SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4961 GIBRALTAR Thursday 26th May 2022

LEGAL NOTICE NO. 131 OF 2022.

FINANCIAL SERVICES ACT 2019

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES (INVESTMENT SERVICES) (AMENDMENT) REGULATIONS 2022

In exercise of the powers conferred on the Minister by sections 620, 621, 623, 626 and 627 of the Financial Services Act 2019 and section 11 of the European Union (Withdrawal) Act 2019, the Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Financial Services (Investment Services) (Amendment) Regulations 2022.

Commencement.

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

Amendment of the Financial Services (Investment Services) Regulations 2020.

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

(2) Omit regulation 1(3).

(3) In regulation 2(3), omit the entries in respect of the following expressions–

APA(approved publication arrangement);

ARM (approved reporting mechanism;

CTP (consolidated tape provider).

(4) In regulation 32(2), omit "within the meaning of the Capital Requirements Directive,".

(5) In regulation 36(19), omit "in accordance with Article 24.11 of the MiFID 2 Directive".

(6) In regulation 38–

(a) in sub-regulation (3)–

(i) in paragraph (d), in the second place it occurs, omit "or";

(ii) for paragraph (e) substitute–

"(e) research relating to an issue of shares, debentures, warrants or certificates representing certain securities by an issuer, which is–

(i) produced–

(aa) prior to the issue being completed; and

(bb) by a person that is providing underwriting or placing services to the issuer on that issue; and

(ii) made available to prospective investors in the issue;

(f) research that is received so that the firm may evaluate the research provider's research service, where–

(i) it is received during a trial period that lasts no longer than three months;

(ii) no monetary or non-monetary consideration is due (whether before, during or after the trial period) to the research provider for providing the research during the trial period;

(iii) the trial period is not commenced with the research provider within 12 months from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and

(iv) the firm makes and retains a record of–

(aa) the dates of any trial period accepted under this paragraph; and

(bb) how the conditions in sub-paragraphs (i) to (iii) were satisfied for each such trial period;

(g) research on listed or unlisted companies with a market capitalisation below £200 million, which is offered on a re-bundled basis or provided for free.

(h) third party research that is received by a firm providing investment services or ancillary services to clients where it relates to fixed income, currency or commodity instruments;

(i) research received from a research provider where the research provider is not engaged in execution services and is not part of a financial services group that includes an investment firm that offers execution or brokerage services;

(j) written material that is made openly available from a third party to any firm wishing to receive it or to the general public;

(k) corporate access services which relate to listed or unlisted companies with a market capitalisation below £200 million;

(l) other minor, reasonable and proportionate non-monetary benefits which enhance the quality of service provided to a client and which, having regard to the scale and nature of–

(i) the overall level of benefits, are unlikely to influence the investment firm's behaviour in a manner that is detrimental to the interests of the relevant client; and

(ii) the benefits provided by one entity or group of entities, are unlikely to impair the investment firm's compliance with its duty to act in the best interest of the client."; and

(b) after sub-regulation (3), insert–

"(3A) For the purposes of–

(a) sub-regulation (3)(g) and (k), "market capitalisation" is to be calculated–

(i) by reference to the average closing price of the company's shares at the end of each month to 31st October for the preceding 24 months; or

(ii) for a company newly admitted to trading, by reference to its market capitalisation at the close of day one trading, which is to apply until an average can be calculated in accordance with sub-paragraph (i),

but an investment firm may reasonably rely on the assessment of a third party that the research is on a company with a market capitalisation below £200 million; and

(b) sub-regulation (3)(j), written material is "openly available" if, in order for a person to access that material, there are no conditions or barriers which apply other than those which are reasonably required to comply with relevant regulatory obligations.".

(7) In regulation 40–

(a) in sub-regulation (8)(a)(iv), for "as referred to in the second sub-paragraph of Article 36.1 of Regulation (EU) No 583/2010 as it forms part of the law of Gibraltar after IP completion date" substitute "(those which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or UCITS with similar features)";

(b) for sub-regulation (9), substitute–

"(9) In sub-regulation (8) an "equivalent third-country market" means a market in a third-country which the GFSC considers has a legal and supervisory framework that fulfils at least the following conditions–

(a) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(b) the markets have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;

(c) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and

(d) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.";

(c) for sub-regulation (16)(b), substitute–

"(b) having regard to any guidance issued by the GFSC–

(i) specifying criteria for the assessment of knowledge and competence required under sub-regulation (1); or

(ii) for the assessment of–

(aa) financial instruments incorporating a structure which makes it difficult for the client to understand the risk involved, in accordance with sub-regulation (8)(a)(ii) or 8(a)(iii);

(bb) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term, in accordance with sub-regulation (8)(a)(v); or

(cc) financial instruments being classified as non-complex for the purpose of sub-regulation (8)(a)(vi).".

(8) In regulation 42–

(a) omit sub-regulation (7);

(b) omit sub-regulation (12);

(c) in sub-regulation (13)(b), for ", among other things, the information published under sub-regulations (6) and (12)" substitute "the relevant data or other internal analyses conducted by investment firms"; and

(d) in sub-regulation (15), omit paragraphs (d) and (e).

(9) In regulation 46(18)(b), for "in accordance with Article 48.13 of the MiFID 2 Directive" substitute "on the appropriate calibration of trading halts under sub-regulation (6), taking into account the factors referred to in that sub-regulation".

(10) In regulation 54(7), for "of the Prospectus Regulation or under the Transparency Directive" substitute "under Part 19 of the Act".

(11) For regulation 58(18), substitute–

"(18) This regulation must be applied having regard to any guidance issued by the GFSC on–

(a) the notion of sufficient time commitment of a member of the management body to perform that member's functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the market operator;

(b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in in sub-regulation (4);

(c) the notions of honesty, integrity and independence of mind of a member of the management body as referred to in in sub-regulation (5);

(d) the notion of adequate resources devoted to the induction and training of members of the management body as referred to in in sub-regulation (9); or

(e) the notion of diversity to be taken into account for the selection of members of the management body as referred to in in sub-regulation (11).".

(12) Omit regulation 99(4)(a).

(13) In regulation 106(3), for "the Accounting Directive" substitute "Part 7 of the Companies Act 2014".

(14) In regulation 122(3), omit "and, where relevant, with Regulation (EC) No 2018/1725".

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

4.(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 65.6, omit "In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU.".

(3) In Article 66.9, omit "The summary shall also provide a link to the most recent execution quality data published in accordance with Article 27(3) of Directive 2014/65/EU for each execution venue listed by the investment firm in its execution policy.".

Revocation of retained EU law.

5. The following Commission Delegated Regulations, as they form part of the law of Gibraltar, are revoked–

(a) Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions; and

(b) Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.

Dated: 26th May 2022.

A J ISOLA,
Minister with responsibility for Financial Services.

EXPLANATORY MEMORANDUM

These regulations amend the Financial Services (Investment Services) Regulations 2020 and make related changes to retained EU law. They provide an exemption from the prohibition on the bundling of research and execution fees, in order to improve the availability of research on SME firms, and remove best execution reporting requirements that do not appear to benefit users. The Regulations also make minor amendments to the 2020 Regulations to address deficiencies arising from Gibraltar's withdrawal from the European Union.