

Subsidiary Legislation made under ss.6(1), 44(4), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10.

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LN.2020/038

Commencement

15.1.2020

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In exercise of the powers conferred upon the Minister under section 6(1), 44(4), 63(3), 64(3), 83(1), 150(1), 164(1), 166(2), 167(3), 620(1), 621(1) and 627 of, and paragraph 6 of Schedule 10 to, 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 (Data Reporting Services Providers) Regulations 2020.

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

Overview.

2. These Regulations supplement the provisions of the Act regarding data reporting services business, the process for obtaining Part 7 permission to carry out data reporting services business, the carrying on of data reporting business and the GFSC's regulatory powers in respect of a data reporting services provider.

Interpretation.

3.(1) In these Regulations, unless the context otherwise requires—

“Act” means the Financial Services Act 2019;

“APA business” means a regulated activity that falls within paragraph 87 of Schedule 2 to the Act and pursuant to Articles 20 and 21 of MiFIR;

“APA provider” means a person with Part 7 permission to carry out APA business;

“ARM business” means a regulated activity that falls within paragraph 89 of Schedule 2 to the Act;

“ARM provider” means a person with Part 7 permission to carry out ARM business;

“CT provider” means a person with Part 7 permission to carry out CTP business;

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“CTP business” means a regulated activity that falls within paragraph 88 of Schedule 2 to the Act;

“data reporting services business” means APA business, ARM business or CTP business;

“data reporting services provider” means an APA provider, ARM provider or CT provider;

“Investment Services Regulations” means the Financial Services (Investment Services) Regulations 2020;

“management body” means the board of directors, committee of management or other body of a data reporting services provider which is empowered to set the provider’s strategy, objectives and overall direction, and which oversees and monitors management decision-making and includes persons who effectively direct the business of the data reporting services provider;

“market operator” has the meaning given in paragraph 1 of Schedule 2 to the Act;

“Part 7 permission” means permission under Part 7 of the Act;

“senior management” means individuals who exercise executive functions within a data reporting services provider and who are responsible, and accountable to the management body, for the day-to-day management of the provider, including for the implementation of the policies concerning the distribution of services to clients by the provider and its personnel;

“systematic internaliser” has the same meaning as given in paragraph 81 of Schedule 2 to the Act.

Application.

4. These Regulations apply to data reporting services providers in respect of their data reporting services business.

**PART 2
AUTHORISATION CONDITIONS**

Authorisation conditions for data reporting service providers

Conditions of authorisation.

- 5.(1) An applicant for Part 7 permission to carry out data reporting services business must—
- (a) provide the GFSC with a programme of its operations setting out, among other things, the types of services envisaged and its organisational structure;
 - (b) notify the GFSC of all members of the applicant’s proposed management body; and
 - (c) provide the GFSC with all the information it requires in order to assess whether or not the members of its proposed management body—
 - (i) are of sufficiently good repute;
 - (ii) possess sufficient knowledge, skills and experience and are able to commit sufficient time to perform their duties;
 - (iii) possess adequate collective knowledge, skills and experience to be able to understand the proposed activities of the data reporting services business and each member of that body must act with honesty, integrity and independence of mind and, where necessary, challenge effectively the decisions of senior management and effectively oversee and monitor management decision-making.
- (2) In assessing the suitability of the proposed members of the applicant’s management body for the purposes of sub-regulation (1)(c)(i) to (iii), the GFSC must have regard to any guidelines issued by ESMA under Article 63(2) of the MiFID 2 Directive.
- (3) The GFSC must not give Part 7 permission unless—
- (a) the applicant also meets—
 - (i) in the case of APA business, the requirements of regulations 8 and 9;
 - (ii) in the case of a CTP business, the requirements of regulations 8 and 10;
 - (iii) in the case of an ARM business, the requirements of regulations 8 and 11;
 - (b) the GFSC is satisfied that the persons who will effectively direct the applicant’s business are of sufficiently good repute.
- (4) If the GFSC-

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- (a) proposes to refuse to approve a person as suitable to be a member of the proposed management body of an applicant, the GFSC must give a warning notice to the person and to the applicant; and
- (b) decides to refuse to approve a person as suitable to be a member of the proposed management body of an applicant, the GFSC must give a decision notice to the person and to the applicant.

