement imposed under sub-regulation (2) –
 - (i) gives information which P knows to be false or misleading; or
 - (ii) recklessly gives information which is false or misleading.

(8) A person who commits an offence under sub-regulation (7)(a) is liable on summary conviction to imprisonment for six months, or the statutory maximum fine, or both.

(9) A person who commits an offence under sub-regulation (7)(b) is liable-

- (a) on summary conviction to imprisonment for six months, or the statutory maximum fine, or both;
- (b) on conviction on indictment, to imprisonment for seven years, or a fine, or both.

Information gathering and co-operation.

19.(1) The FSC may exchange information with, cooperate with, and assist, ESMA, and competent authorities under the SFTR Regulation in other jurisdictions—

- (a) as if ESMA and those competent authorities fell within section 4(1)(b) of the 2013 Act; and
- (b) as if the functions of ESMA and those competent authorities fell within section 12(4) of the 2013 Act.

(2) In this section “the 2013 Act” means the Financial Services (Information Gathering and Co-operation) Act 2013.

PART 4

SUPERVISORY POWERS

Supervisory powers.

20.(1) The FSC's powers under the Acts specified in sub-regulation (2) extend to supervising and enforcing compliance by financial counterparties with these Regulations and the SFTR Regulation.

(2) Those Acts are—

- (a) the Financial Services (Banking) Act, in respect of institutions licensed under that Act;
- (b) the Financial Services (Markets in Financial Instruments) Act 2006, in respect of investment firms authorised under that Act;
- (c) the Financial Services (Insurance Companies) Act, in respect of insurance businesses licenced under that Act;
- (d) the Financial Services (Investment and Fiduciary Services) Act, in respect of investment businesses or controlled activities licenced under that Act;
- (e) the Financial Services (Collective Investment Schemes) Act 2011, in respect of collective investment schemes authorised under that Act;
- (f) the Financial Services (Occupational Pensions Institutions) Act 2006, in respect of institutions licensed under that Act.