Subsidiary Legislation made under ss.150, 620, 621 & 627.

FINANCIAL SERVICES (INSTITUTIONAL INVESTORS, ASSET MANAGERS AND PROXY ADVISORS) REGULATIONS 2020

LN.2020/277

Commencement **6.8.2020**

ARRANGEMENT OF REGULATIONS.

Regulation

PART 1
GENERAL

1. Title and commencement.
2. Interpretation.
3. Application.

PART 2
TRANSPARENCY OF INSTITUTIONAL INVESTORS, ASSET MANAGERS AND PROXY ADVISORS

4. Engagement policy.
5. Investment strategy of institutional investors and arrangements with asset managers.
6. Transparency of asset managers.
7. Code of conduct of proxy advisors.
8. Information giving assurance about the accuracy and reliability of advice.
9. Conflicts of interest.
10. Obligation to collect and update information.

PART 3
CONTRAVENTIONS AND OFFENCES

11. Sanctioning powers.
12. Maximum amounts of administrative penalty.
13. Contraventions by proxy advisors.
14. Providing misleading information.

2019-26 Financial Services

2020/277 **Financial Services (Institutional Investors, Asset Managers and Proxy Advisors) Regulations 2020**

This version is out of date

In exercise of the powers conferred on the Minister by sections 150, 620, 621 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, the Minister and the Government have made the following Regulations.

PART 1
GENERAL

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Institutional Investors, Asset Managers and Proxy Advisors) Regulations 2020.

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

Interpretation.

2. In these Regulations, unless the context otherwise requires–

"the Act" means the Financial Services Act 2019;

"asset manager" means–

(a) an investment firm as defined in Article 4.1 of the MiFID 2 Directive that provides portfolio management services to investors;

(b) an alternative investment fund manager (AIFM) as defined in Article 4.1 of the AIFM Directive that does not fulfil the conditions for an exemption in accordance with Article 3 of that Directive

(c) a management company as defined in Article 2.1 of the UCITS Directive; or

(d) an investment company authorised in accordance with the UCITS Directive that, for its management, has not designated a management company authorised under that Directive;

"institutional investor" means–

(a) an undertaking carrying on life assurance activities within the meaning of Article 2.3 of the Solvency 2 Directive, and reinsurance within the meaning of Article 13 of that Directive that covers life-insurance obligations, and which is not excluded under that Directive; or

(b) an institution for occupational retirement provision (IORP) within the scope of Article 2 of the IORP 2 Directive, other than a small institution within the meaning of section 558 of the Act;

"listed company" means a company which has its registered office in Gibraltar and whose shares are admitted to trading on a regulated market situated or operating within the EEA;

"the Minister" means the Minister with responsibility for financial services;

"proxy advisor" means a person who–

(a) is a proxy advisor within the meaning of Article 2(g) of the Shareholder Rights Directive;

(b) provides proxy advisor services to a shareholder with respect to the shares of any company where–

(i) the company's registered office is situated in Gibraltar or another EEA; and

(ii) the shares are admitted to trading on a regulated market situated or operating in Gibraltar or another EEA State; and

(c) either–

(i) has its registered office (or if it does not have a registered office, its head office) in Gibraltar; or

(ii) has its registered office or head office in any country or territory other than Gibraltar or another EEA State, and provides proxy advisor services through an establishment located in Gibraltar;

"proxy advisor services" means services provided by a person acting in the capacity of a proxy advisor within the meaning of Article 2(g) of the Shareholder Rights Directive;

"regulated market" has the meaning given in paragraph 1 of Schedule 2 to the Act; and

"Shareholder Rights Directive" means Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, as amended by Directive (EU) 2017/828 and as further amended from time to time.

Application.

3. These Regulations apply to–

(a) institutional investors, to the extent that they invest directly or through an asset manager in shares traded on a regulated market;

(b) asset managers, to the extent that they invest in such shares on behalf of investors; and

(c) proxy advisors, to the extent that they provide services to shareholders with respect to shares of listed companies which have their registered office in an EEA State and the shares of which are admitted to trading on a regulated market situated or operating within an EEA State.

PART 2
TRANSPARENCY OF INSTITUTIONAL INVESTORS, ASSET MANAGERS AND PROXY ADVISORS

Engagement policy.

4.(1) Subject to sub-regulation (3), an institutional investor or asset manager must develop and publicly disclose an engagement policy which complies with sub-regulation (2).

