
D R A F T S T A T U T O R Y I N S T R U M E N T S

2024 No. XXX

FINANCIAL SERVICES AND MARKETS

**Consumer Composite Investments (Designated Activities)
Regulations 2024**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury, in exercise of the powers conferred by sections 71K(1), (3) and (4), 71M(1), 71N(2)(b) and (5), [71O(2) and (10),] 71P(1) and (3)(b), [71Q,] [71R,] and 428(3) of the Financial Services and Markets Act 2000(a), makes the following Regulations.

In accordance with section[s] 71S(2)[and 429(2A) and (2B)] of the Financial Services and Markets Act 2000(b), a draft of this instrument has been laid before, and approved by resolution of, each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Consumer Composite Investments (Designated Activities) Regulations 2024.

(2) These Regulations come into force on the day on which the revocation of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products(c) by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 comes into force.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(a) 2000 c. 8. Sections 71K to 71S were inserted by section 8(2) of the Financial Services and Markets Act 2023 (c. 29). Section 428(3) was amended by section 66(3)(a) of that Act.
(b) Subsection (2B)(aa) and (ab) of section 429 were inserted by section 8(8)(a) of the Financial Services and Markets Act 2023 (c.29).
(c) EUR 1286/2014.

Interpretation

2.—(1) In these Regulations—

“advising on a consumer composite investment” means giving advice on the merits of—

- (a) buying a consumer composite investment,
- (b) selling a consumer composite investment,
- (c) subscribing for a consumer composite investment, or
- (d) entering into a consumer composite investment contract.

“consumer composite investment” means—

- (a) an investment, or
- (b) an insurance product,

other than excluded products, where the amount repayable is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor;

“designated activity rules” means rules made under section 71N of FSMA 2000(a);

“excluded products” has the meaning given in regulation 3;

“FSMA 2000” means the Financial Services and Markets Act 2000;

“manufacturing a consumer composite investment” means—

- (a) creating, developing, designing, issuing, managing, operating, carrying out, or underwriting a consumer composite investment, or
- (b) making changes to a term, condition, or feature of a consumer composite investment;

“non-equity transferable securities” has the meaning given in section 102A(5) of FSMA 2000;

“offering a consumer composite investment” means communicating sufficient information on—

- (a) the consumer composite investment to be offered, and
- (b) the terms on which it is offered,

to enable the person to decide to buy the consumer composite investment in question, and includes selling a consumer composite investment;

“Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b);

“retail investor” means a person, other than a professional client (as defined in Article 2(1)(8) of the markets in financial instruments regulation(c)), who is using[, or is or may be contemplating using,] any of the services provided by a person carrying on an activity designated in regulation 4;

“selling a consumer composite investment” includes disposing of the consumer composite investment for valuable consideration, and for these purposes “disposing” includes—

- (a) in the case of a consumer composite investment consisting of rights under a contract—
 - (i) surrendering, assigning or converting those rights, or
 - (ii) assuming the corresponding liabilities under the contract,
- (b) in the case of a consumer composite investment consisting of rights under other arrangements, assuming the corresponding liabilities under the arrangements, and
- (c) in the case of any other consumer composite investment, granting the rights or interests of which it consists;

“transferable securities” has the meaning given in section 102A(3) of FSMA 2000.

(a) Section 71N was inserted by section 8 of the Financial Services and Markets Act 2023.

(b) S.I. 2001/544.

(c) EUR 600/2014.

(2) In these Regulations, references to rules made by the FCA are to those rules as they have effect from time to time.

