EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2023 (ADDITION OF RELEVANT ENACTMENTS) REGULATIONS 2024

2024 No.

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Tulip Siddiq MP, Economic Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Tom Duggan, Deputy Director for Securities and Markets, at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Tim Maloney at HM Treasury, email: Timothy.Maloney@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument, relying on the powers set out in section 17(6) of the Financial Services and Market Act of 2023 ("FSMA 2023") will bring the following relevant enactments into scope of the Financial Market Infrastructure ("FMI") Sandbox powers:

- The Stock Transfer (Gilt-edged Securities) (CGO Service) Regulations 1985 ("STRs"),
- The Government Stock Regulations 2004 ("GSRs"),
- The Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("MLRs"),
- Prospectus Regulation (Regulation (EU) 2017/1129 of the European Parliament and of the Council ("UK Prospectus Regulation").

4.2 The consequence of this will be that HM Treasury will be able to apply, disapply or modify the effect of these pieces of legislation by way of negative SI when establishing new FMI Sandboxes or modifying existing sandboxes. Each negative SI will set out in detail the specific changes being made.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland, and Northern Ireland.

5. Policy Context

What is being done and why?

Additional legislation to support the Digital Securities Sandbox.

5.1 This instrument will bring several pieces of legislation into scope of section 17(3) of FSMA 2023. This will facilitate further temporary modifications to UK legislation as part of FMI Sandboxes set up under these powers.

5.2 Section 13 of FSMA 2023 gives the government the power to set up FMI Sandboxes via statutory instrument. FMI Sandboxes are intended to enable firms to utilise developing technologies, such as Distributed Ledger Technology (DLT) in performing the functions of traditional FMIs, such as the operation of a securities settlement system or operating a trading venue. They do this by providing temporary modifications to existing legislation to participating firms, where existing legislation, or its interpretation, would otherwise form a barrier or an obstacle to this. The list of legislation that can be modified is set out in section 17(3) of FSMA 2023.

5.3 Three of the pieces of legislation being brought into scope would facilitate activity in the first FMI Sandbox, known as the 'Digital Securities Sandbox' (DSS): the STRs, the GSRs, and the MLRs.

5.4 The DSS will enable firms to test the use of new and developing technology across financial market infrastructure activities. In particular, this will involve trialling the use of technology (such as DLT or technology that facilitates the use of 'digital assets') to perform the activity of a central securities depository (specifically notary, settlement and maintenance), and operating a trading venue, including for the first time in the UK, from the same legal entity.

5.5 Participating entities in the DSS are subject to a set of modified legislative requirements, where existing requirements outside of the DSS may act as a barrier or an obstacle to using new technology in the provision of in-scope FMI activities. Some existing legislative requirements are being disapplied within the DSS, with the regulators able to make rules, including to replace requirements placed on firms. Under the modified framework, the regulators also have the power to: waive or modify rules, including those made under FSMA 2000 or other relevant enactments; provide for the application of existing rules to firms of a specified description or for individual firms; and modify (including the power to provide for them not to apply) technical standards.

5.6 The DSS will enable the government, in close collaboration with the regulators, to assess how, at the end of the DSS regime, permanent changes may be needed to the future in-scope settlement regimes to accommodate new and developing technologies. This would be done after consulting Parliament. The DSS opened for applications on 30 September 2024, further information is available on the following webpage https://www.bankofengland.co.uk/financial-stability/digital-securities-sandbox.

5.7 The application of the cryptoasset regime in the MLRs to activity in the DSS was raised in response to HM Treasury's consultation on the DSS in 2023 and the Bank of England (the Bank) and the FCA's joint consultation on the DSS in 2024. Given that the purpose of the DSS is to allow firms to trial innovative business models, and for wider industry to be able to interact with a sandbox entrant in broadly the same way in

which they would with a conventional FMI, HM Treasury, the Bank and the FCA believe that it is proportionate to provide a temporary exemption from the cryptoasset regime in the MLRs, to prevent it constituting a barrier to entry into, or engagement with, the DSS.

5.8 HM Treasury therefore intends to temporarily exempt activity in the DSS from the cryptoasset regime in the MLRs. As a result, firms engaging in or with activity in the DSS would be subject to the MLRs to the extent that they would be if carrying on the same activity outside the DSS, but without the use of DLT. The proposed exemption is not intended to have any bearing on a firm's activities outside of the DSS.

5.9 These amendments will be set out in detail in a later statutory instrument and accompanying explanatory memorandum.

5.10 Bringing the GSRs and the STRs into scope of the FMI Sandbox powers under FSMA 2023 would facilitate the possibility of sovereign debt issuances utilising distributed ledger technology, under the DSS.

5.11 While this SI brings these two items into scope of the FMI Sandbox powers under FSMA 2023 powers, the government will need to set out the specific modifications to legislation as part of a future SI, once it has decided whether it wants to undertake any such issuance.

Additional legislation to support PISCES.

5.12 This SI also brings into scope a further piece of legislation to facilitate the creation of a separate FMI Sandbox, the "Private Intermittent Securities and Capital Exchange System" (PISCES) Sandbox, which the government intends to establish in due course through secondary legislation using FSMA 2023 powers.