(2) The engagement policy must describe how the institutional investor or asset manager–

(a) integrates shareholder engagement in its investment strategy;

(b) monitors investee companies on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance;

(c) conduct dialogues with investee companies, exercise voting rights and other rights attached to shares, cooperates with other shareholders and communicates with relevant stakeholders of the investee companies; and

(d) manages actual and potential conflicts of interests in relation to its engagement.

(3) An institutional investor or asset manager that chooses not to comply with one or more of the requirements in sub-regulation (2) must publicly disclose a clear and reasoned explanation as to why they have chosen not to do so.

(4) An institutional investor or asset manager must, on an annual basis, publicly disclose how its engagement policy has been implemented, including–

(a) a general description of voting behaviour;

(b) an explanation of the most significant votes; and

(c) details as to the use of the services of proxy advisors.

(5) An institutional investor or asset manager must publicly disclose how it has cast votes in the general meetings of the companies in which it hold shares.

(6) An institutional investor or asset manager may exclude from disclosure under sub-regulation (5) votes that are insignificant due to their subject matter or the size of the holding in the listed company.

(7) Information disclosed under this regulation must be accessible free of charge on the institutional investor's or asset manager's website or by other means which are easily accessible online.

(8) Where an asset manager implements an engagement policy on behalf of an institutional investor, the institutional investor must make a reference as to where such information has been published by the asset manager.

(9) Any conflict of interest rules under the UCITS Directive or MiFID 2 Directive which apply to institutional investors or asset managers also apply with regard to engagement activities governed by this regulation.

Investment strategy of institutional investors and arrangements with asset managers.

5.(1) An institutional investor must publicly disclose how the main elements of its equity investment strategy are consistent with the profile and duration of its liabilities, in particular long-term liabilities, and how they contribute to the medium to long-term performance of its assets.

(2) Where an asset manager invests on behalf of an institutional investor, the institutional investor must publicly disclose the following information regarding its arrangement with the asset manager–

(a) how the arrangement with the asset manager incentivises the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities;

(b) how that arrangement incentivises the asset manager to make investment decisions based on assessments about medium to long-term financial and non-

financial performance of the investee company and to engage with investee companies in order to improve their performance in the medium to long-term;

(c) how the method and time horizon of the evaluation of the asset manager's performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities, and take absolute long-term performance into account;

(d) how the institutional investor monitors portfolio turnover costs incurred by the asset manager and how it defines and monitors a targeted portfolio turnover or turnover range; and

(e) the duration of the arrangement with the asset manager.

(3) Where an institutional investor's arrangement with an asset manager does not contain one or more of the elements in sub-regulation (2), the institutional investor must give a clear and reasoned explanation as to why that is the case.

(4) The information required under sub-regulations (1) and (2) must be available free of charge on the institutional investor's website or by other means that are easily accessible online and must be updated annually unless there is no material change.

(5) Institutional investors which are regulated under the Solvency 2 Directive may include the information required under sub-regulations (1) and (2) in their report on solvency and financial condition.

Transparency of asset managers.

6.(1) Except where such information is already publicly available, an asset manager must, on an annual basis, disclose to the institutional investors with which it has entered into arrangements of the kind in regulation 5 how the asset manager's investment strategy and its implementation complies with that arrangement and contributes to the medium to long-term performance of the assets of the institutional investor or of the fund.

(2) Disclosure under sub-regulation (1) must include reporting on–

(a) the key material medium to long-term risks associated with the investments;

(b) portfolio composition, turnover and turnover costs;

(c) the use of proxy advisors for the purpose of engagement activities;

(d) its policy on securities lending and how it is applied to fulfil its engagement activities if applicable, particularly at the time of the general meeting of the investee companies;

(e) information on whether, and, if so, how, investment decisions are made based on the evaluation of medium to long-term performance of the investee company, including non-financial performance; and

(f) whether and, if so, which conflicts of interests have arisen in connection with engagements activities and how the asset manager has dealt with them.

(3) The disclosures required by sub-regulation (1) may be disclosed together with–

(a) the annual report referred to in–

(i) Article 68 of the UCITS Directive; or

(ii) Article 22 of the AIFM Directive; or

(b) the periodic communications referred to in Article 25.6 of the MiFID 2 Directive.

(4) Where an asset manager does not manage assets on a discretionary client-by-client basis, it must provide the disclosures required sub-regulation (1) to other investors of the same fund on request.

Code of conduct of proxy advisors.

7.(1) Where a proxy advisor ("P") provides proxy advisor services in accordance with or by reference to a code of conduct, P must disclose to the public–

(a) a reference to the code of conduct, by means of which any person may readily view it;

(b) a report on the manner in which P has applied the code of conduct; and

(c) where P's practice is to depart from any of the recommendations contained in the code of conduct, a statement which specifies the recommendations concerned, explains the reason for departing from them, and indicates any measures adopted instead of them.