[“Excluded products”

3.—(1) In regulation 2, in relation to the definition of “consumer composite investment”, “excluded products” means—

- (a) a contract of general insurance;
- (b) a contract of long-term insurance where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
- (c) deposits other than structured deposits (as defined in Article 2(1)(23) and (23A) of the markets in financial instruments regulation);
- (d) non-equity transferable securities issued by—
 - (i) any country or territory,
 - (ii) any local or regional authority,
 - (iii) any public international body, or
 - (iv) any central bank;
- (e) shares in the capital of any central bank;
- (f) transferable securities unconditionally and irrevocably guaranteed by—
 - (i) any country or territory, or
 - (ii) any local or regional authority;
- (g) transferable securities issued by associations with legal status or non-profit-making bodies recognised by any country or territory with a view to their obtaining the means necessary to achieve their non-profit-making objectives;
- (h) non-equity transferable securities issued on tap, or at least two separate issues of a similar type or class over a 12-month period, by credit institutions provided that these securities—
 - (i) are not subordinated, convertible or exchangeable,
 - (ii) do not give a right to subscribe to or acquire other types of securities,
 - (iii) are not linked to a derivative instrument,
 - (iv) materialise reception of repayable deposits, and
 - (v) are covered by the compensation scheme within the meaning of section 213(2) of FSMA 2000 or by a similar scheme in a country or territory outside the United Kingdom;
- (i) non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment, or other form of immovable property or a part thereof and where the shares cannot be sold on without this right being given up;
- (j) non-equity transferable securities issued on tap, or at least two separate issues of non-equity transferable securities of a similar type or class over a 12 month period, by credit institutions where the total consideration for the offer in the [United Kingdom] is less than [X], which shall be calculated over a period of 12 months, provided that those securities—
 - (i) are not subordinated, convertible or exchangeable,
 - (ii) do not give a right to subscribe to or acquire other types of securities, and
 - (iii) are not linked to a derivative instrument;
- (k) personal pension schemes;
- (l) occupational pension schemes;
- (m) stakeholder pension schemes.

(2) In this regulation, “contract of general insurance”, “contract of long-term insurance”, “personal pension schemes”, “occupational pension schemes” and “stakeholder pension schemes” have the meaning given in regulation 3 of the Regulated Activities Order.]

PART 2

Designated Activities and FCA Powers

Activities specified as designated activities for the purposes of FSMA 2000

4.—(1) The following activities are specified under section 71K of FSMA 2000 as designated activities for the purposes of that Act—

- (a) manufacturing a consumer composite investment [made available] to a retail investor located in the United Kingdom;
- (b) advising on a consumer composite investment if the advice is—
 - (i) given to a person located in the United Kingdom, and
 - (ii) given to the person in their capacity as a retail investor [or potential retail investor] (“P”), or in their capacity as agent for P;
- (c) offering a consumer composite investment to a retail investor located in the United Kingdom.

(2) In this regulation “made available” has the meaning given in rules made by the FCA.

FCA rules

5.—(1) The FCA may make designated activity rules relating to the activities specified in regulation 4.

(2) The FCA may by notice suspend any rules made under paragraph (1) for such period as it considers appropriate (and see section 71N(6)(a) which imposes a duty to consult the PRA beforehand).

(3) Rules under paragraph (1) may include provision enabling requirements imposed by the rules to be dispensed with, or modified, in such cases or circumstances as may be determined by the FCA under the rules.

[Power of the FCA to give directions

6.—(1) The FCA may give directions under section 71O of FSMA 2000(b) imposing on a person or a description of persons such requirements as the FCA considers appropriate in relation to the carrying on of an activity specified in regulation 4.

(2) The FCA may exercise the power conferred by virtue of paragraph (1) only if—

- (a) a person has contravened a requirement imposed by or under designated activity rules made by virtue of regulation 5, or
- (b) [the FCA is satisfied that—
 - (i) a consumer composite investment, or financial activity or practice relating to a consumer composite investment, gives rise to—
 - (aa) retail investor protection concerns,
 - (bb) a threat to the orderly functioning and integrity of the financial markets, or
 - (cc) a threat to the stability of the financial system within the United Kingdom,

(a) Inserted by section 8(2) of the Financial Services and Markets Act 2023.

(b) Inserted by section 8(2) of the Financial Services and Markets Act 2023.

