

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4656 GIBRALTAR Thursday 30th January 2020

LEGAL NOTICE NO. 52 OF 2020

FINANCIAL SERVICES ACT 2019

INTERPRETATION AND GENERAL CLAUSES ACT

FINANCIAL SERVICES (INVESTMENT SERVICES) (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred on the Minister by sections 620, 621, 623 and 627 of the Financial Services Act 2019, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and on the Government by section 23(g)(ii) of that Act and by all other enabling powers, the Minister and the Government have made these Regulations.

Title.

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

Commencement.

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

Amendment of the Investment Services Regulations.

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

(2) In regulation 2(1), in the definition of “professional client”, for “the Schedule” substitute “Schedule 1”.

(3) In regulation 7(1)(a), for “10” substitute “15”.

(4) For regulation 7(2) substitute—

“(2) The applicable provisions, which must be read with any necessary modifications, are—

(a) regulation 15;

(b) regulations 30 to 34;

- (c) regulations 37 to 39;
- (d) regulations 53 to 55;
- (e) regulation 75; and
- (f) regulations 125 and 126.”.

(5) After regulation 62 insert–

“Complaints.

62A. A market operator must have effective arrangements for the consideration and investigation of complaints in respect of business transacted by means of its facilities.

Co-operation with GFSC and Government.

62B. A market operator must co-operate with the GFSC or the Minister, whether by the sharing of information and otherwise, when requested to do so by the GFSC or the Minister (as the case may be).

General notification obligations.

62C.(1) A market operator must notify the GFSC of any event or circumstance specified in Schedule 2.

(2) A notification under this regulation must be given in writing and contain all the information that is necessary to ensure that the GFSC is fully aware of the nature and details of the event or circumstances giving rise to the requirement to notify.

(3) Except where Schedule 2 requires otherwise, a notification must be given as soon as possible after the occurrence of the event or circumstance concerned.

(4) The GFSC may in its discretion, by notice in writing to a market operator, exclude or modify the application of any provision of Schedule 2 if the GFSC is satisfied that doing so will not be prejudicial to the interests of investors.”.

(6) After regulation 77(4) insert–

“(5) Investment firms and market operators must–

- (a) establish appropriate internal procedures for their employees to report potential or actual infringements through a specific, independent and autonomous channel; and
- (b) report potential or actual infringements which come to their attention (whether by means of the channel established under paragraph (a) or otherwise) to the GFSC.”.

(7) For regulation 96(2) substitute–

“(2) Where Gibraltar is the home State of an MTF or OTF, the GFSC must communicate–

- (a) the information it receives under sub-regulation (1), within one month of receiving it, to the competent authority of the EEA State in which the MTF or the OTF intends to provide those arrangements; and
- (b) at the request of the competent authority of the MTF’s host State, without undue delay, the identity of the remote members or participants of the MTF established in that State.”.

(8) In regulation 100(1), for “the Schedule to these Regulations” substitute “Schedule 1”.

(9) In regulation 111(6), for “the Schedule” substitute “Schedule 1”.

(10) After regulation 124 insert–

“Conduct of investment services in United Kingdom

Notice in respect of UK investment services.

125.(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), which meets EU requirements.

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, which exceeds EU requirements. Further details are available from the UK Scheme.”.

(2) Sub regulation (1) does not apply to any agreement or promotional material in relation to investment services which are provided from a branch in the United Kingdom in accordance with regulation 126.

Obligation to participate in UK Scheme.

126. An investment firm that provides investment services and activities in the United Kingdom from a branch in the United Kingdom must, in relation to those investment services, elect to participate in the UK Financial Services Compensation Scheme by ‘topping up’ into that scheme (as provided for in section 213(10) of the Financial Services and Markets Act 2000 of the United Kingdom), in order to provide compensation to clients of that branch at the level available under the UK Scheme, by means of a combination of the benefits provided to investors by that scheme and the Gibraltar Investor Compensation Scheme.”.

(11) Re-number the Schedule as Schedule 1.

(12) After Schedule 1 insert–

“SCHEDULE 2

Regulation 62C.

NOTIFICATIONS OF EVENTS AND CIRCUMSTANCES

Interpretation.

