

Subsidiary Legislation made under ss.6(1), 150(1), 620(1), 621(1) and 627.

Financial Services (Transparency of Securities Financing Transactions and Reuse) Regulations 2020**LN.2020/017***Commencement* **15.1.2020**

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In exercise of the powers conferred upon the Minister under section 6(1), 150(1), 620(1), 621(1) 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 the following Regulations.

PART 1 PRELIMINARY

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Transparency of Securities Financing Transactions and Reuse) Regulations 2020.

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

Interpretation.

2.(1) In these Regulations-

“the Act” means the Financial Services Act 2019;

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

(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.

Application of SFTR Regulation.

3. The SFTR Regulation has effect in Gibraltar subject to these Regulations.

PART 2 ENFORCEMENT AND SANCTIONS

Sanctions for infringements.

4.(1) Part 11 of the Act and this Part set out sanctioning powers for contraventions of a regulatory requirement (including a regulatory requirement contained in these Regulations and the SFTR Regulation).

(2) Sections 158 to 162 of the Act apply to any sanctioning action taken by the GFSC in exercise of the following powers.

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Additional persons subject to sanctioning powers.

5. In addition to the persons specified in section 147 and 148 of the Act, the GFSC may exercise the sanctioning powers in Part 11 of the Act and in these Regulations—

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

Temporary prohibition on person exercising management functions.

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

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

Administrative penalty.

7.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement by a person to whom these Regulations or the SFTR Regulation applies must be of an amount that does not exceed the higher of the following—

- (a) where the profits gained or losses avoided by the contravention can be determined, three times the amount of those profits or avoided losses even if this exceeds the amounts set out in sub-regulation (b), (c) or (d);
- (b) in the case of an individual, EUR 5,000,000;
- (c) in the case of a legal person who infringes Article 4 of the SFTR Regulation, the greater of EUR 5,000,000 or 10% of the total annual turnover of the person according to the most recent approved set of accounts;
- (d) in the case of a legal person, who infringes Article 15 of the SFTR Regulation, the greater of EUR 15,000,000 or 10% of the total annual turnover of the person according to the most recent approved set of accounts.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with the Accounting Directive, the relevant total turnover for the purpose of sub-regulation (1)(c) and (d) is the total annual turnover, or the corresponding type of income in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(3) A penalty under sub-regulation (1) may be imposed as an equivalent amount expressed in Sterling, based upon the exchange rate as at 12 January 2016.

Publication of sanctioning action.

8.(1) This regulation applies—

- (a) where the GFSC has taken any sanctioning action under the Act or these Regulations in respect of a contravention of a regulatory requirement (other than measures of an investigatory nature); and
- (b) instead of sections 616 to 618 of the Act.

(2) The GFSC must publish on its website only details of any sanctioning action taken in respect of a person without undue delay after that person is informed of that action.

(3) The information published must be limited to—

- (a) the identity of the individual or legal person responsible for it;
- (b) the type and nature of the contravention; and
- (c) the details of the sanctioning action taken.

(4) The GFSC must take one of the steps in sub-regulation (5) where—

- (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with sub-regulation (2)—
 - (i) the identity of the legal person involved; or
 - (ii) the personal data of the individual involved; or
- (b) it considers that publication would jeopardise the stability of financial markets or an ongoing investigation.

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(5) Those steps are—

- (a) to defer publication until the reasons for non-publication cease to exist;
- (b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or
- (c) not to publish the decision 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 of such decisions with regard to measures which are deemed to be of a minor nature.

(6) 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 will cease to exist.

(7) Where a decision to which this regulation applies is subject to an appeal, the GFSC must publish information to that effect on its website and, without undue delay, revise that information to reflect the status and outcome of any appeal or any decision annulling a previous decision to impose a sanction.

(8) The GFSC must ensure that any publication in accordance with this regulation 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 legislation.

**PART 3
INFORMATION GATHERING AND CO-OPERATION**

Information gathering and co-operation.

9. The GFSC may exchange information with, cooperate with, and assist, ESMA, and competent authorities under the SFTR Regulation in other jurisdictions as if ESMA and those competent authorities fell within the definition of a foreign regulator under Part 5 of the Act.

**PART 4
SUPERVISORY POWERS**

Supervisory powers.

10.(1) The GFSC's powers under Parts 7, 10, 18 and 26 of the Act and the Regulations specified in sub-regulation (2) extend to supervising and enforcing compliance by financial counterparties with these Regulations and the SFTR Regulation.

(2) Those Regulations are the—

- (a) Financial Services (Credit Institutions and Capital Requirements) Regulations 2020, in respect of Credit institutions as defined in those Regulations;
- (b) Financial Services (Investment Services) Regulations 2020, in respect of Investment Firms as defined in those Regulations;
- (c) Financial Services (Insurance Companies) Regulations 2020, in respect of insurance and re-insurance undertakings as defined in those Regulations;
- (d) Financial Services (Alternative Investment Fund Managers) Regulations 2020, in respect of Alternative Investment Fund Managers as defined in those Regulations;
- (e) Financial Services (UCITS) Regulations 2020, in respect of UCITS Management Companies as defined in those Regulations; and
- (f) Financial Services (Occupational Pensions Institutions) Regulations 2020, in respect of institutions for occupational retirement provision (IORPS).

**PART 5
REVOCATION**

Revocation of 2017 Regulations.

11. The Transparency of Securities Financing Transactions and Reuse Regulations 2017 are revoked.