- (ii) existing regulatory requirements do not sufficiently address the risk or issue identified,
 - (iii) the issue would not be better addressed by designated activity rules made by virtue of regulation 5, and
 - (iv) the action is proportionate taking into account—
 - (aa) the nature of the risks identified,
 - (bb) the level of sophistication of the retail investors concerned, and
 - (cc) the likely effect of the action on retail investors.]
- (3) The power to impose requirements under section 71O of FSMA 2000 by virtue of paragraph (1) includes power to—
- (a) prohibit a person from—
 - (i) marketing a consumer composite investment to a retail investor located in the United Kingdom,
 - (ii) distributing a consumer composite investment to a retail investor located in the United Kingdom,
 - (iii) offering a consumer composite investment to a retail investor located in the United Kingdom,
 - (iv) publishing information which does not comply with requirements imposed by or under designated activity rules made by virtue of regulation 5, or
 - (v) carrying on a type of financial activity or practice;
 - (b) impose requirements with respect to anything specified in sub-paragraph (a).]

Directions: procedure

- 7.—(1) The FCA must give written notice to the person concerned (“P”) if it—
- (a) gives a direction with immediate effect,
 - (b) proposes to give a direction, or
 - (c) proposes to vary a direction pursuant to section 71O(5) of FSMA 2000.
- (2) A direction given under section 71O of FSMA 2000 by virtue of this regulation takes effect—
- (a) immediately, if the notice under subsection (1) states that is the case,
 - (b) on such other date as may be specified in the notice, or
 - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (3) A direction may be expressed to take effect immediately (or on a specified date) under paragraph (1)(a) only if the FCA considers that it is necessary for the direction to take effect immediately (or on that date).
- (4) The notice under paragraph (1) must—
- (a) give details of the direction,
 - (b) state the FCA’s reasons for the direction and for its determination as to when the direction takes effect,
 - (c) inform P that P may make representations to the FCA within such period as may be specified in the notice (whether or not P has referred the matter to the Tribunal), and
 - (d) inform P of P’s right to refer the matter to the Tribunal.
- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) The FCA must give P written notice if, having considered any representations made by P, the FCA—
- (a) gives the direction as proposed,

- (b) varies the direction as proposed, or
 - (c) if the direction has been given, does not revoke the direction.
- (7) The FCA must give P written notice if, having considered any representations made by P, the FCA—
- (a) does not give the direction proposed,
 - (b) gives a different direction,
 - (c) varies the direction not as proposed, or
 - (d) revokes a direction which has effect.
- (8) A notice under paragraph (6) must inform P of P’s right to refer the matter to the Tribunal.
- (9) A notice under paragraphs (7)(b) or (7)(c) must comply with paragraph (4).
- (10) If a notice informs P of P’s right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (11) For the purposes of paragraph (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of FSMA 2000.
- (12) P may refer the matter to the Tribunal if the FCA—
- (a) gives a direction under section 71O of FSMA 2000 pursuant to regulation 6(1),
 - (b) varies a direction, or
 - (c) does not revoke a direction which takes effect immediately.
- (13) The FCA must revoke a direction imposed under section 71O of FSMA 2000 by virtue of regulation 6(2)(b) where the conditions in that sub-paragraph are no longer met.

PART 3

Civil Liability and Enforcement

CHAPTER 1

Civil Liability

Civil liability for pre-contractual disclosure

8.—(1) A contravention of a designated activity rule made by virtue of regulation 5 is actionable at the suit of a retail investor who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.

(2) If designated activity rules made by virtue of regulation 5 so provide, sub-paragraph (1) does not apply to a contravention of a specified provision of the rules.

CHAPTER 2

Application of FSMA 2000 for the purposes of these regulations

Placeholder for enforcement and supervisory provisions

9.—(1) *Application provisions e.g. offences, tribunals, financial penalties, investigation...*

PART 4

Consequential amendments

Placeholder for consequential amendments

10.—(1) *Consequential amendments.*

PART 5

Transitional Provisions and Review

UCITS and non-UCITS funds

11.—(1) Where the FCA applies designated activity rules by virtue of regulation 5 to UK UCITS or EEA UCITS, the relevant person must—