1. In this Schedule–

“annual accounting reference date”, in relation to a market operator, means the date notified to the GFSC as the date as at which the market operator’s annual accounts are drawn up;

“category of membership”, in relation to a regulated market, means any category into which the members are divided for the purpose of admission to, or the conduct of business on, the market;

“chair”, in relation to a market operator, means the person for the time being elected as chair of the market operator under its constitution;

“chief executive”, means any person occupying the position of chief executive or managing director of a market operator, whether solely or jointly and by whatever name is used for that position;

“employee”, in relation to a market operator, means an individual who is employed in connection with the regulated market’s business, whether under a contract of service or for services or otherwise;

“key individual”, in relation to a market operator, means a person holding any of the posts in paragraph 2(1);

“person responsible for compliance”, in relation to a market operator, means a person who is responsible for the monitoring and enforcement of compliance with the rules of the regulated market; and

“person responsible for finance”, in relation to a market operator, means a person who is responsible for maintaining the accounts and other financial records of the regulated market.

Changes and events relating to key individuals.

2.(1) Subject to sub-paragraph (2), a market operator must notify the GFSC if any person is to become or has ceased to be—

- (a) the chair of the market operator;
- (b) the chief executive of the market operator;
- (c) the person responsible for compliance;
- (d) the person responsible for finance;
- (e) an executive member of the board of the market operator;
- (f) an non-executive member of the board of the market operator;
- (g) a member of a body to which that board has delegated rule-making powers;
- (h) a member of a body with responsibility for disciplinary matters within the regulated market; or
- (i) a member of a body with responsibility for investigating complaints in respect of business transacted on the regulated market.

(2) The posts in sub-paragraph (1)(a) to (e) may only be occupied by a person who is approved as a regulated individual within the meaning of Part 8 of the Act and any appointment or notification in respect of any of those posts must be made in accordance with that Part.

(3) The GFSC’s prior consent must be obtained before any person takes up a post in sub-paragraph (1)(f) to (i) and, accordingly, the GFSC must be notified that a person is to take up one of those posts at least 14 days before the appointment is due to take effect.

(4) Without limiting Part 8 of the Act, a market operator must notify the GFSC on becoming aware that a key individual—

- (a) has changed his or her name;

- (b) has been convicted of an offence—
 - (i) involving fraud or other dishonesty; or
 - (ii) under any legislation relating to financial services;
- (c) has initiated bankruptcy, winding-up, sequestration or similar proceedings;
- (d) has been refused authorisation (however described) under any legislation relating to financial services or had authorisation of that kind suspended or revoked;
- (e) has been the subject of any disciplinary measure or sanction imposed by a regulatory or professional body in relation to the individual's professional or business activities; or
- (f) has been disqualified by court order from serving as a director or being concerned with the management of a company.

Dismissal etc. of key individuals and other employees.

3.(1) A market operator must notify the GFSC if, as a result of concerns about the honesty or integrity of a key individual or other employee, the individual concerned—

- (a) is dismissed for misconduct;
- (b) resigns as a result of, or to avoid, an investigation into the alleged misconduct; or
- (c) is subject to any other disciplinary action.

(2) Sub-paragraph (1) applies without limiting any notification obligation under Part 8 of the Act.

Changes to constitution.

4.(1) A market operator must notify the GFSC of—

- (a) any proposed change to its constitution, articles of association, governing statute, charter or by-laws; and
- (b) the reasons for the proposed change.

(2) Notification under sub-paragraph (1) must be given before the proposed change is circulated to members for consideration or approval.

- (3) The market operator must notify the GFSC of–
- (a) any change made as a result of the proposals notified under sub-paragraph (1)(a) and the subsequent consideration and approval by members; and
 - (b) the date from which those changes took or will take effect.

Auditors.

- 5.(1) A market operator that proposes to appoint an auditor must–
- (a) notify the GFSC of the name and professional qualifications of the person concerned; and
 - (b) obtain the GFSC’s prior consent before appointing the person as auditor.
- (2) A market operator must notify the GFSC if, and of the circumstances in which, a person ceases to be the auditor of the market operator.

Audit committee reports.