(5) This Part 2 applies subject to any technical standards or implementing technical standards adopted by the European Commission under Article 61(4) or (5) of the MiFID 2 Directive.

Conditions for authorisation: investment firms and market operators.

6.(1) An investment firm or market operator operating a trading venue may carry out data reporting service business as part of its existing Part 7 permission if–

- (a) the investment firm or market operator has applied to the GFSC, in the form and manner it may direct, for verification of the investment firm’s or market operator’s compliance with these Regulations; and
- (b) the GFSC has given the investment firm or market operator written confirmation of its compliance with these Regulations.

(2) If the GFSC–

- (a) proposes to refuse to confirm an investment firm’s or market operator’s compliance with these Regulations, the GFSC must give the investment firm or market operator a warning notice; and
- (b) decides to refuse to confirm an investment firm’s or market operator’s compliance with these Regulations, the GFSC must give the investment firm or market operator a decision notice.

(3) Where a market operator seeks to vary its Part 7 permission to carry out APA business, CTP business or ARM business and the members of the proposed management body responsible for that data reporting services business are the same as the members of the equivalent management body for the regulated market, those persons are to be regarded–

- (a) being of sufficiently good repute; and
- (b) possessing sufficient knowledge, skills, experience and commit sufficient time to perform their duties.

Scope of Part 7 permission.

7.(1) Where the GFSC gives Part 7 to carry out data reporting services business, it must ensure that the permission specifies the data reporting services business to which the permission relates.

(2) A Part 7 permission may extend to one or more data reporting services business categories.

(3) A data reporting services provider seeking permission to extend its business to an additional service of data reporting services business not foreseen at the time of its initial application for Part 7 permission must make an application to the GFSC under section 68 of the Act to vary its Part 7 permission.

(4) A Part 7 permission is valid for the entire EEA and allows a data reporting services provider to provide throughout the EEA data reporting services business for which it has been authorised.

**PART 3
CORPORATE GOVERNANCE AND CONDUCT OF BUSINESS**

Requirements for management body & changes to the management body.

8.(1) The members of the management body must at all times—

- (a) be of sufficiently good repute; and
- (b) possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

(2) The management body must possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider and each member of that body must act with honesty, integrity and independence of mind and, where necessary, challenge effectively the decisions of the senior management and effectively oversee and monitor management decision-making.

(3) A data reporting services provider must—

- (a) notify the GFSC of all changes to the membership of its management body; and
- (b) provide the GFSC with all the information it requires in order to assess whether it continues to comply with sub-regulations (1) and (2).

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(4) In assessing the suitability of members of a management body for the purposes of sub-regulations (1) and (2), the GFSC must have regard to any guidelines issued by ESMA under Article 63(2) of the MiFID 2 Directive.

(5) The management body must define and oversee the implementation of governance arrangements that ensure effective and prudent management of the data reporting services provider, including the segregation of duties and the prevention of conflicts of interest, in a manner that promotes the integrity of the market and the interests of its clients.

(6) The GFSC must refuse to approve a change pursuant to sub-regulation (3) where the GFSC—

- (a) is not satisfied that the persons who will effectively direct the data reporting services provider's business are of sufficiently good repute; or
- (b) has objective and demonstrable grounds for believing that proposed changes to the management body pose a threat to its sound and prudent management and to the adequate consideration of the interests of its clients and the integrity of the market.

(7) If the GFSC—

- (a) proposes to refuse to approve a person as suitable to be a member of the management body, the GFSC must give a warning notice to the person and to the data reporting services provider; and
- (b) decides to refuse to approve a person as suitable to be a member of the management body, the GFSC must give a decision notice to the person and to the data reporting services provider.

Conditions for APA providers

APA provider organisational requirements.

9.(1) An APA provider must have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 of MiFIR as close to real time as is technically possible on a reasonable commercial basis.

(2) The information in sub-regulation (1) must be made available free of charge by an APA provider 15 minutes after it has published it and an APA provider must be able to efficiently and consistently disseminate the information in a way that ensures fast access to the

information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

(3) The information made public by an APA provider in accordance with sub-regulations (1) and (2) must include–

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue on which the transaction was executed or, where the transaction was executed via a systematic internaliser, the code “SI” or “OTC”; and
- (h) where applicable, an indicator that the transaction was subject to specific conditions.