(2) Where P, in the provision of proxy advisor services, does not provide those services in accordance with or by reference to a code of conduct, P must provide a clear and reasoned explanation of P's reasons for not doing so.

(3) Any information which P is required to disclose under sub-regulations (1) and (2) must be–

(a) made available free of charge; and

(b) published on P's website.

(4) Any information published by P in accordance with sub-regulation (3) must be updated–

(a) for the first time, no later than the end of P's first financial year following the commencement of these regulations; and

(b) subsequently, at intervals of no more than twelve months beginning with the date on which it was last updated.

Information giving assurance about the accuracy and reliability of advice.

8.(1) With the object of giving the clients of a proxy advisor ("P") assurance about the accuracy and reliability of P's proxy advisor services, P must disclose to the public the following information relating to P's preparation of research, advice and voting recommendations–

(a) the essential features of the methodologies and models applied for the provision of those services;

(b) the main sources of information used for the provision of those services;

(c) the procedures put in place to ensure that P's research, advice and voting recommendations are of an adequate quality and are prepared by staff who are suitably qualified to prepare them;

(d) whether P takes account of national market, legal, regulatory and company-specific conditions, and if P does so, how P takes account of those matters;

(e) the essential features of the voting policies applied for each market;

(f) whether P has a dialogue with the company which is the object of P's research, advice or voting recommendations, or with persons who have a stake in that company, and if P does so, the extent and nature of the dialogue; and

(g) P's policy regarding the prevention and management of potential conflicts of interest.

(2) This regulation does not have effect in relation to any information of a kind specified in sub-regulation (1) if, or so far as, that information is disclosed to the public in compliance with regulation 7.

(3) Any information which P is required to disclose under sub-regulation (1) must be–

(a) disclosed by publication on P's website;

(b) published for the first time no later than the end of P's first financial year following the commencement of these regulations; and

(c) made available free of charge for a period of at least three years beginning with the date on which it is published for the first time.

(4) All information published by P in accordance with sub-regulation (3) must be updated–

(a) for the first time no later than the end of the period of twelve months beginning with the date on which it was first published; and

(b) subsequently, at intervals of no more than twelve months beginning with the date on which it was last updated.

Conflicts of interest.

9.(1) A proxy advisor ("P") must take all appropriate steps to ensure–

(a) that P identifies any actual or potential conflict of interest or any business relationship that may influence P in the preparation of research, advice or voting recommendations; and

(b) that such a conflict of interest or business relationship is identified without delay after the time at which it arises.

(2) Where P has identified an actual or potential conflict of interest or a business relationship of the kind specified in sub-regulation(1), P must, without delay—

(a) disclose that fact to P's clients together with particulars of the conflict of interest or business relationship concerned; and

(b) give P's clients a statement of the action P has undertaken to eliminate, mitigate or manage the conflict of interest or business relationship concerned.

Obligation to collect and update information.

10. A proxy advisor must collect and keep up to date all information required to enable it to comply with its obligations relating to the disclosure of information under this Part.

PART 3
CONTRAVENTIONS AND OFFENCES

Sanctioning powers.

11.(1) The sanctioning powers set out in Part 11 of the Act, which are exercisable in relation to a contravention of a regulatory requirement, may be exercised against an institutional investor or asset manager that has contravened Part 2.

Maximum amounts of administrative penalty.

12.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of Part 2 by an institutional investor or asset manager must be of an amount which does not exceed the higher of the following–

(a) where the amount of the benefit derived as a result of the contravention can be determined, twice the amount of that benefit;

(b) in the case of a legal person–

(i) £250,000; or

(ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body; or

(c) in the case of an individual, £125,000.

(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 the Accounting Directive, 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.

Contraventions by proxy advisors.

13. A proxy advisor who fails to comply with the requirements of these Regulations commits an offence and, in respect of each offence, is liable on summary conviction to imprisonment for 6 months or to a fine at level 4 on the standard scale.

Providing misleading information.

14.(1) A person must not provide information to another person–

(a) knowing or being reckless as to whether the information is false or misleading in a material particular; and

(b) knowing that the information is to be provided to, or used for the purpose of providing information to, the GFSC in connection with the discharge of any of its functions in respect of these Regulations.

(2) A person who contravenes sub-regulation (1) commits an offence and is liable–

(a) on summary conviction, to imprisonment for six months or a fine at level 5 on the standard scale, or both; or

(b) on conviction on indictment, to imprisonment for two years or a fine, or both.