- 6.(1) A market operator which has an audit committee must notify the GFSC of the making of any report by the audit committee and provide the GFSC with a copy of the relevant report.

Trading hours.

- 7.(1) A market operator must notify the GFSC of its trading hours when it is given permission to manage or operate the business of a regulated market or as soon as those trading hours are first determined after that permission is given.
- (2) The market operator must promptly notify the GFSC of
- (a) any change, whether temporary or permanent, in the hours when business may be conducted by means of the facilities of the regulated market;
 - (b) any trading halt; or
 - (c) any suspension in trading of any investment.
- (3) For the purposes of this paragraph, a “trading halt” means a halt in the trading of investments on the exchange as a whole or in relation to a sector of trading, but does not include a halt in the trading of individual investments.

Investments listed or dealt on the regulated market.

8.(1) A market operator must notify the GFSC of any financial instrument to be traded when it is given permission to manage or operate the business of a regulated market or when the investment is first admitted to trading.

(2) The market operator must notify the GFSC of any proposed change in the type of investments admitted to trading.

(3) The market operator must notify the GFSC when trading in any type of financial instrument is discontinued or suspended, other than where a particular trading limit has been reached.

(4) In this paragraph, references to a type of financial instrument do not include references to the securities of a particular company unless those securities of themselves constitute a new type of investment.

Market information.

9. A market operator must give the GFSC details of its system for displaying market information and notify the GFSC of any material change in that system.

Membership.

10.(1) A market operator must notify the GFSC of the introduction or abolition of a category of membership.

(2) The market operator must notify the GFSC if a person has become or ceased to be a member of the regulated market and, in the case of the former, the notice must include the member's name, address and category of membership.

(3) The market operator must notify the GFSC of any change in the information previously notified under sub-paragraph (2).

Suspension, expulsion and resignation from membership.

11.(1) A market operator must notify the GFSC if a member is suspended or expelled.

(2) A notification under sub-paragraph (1) must state—

(a) the reasons for the suspension or expulsion;

(b) the date on which it took effect;

(c) in the case of a suspension, its duration; and

(d) any other action taken by the market operator in relation to the member concerned.

(3) Where a person who has been expelled or suspended appeals against expulsion or suspension, the market operator must notify the GFSC of the appeal and its outcome.

(4) The market operator must notify the GFSC if a person resigns from membership.

(5) A notification under sub-paragraph (5) must state–

(a) the name and address of the former member;

(b) the category of membership; and

(c) the date on which the resignation took effect.

Liquidation of, or instruction to close out, positions.

12.(1) A market operator must notify the GFSC if the market operator–

(a) it liquidates or restricts the open positions on all or any of a member's the investments; or

(b) issues instructions to a member to close out the member's positions on all or any investments.

(2) A notification under sub-paragraph (1) must state–

(a) the name of the member;

(b) the nature and size of the positions which are liquidated, restricted or instructed to be closed out; and

(c) the reasons for the market operator's action.

Default of exchange member.

13.(1) A market operator must notify the GFSC if it takes any action by reason of the default of a member.

(2) A notification under sub-paragraph (1) must state–

(a) the name of the member;

(b) the reasons for the action;

- (c) the name of the clearance system on which the member clears business; and
- (d) where appropriate, a summary of the member's open positions, collateral liability and cash and collateral balances in respect of the member's client account and other accounts.

Delegation of monitoring.

14.(1) A market operator which proposes to delegate the monitoring of compliance with any of its rules to any other body or person must notify the GFSC.

(2) A notification under sub-paragraph (1) must include—

- (a) the name of the other body or person;
- (b) the monitoring function which the market operator proposes to delegate; and
- (c) evidence of the other body's or person's ability and willingness to perform that monitoring function.

(3) Where any other body or person proposes to delegate the monitoring of compliance with its rules to a market operator, the market operator must notify the GFSC, specifying the monitoring function which it is proposed should be delegated to the market operator.

(4) The GFSC must be notified of any agreement for delegating monitoring which is subsequently concluded by a market operator and of any alteration of that agreement.

Complaints.