(4) An APA provider must maintain and operate effective administrative arrangements designed to prevent conflicts of interest with its clients and, in particular, an APA provider which is also a market operator or investment firm must–

- (a) treat all information collected in a non-discriminatory manner; and
- (b) maintain and operate appropriate arrangements to separate its different business functions.

(5) An APA provider must–

- (a) have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage before publication; and
- (b) maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

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(6) An APA provider must have effective systems in place to check trade reports for completeness, identify omissions and obvious errors and request re- transmission of any erroneous reports.

(7) This regulation applies subject to any regulatory technical standards or delegated acts adopted by the European Commission under Article 64(6), (7) or (8) of the MiFID 2 Directive.

Conditions for CT providers

CT provider organisational requirements.

10.(1) A CT provider must have adequate policies and arrangements in place to collect the information made public in accordance with Articles 6 and 20 of MiFIR, consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible and on a reasonable commercial basis.

(2) That information must at least include—

- (a) the identifier of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue on which the transaction was executed or, where the transaction was executed via a systematic internaliser, the code “SI” or “OTC”;
- (h) where applicable, the fact that a computer algorithm within the investment firm was responsible for the investment decision and execution of the transaction;
- (i) where applicable, an indicator that the transaction was subject to specific conditions; and

- (j) if the obligation to make public the information referred to in Article 3(1) of MiFIR was waived in accordance with Article 4(1)(a) or (b) of those regulations, a flag to indicate which of those waivers applies to the transaction.

(3) The information in sub-regulations (1) and (2) must be made available free of charge by a CT provider 15 minutes after it has published it and a CT provider must be able to efficiently and consistently disseminate the information in a way that ensures fast access to the information, on a non-discriminatory basis and in formats that are easily accessible and utilisable for market participants.

(4) A CT provider must have adequate policies and arrangements in place to collect the information made public in accordance with Articles 10 and 21 of MiFIR, consolidate it into a continuous electronic data stream and make the following information available to the public as close to real time as is technically possible on a reasonable commercial basis—

- (a) the identifier or identifying features of the financial instrument;
- (b) the price at which the transaction was concluded;
- (c) the volume of the transaction;
- (d) the time of the transaction;
- (e) the time the transaction was reported;
- (f) the price notation of the transaction;
- (g) the code for the trading venue on which the transaction was executed or, where the transaction was executed via a systematic internaliser, the code “SI” or “OTC”; and
- (h) where applicable, an indicator that the transaction was subject to specific conditions.

(5) The information in sub-regulation (4) must be made available free of charge by a CT provider 15 minutes after it has published it and a CT provider must be able to efficiently and consistently disseminate the information in a way that ensures fast access to the information, on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

(6) A CT provider must ensure that the data provided under sub-regulation (4) is consolidated from all the regulated markets, MTFs, OTFs and APAs and for any financial

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instrument specified by the European Commission in accordance with Article 65(8)(c) of the MiFID 2 Directive.

(7) A CT provider must maintain and operate effective administrative arrangements designed to prevent conflicts of interest and, in particular, a market operator or APA which also operates a consolidated tape must—

- (a) treat all information collected in a non-discriminatory fashion; and
- (b) maintain and operate appropriate arrangements to separate its different business functions.

(8) A CT provider must—

- (a) have sound security mechanisms in place designed to guarantee the security of the means of transfer of information and minimise the risk of data corruption and unauthorised access; and
- (b) maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

(9) This regulation applies subject to any regulatory technical standards or delegated acts adopted by the European Commission under Article 65(6), (7) or (8) of the MiFID 2 Directive.

Conditions for ARM providers

ARM provider organisational requirements.

11.(1) An ARM provider must have adequate policies and arrangements in place to report the information required under Article 26 of MiFIR (in accordance with that Article)—

- (a) as soon as possible; and
- (b) in any event, by no later than the close of the working day following the day upon which the transaction took place.