- (a) comply with those designated activity rules, or
- (b) until 31 December 2026—
 - (i) for UK UCITS, comply with FCA rules in COLL 4.7 (key investor information and marketing communications) of the FCA Handbook, to the extent it applies to key investor information for UK UCITS;
 - (ii) for EEA UCITS recognised by virtue of regulation 62 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019(a), comply with duties corresponding to those that, if the United Kingdom were a UCITS host Member State for the purposes of the UCITS Directive, would be imposed on the operator in accordance with the following provisions of that directive—
 - (aa) Article 43(4),
 - (bb) Article 64(2),
 - (cc) Article 84(3),
 - (dd) the final sentence of Article 93(7),
 - (ee) Article 93(8), and
 - (ff) Article 94;
 - (iii) for EEA UCITS recognised under section 271A or 272 of FSMA 2000, comply with duties corresponding to those that, if the United Kingdom were a UCITS host Member State for the purposes of the UCITS Directive, would be imposed on the EEA UCITS in accordance with Article 94 of that Directive, to the extent it applies to key investor information.

(2) Where the FCA applies designated activity rules by virtue of regulation 5 to non-UCITS funds, the relevant person must—

- (a) comply with those designated activity rules, or
- (b) until 31 December 2026, comply with FCA rules in COLL 4.7 (key investor information and marketing communications) of the FCA Handbook, to the extent it applies to key investor information for non-UCITS funds.

(3) In this regulation—

- (a) “non-UCITS fund” means an authorised fund which is not a UK UCITS, and for these purposes “authorised fund” means—
 - (i) an authorised unit trust scheme,

(a) S.I. 2019/325.

- (ii) an authorised contractual scheme, and
- (iii) an authorised open-ended investment company;
- (b) “relevant person” means—
 - (i) for UK UCITS—
 - (aa) the management company (as defined in section 237(2) of FSMA 2000) of a UK UCITS,
 - (bb) an authorised open-ended investment company which is a UK UCITS, or
 - (cc) a person advising on, or offering, units of UK UCITS to retail investors in the United Kingdom;
 - (ii) for EEA UCITS—
 - (aa) the management company (as defined in point (b) of Article 2(1) of Directive 2009/65/EC) of an EEA UCITS,
 - (bb) an investment company referred to in Article 27 of Directive 2009/65/EC, or
 - (cc) a person advising on, or offering, units of EEA UCITS to retail investors in the United Kingdom;
 - (iii) for non-UCITS funds—
 - (aa) the management company (as defined in section 237(2) of FSMA 2000) of a non-UCITS fund,
 - (bb) [an investment company which is a non-UCITS fund], or
 - (cc) a person advising on, or offering, units of non-UCITS funds to retail investors in the United Kingdom.
- (c) “UCITS Directive” means the Directive of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No 2009/65/EC), as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23rd July 2014(a);
- (d) “authorised open-ended investment company”, “UK UCITS” and “EEA UCITS” have the meanings given in section 237 of FSMA 2000;
- (e) Article 94 of the UCITS Directive is to be read as if—
 - (i) references to the UCITS host member State, or to a member State where the UCITS markets its units, were references to the United Kingdom, and
 - (ii) references to the competent authority of the UCITS host member State or of the member State where the UCITS markets its units were references to the FCA.

Further transitional provisions

12. [Arrangements to continue enforcement action begun under the PRIIPs Regulation and/or the 2017 PRIIPs Regulations.]

13. [Arrangements for transition to FCA rules in respect of matters previously covered by retained EU law.]

Review

- 14.**—(1) The Treasury must from time to time—
- (a) carry out a review of regulations 2 to [X],
 - (b) set out the conclusions of the review in a report, and

(a) EUR 2009/65/EC.

- (c) publish the report.
- (2) The review must in particular—
 - (a) set out the objectives intended to be achieved by the regulatory provision made under regulations 2 to [X],
 - (b) assess the extent to which those objectives are achieved, and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) The first report under this regulation must be published before the end of the period of five years beginning with [xxx].
- (4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Date *Name*
Name
Two of the Lords Commissioners of His Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

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