15.(1) By not later than the end of January in each year, a market operator must notify the GFSC of the following—

- (a) the total number of complaints received during the preceding calendar year, distinguishing between complaints relating to—
 - (i) the business transacted on the regulated market and the market's performance of its functions generally;
 - (ii) any clearing arrangements made by the market operator;
 - (iii) the conduct of a member of the regulated market in relation to its dealings on the market;

(b) the total number of those complaints–

(i) settled during that calendar year; and

(ii) which had been pending for more than three months at the end of that calendar year,

distinguishing between complaints on the same basis as in paragraph (a).

(2) For the purposes of sub-paragraph (1), a “complaint” is a complaint relating to one or more of the matters specified in subparagraph (1)(a)–

(a) made in writing to the market operator; or

(b) any other complaint to which the market operator has replied in writing.

(3) For the purposes of this paragraph, where the market operator has given a substantive response in relation to a complaint, then, unless and until the market operator has received an indication from the complainant that the response is unsatisfactory, the market operator may treat the complaint as settled and resolved four weeks after the date of its response.

(4) Where an investigator is appointed to look into any complaint, the market operator must send the GFSC a copy of any report prepared by the investigator.

Reports of transactions.

16. As soon as practicable after the close of business on each business day, a market operator must notify the GFSC of–

(a) the transactions carried out on the regulated market during that day; and

(b) the cancellation or modification of any transaction carried out on an earlier day.

Fees and Charges.

17. A market operator must notify the GFSC when the following fees or charges are first fixed or subsequently varied–

(a) the fees or charges levied in respect of membership of the regulated market; and

(b) the transaction charges imposed.

Annual accounting reference date.

18. A market operator must notify the GFSC of any change in the market operator's annual accounting reference date.

Insolvency and legal proceedings.

19.(1) A market operator must notify the GFSC immediately of–

- (a) the presentation of a petition for the winding up of the market operator;
- (b) the appointment of a receiver, administrator, liquidator or trustee of assets of the market operator; or
- (c) the making of a composition or arrangement with creditors of the market operator.

(2) A market operator must notify the GFSC of any proceedings instituted against the market operator–

- (a) arising out of the contravention or alleged contravention of any provision of the legislation relating to financial services; or
- (b) which might be expected to have a significant impact on the financial stability of the regulated market.

(3) A market operator must notify the GFSC of any legal proceedings instituted by the market operator.

Disciplinary action.

20.(1) A market operator must notify the GFSC of any disciplinary action taken by the market operator against a member or an employee of any member and which is relevant and material to the carrying on of investment services and activities or any other regulated activity.

(2) A notification under sub-paragraph (1) must state–

- (a) the name of the person concerned;
- (b) details of the disciplinary action taken; and
- (c) the reasons for taking that action.

(3) Where a person appeals against any disciplinary action, the market operator must notify the GFSC of the appeal and its outcome.

Offences.

21. A market operator must notify the GFSC on becoming aware that any person who is or was formerly a member or employee of the regulated market—

- (a) has been carrying on any investment services and activities or other regulated activity without the necessary authorisation (however described); or
- (b) has been convicted of an offence relating to, or arising out of, the carrying on of any investment services and activities or other regulated activity.

Investor protection.

22.(1) A market operator must notify the GFSC immediately if any event occurs or circumstances arise which make it impossible or impracticable (for however short a period of time) for the market operator to continue to satisfy the requirements of this Schedule.

(2) A notification under sub-paragraph (1) must specify the event or circumstances and the action which is being or has been taken by the market operator to deal with the situation.”.

Dated 30th January 2020.

A J ISOLA,
Minister with responsibility for financial services,
and for the Government.

EXPLANATORY MEMORANDUM

These regulations amend the Financial Services (Investment Services) Regulations 2020. They impose complaint handling and reporting obligations on market operators and require Gibraltar investment firms offering investment services in the United Kingdom to provide information about the Gibraltar Investor Compensation Scheme (GICS) and, where those services are provided from a branch in the United Kingdom to ‘top up’ the compensation provided by participating in the UK Financial Services Compensation Scheme. The amendments made by the Regulations replace the Financial Services (Investment Exchange) (Rules and Notification) Regulations 2007 and the Financial Services (Conduct of Business in the United Kingdom) Regulations 2006, which have been revoked.