(2) An ARM provider must maintain and operate effective administrative arrangements designed to prevent conflicts of interest with its clients and, in particular, an ARM provider that is also a market operator or investment firm must—

- (a) treat all information collected in a non-discriminatory manner; and

- (b) maintain and operate appropriate arrangements to separate its different business functions.
- (3) An ARM provider must–
- (a) have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access, prevent information leakage and maintain the confidentiality of the data at all times; and
 - (b) maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.
- (4) An ARM provider must have effective systems in place–
- (a) to check transaction reports for completeness, identify omissions and obvious errors caused by an investment firm and, where an error or omission is identified, to communicate the details to the investment firm and request the transmission of a corrected report; and
 - (b) to enable the ARM provider to detect errors or omissions caused by the ARM provider and correct and to transmit or re-transmit (as the case may be) complete and correct transaction reports to the GFSC.
- (5) This regulation applies subject to any delegated acts adopted by the European Commission under Article 66(5) of the MiFID 2 Directive.

PART 4 REPORTING AND NOTIFICATION

Relations with auditors.

12.(1) Any person authorised within the meaning of the Audit Directive and performing in a data reporting services provider the task described in Article 34 of the Accounting Directive or Article 73 of the UCITS Directive or any other task prescribed by law, has a duty to report promptly to the GFSC any fact or decision concerning that undertaking of which the person has become aware while carrying out that task and which may–

- (a) constitute a material infringement of the Act, any Regulations made under the Act or any other legal or administrative provisions governing the authorisation or activities of a data reporting services provider;
- (b) affect the continuous functioning of the data reporting services provider; or

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(c) lead to refusal to certify the accounts or to the expression of reservations.

(2) An auditor must also report any fact or decision of which the it becomes aware in carrying out any of the tasks mentioned in sub-regulation (1) in an undertaking which has close links with the data reporting services provider within which the auditor is carrying out that task.

(3) The GFSC may by written notice require the auditors of a data reporting services provider to provide such information relating to the data reporting services provider as may be specified in the notice.

(4) A person who, in good faith, makes a disclosure to the GFSC under sub-regulation (1) or (2) does not breach any contractual or legal restriction on the disclosure of information or incur a liability of any kind.

GFSC to notify ESMA: complaint and redress procedures.

13. The GFSC must notify ESMA of the complaint and redress procedures available under the Act.

GFSC Co-operation and exchange of information.

14. Regulations 117 to 122 and 124 of the Investment Services Regulations apply, with any necessary modifications, to the GFSC in respect of data reporting services providers.

Reporting notifications of the GFSC

Notification and supervision.

15.(1) The GFSC must ensure that ESMA is notified of every Part 7 permission given by the GFSC for the carrying out of data reporting services business.

(2) Data reporting services providers must provide their services under the supervision of the GFSC, which must keep under regular review—

- (a) the compliance of data reporting services providers with the requirements of these Regulations; and
- (b) in particular, their compliance at all times with the conditions of their permission from the GFSC.

PART 5

REGULATORY POWERS**Chapter 1****Investigatory and supervisory powers****Supervisory powers.**

16.(1) For the purpose of discharging its functions under the Act, these Regulations, MiFIR and the MiFID 2 Directive, the GFSC may act directly or in collaboration with other competent or statutory authorities or institute legal proceedings.

(2) In addition to any other powers the GFSC has under the Act, these Regulations or MiFIR, the GFSC may in discharging its functions –

- (a) require–
 - (i) existing recordings of telephone conversations, electronic communications or data traffic records held by a data reporting services provider or any other entity regulated under the Act, MiFIR or these Regulations;
 - (ii) where permitted by the laws of Gibraltar, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where those records may be relevant to the investigation of that infringement;
- (b) authorise auditors or experts to carry out verifications or investigations;
- (c) require the provision by any person of information and documents regarding the size and purpose of a position or exposure entered into via a commodity derivative, and any assets or liabilities in the underlying market;
- (d) require the removal of an individual from the management body; or
- (e) adopt any type of measure to ensure that a data reporting services provider and other persons to whom the Act, MiFIR or these Regulations apply, continue to comply with legal requirements.

**Chapter 2
Sanctions****Sanctioning powers.**

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17.(1) For the purposes of section 150 of the Act, the sanctioning powers set out in Part 11 of the Act which are exercisable in relation to a contravention of a regulatory requirement (within the meaning of that Part) are to be read together with the following provisions of this Part.

(2) Sections 158 to 162 of the Act apply to any sanctioning action taken against a data reporting services provider by the GFSC in exercise of the following powers.

Additional persons subject to sanctioning powers.

18. In addition to the persons referred to in sections 147 and 148 of the Act, the GFSC may exercise the sanctioning powers set out in Part 11 in respect of the following persons –

- (a) a member of the management body;
- (b) an employee of a data reporting services provider.

Maximum amounts of administrative penalty.

19.(1) For a contravention of a regulatory requirement (including a requirement contained in these Regulations) by a person to whom these Regulations apply, the maximum administrative penalty is whichever is the higher of the following–

- (a) where the benefit derived from the contravention can be determined, twice the amount of that benefit;
- (b) in the case of a legal person, EUR 5,000,000 or 10% of its total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of an individual, EUR 5,000,000.

(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 Directive 2013/34/EU, the relevant total turnover for the purpose of sub-regulation (1)(b) 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.

GFSC publication of decisions.

20.(1) This regulation applies–

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- (a) where the GFSC has taken any sanctioning action against a data reporting services provider under the Act or these Regulations in respect of a contravention of a regulatory requirement (other than measure of an investigatory nature); and
 - (b) instead of sections 616 to 618 of the Act.
- (2) The GFSC must publish on its official website only details of any action taken against a data reporting services provider under the Act.
- (3) The information published under sub-regulation (2) must be limited to—
- (a) the identity of the person against whom the action has been taken;
 - (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 in accordance with that sub-regulation would jeopardise the stability of financial markets or an ongoing investigation.
- (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.

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(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 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 data protection legislation.

(9) The GFSC must—

- (a) inform ESMA of all administrative sanctions imposed but not published in accordance with sub-regulation (5)(c), including any related appeal and its outcome;
- (b) if it has disclosed an administrative measure, sanction or criminal sanction to the public, report that fact at the same time to ESMA; and
- (c) provide ESMA annually with aggregated information regarding all sanctions and measures imposed in accordance with sub-regulations (1) to (7) (other than measures of an investigatory nature).

(10) This regulation applies subject to any implementing technical standards adopted by the European Commission under Article 71(7) of MiFID.

Reporting of infringements.

21.(1) The GFSC must establish appropriate arrangements for infringements and potential infringements of the Act, these Regulations or MiFIR to be reported to the FSC.

(2) The arrangements established under sub-regulation (1) must include—

- (a) secure communication channels for the reporting of infringements;
- (b) specific procedures for the receipt and investigation of reported infringements;

- (c) arrangements which accord with data protection legislation for the protection of the personal data of an individual who reports an infringement and any individual who is allegedly responsible for an infringement; and
 - (d) access for employees of data report services providers who report infringements committed within their employer to—
 - (i) comprehensive information and advice on the legal procedures and remedies available to protect the person against retaliation, discrimination or other types of unfair treatment, including on the procedures for claiming compensation; and
 - (ii) effective assistance from the GFSC before any relevant authority involved in the person’s protection against unfair treatment, including certification by the GFSC in any employment dispute of the reporting person’s status as a person who has reported an infringement.
- (3) An employee of a data report services provider who reports an infringement in accordance with arrangements established under sub-regulation (1)–
- (a) is not to be considered to be in breach of any restriction on disclosure of information imposed by contract or by any law and any provision in an agreement is void in so far as it purports to preclude an employee from reporting an infringement; and
 - (b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has reported an infringement.
- (4) An employee who has been subjected to a detriment contrary to sub-regulation (3)(b) may present a complaint to the Employment Tribunal as if the reporting of an infringement was a protected disclosure within the meaning of Part IVA of the Employment Act.
- (5) Data reporting services providers 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.

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**PART 6
MISCELLANEOUS**

Register of data reporting services providers.

22.(1) The GFSC must establish and maintain a register of all data reporting services providers that contains information on the services for which each provider has Part 7 permission and which is—

- (a) publicly accessible; and
- (b) updated on a regular basis.

(2) The GFSC Register must include details of any variation or cancellation of a data reporting services provider's Part 7 Permission.

(3) If it appears to the GFSC that a person in respect of whom there is an entry in the register as a result of sub-regulation (1) has ceased to be a person to whom that provision applies, the GFSC may remove the entry from the register.

Application of MiFIR.

23. MiFIR has effect in Gibraltar in relation to data reporting service providers.