5.13 This FMI Sandbox will provide the regulatory framework to allow for the intermittent trading of private company shares on a multilateral system. To deliver this regime, the government intends to adapt or remove the legal requirements that would otherwise prevent or disincentivise companies and investors participating in such a market.

5.14 In its work to develop the PISCES sandbox, HM Treasury has identified that modifications may be needed to the prospectus regime, to ensure that the requirements firms are subject to in the sandbox are coherent, proportionate and support the overall aims of the sandbox. This SI brings the UK Prospectus Regulation into scope of the FMI Sandbox powers. The UK Prospectus Regulation sets out prescriptive detail on what a company must publish when offering securities to the public. It is due to be replaced by a new UK regime under the Public Offers and Admissions to Trading Regulations - which will be implemented by the Financial Conduct Authority. HM Treasury will make any necessary modifications to the UK Prospectus Regulation and the Public Offers and Admissions to Trading Regulations (the latter of which is already in scope of FMI Sandbox powers) as part of the instrument that creates the PISCES sandbox, once the design has been finalised.

What was the previous policy, how is this different?

5.15 The MLRs, the GSRs and the STRs are not featured within the list of relevant enactments as set out in Section 17(3) of FSMA 2023, as HM Treasury had not identified that modifications to this legislation may be needed at the time of the Act's passing. The consequence of this SI will be that the application of the MLRs, the GSRs, and the STRs to firms operating in the sandbox can be modified by way of a negative instrument.

5.16 The UK Prospectus Regulation is not featured within the list of relevant enactments as set out in Section 17(3) of FSMA 2023, as HM Treasury had not identified that modifications to this legislation may be needed at the time of the Act's passing. The consequence of this SI will be that the Prospectus Regulations can be modified by way of a negative instrument when establishing an FMI Sandbox in the future, such as the PISCES sandbox.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument brings UK Prospectus Regulation (Regulation (EU) 2017/1129 of the European Parliament and of the Council, The Government Stock Regulations 2004, The Stock Transfer (Gilt-Edged Securities) (CGO Service) Regulations 2013 and the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 into the scope of the FMI Sandbox powers.

Why was this approach taken to change the law?

6.2 This approach was taken to enable the necessary changes to apply in the relevant FMI Sandboxes, given their objective is the testing of temporary modifications to legislation. As such, it is consistent with the purpose of the powers set out in FSMA 2023.

7. Consultation

Summary of consultation outcome and methodology

7.1 A formal consultation was not undertaken for this instrument. However, HM Treasury previously consulted on the implementation of the DSS and has engaged with both the Bank and the FCA on the instrument. The Bank and FCA consulted jointly on the implementation of the DSS in April and May of 2024, with feedback used to inform the development of this SI.[1] The changes made by this instrument are based on stakeholder feedback and will not fundamentally alter the functioning of the DSS.

7.2 HM Treasury previously consulted on the implementation of PISCES, this period of consultation ran from 6 March 2024 until 17 April 2024.

8. Applicable Guidance

8.1 HM Treasury does not propose to provide any guidance in relation to this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the impact of this SI is negligible. This is because no legislative changes are being made that will directly impact firms - any temporary modifications to the legislation being brought into scope will be made via subsequent negative SIs.

9.2 A de minimis Impact Assessment was produced for the original DSS SI - The Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023 (SI 2023/1398), and can be found on the legislation.gov.uk website.

[1] https://www.bankofengland.co.uk/paper/2024/cp/digital-securities-sandbox-joint-bank-of-england-and-fca-consultation-paper,

9.3 and can be found on the legislation.gov.uk website.

9.4 HM Treasury will produce a de minimis Impact Assessment to accompany a subsequent SI detailing the temporary modifications to be made to the MLRs in the DSS.

Impact on businesses, charities, and voluntary bodies

9.5 There is no, or no significant, impact on business, charities, or voluntary bodies.

9.6 The legislation does not impact small or micro businesses.

9.7 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause, and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to the Treasury (Tulip Siddiq MP) has made the following statement:

"It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £10 million and the number of small businesses in scope is very low."

10.2 For each FMI Sandbox, under section 14 of FSMA 2023 the government is required to report to Parliament, setting out the activity that has taken place and the efficiency and effectiveness of the FMI Sandbox. If the government intends to make permanent changes to legislation after the FMI Sandbox, it can use the powers set out at section 15 of FSMA 2023, subject to parliamentary approval.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The activity in the DSS will enable HMT, working with the regulators, to determine how UK legislation should be permanently amended to accommodate developing technology.

11.2 The government intends to lay a statutory instrument to establish the PISCES sandbox in due course. This may include modifications to the Prospectus Regulations within the FMI Sandbox arrangements, subject to the final design of the PISCES regime.

12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury (Tulip Siddiq MP) has made the following statement regarding Human Rights:

"In my view the provisions of the Financial Services and Markets Act 2023 (Addition of Relevant Enactments) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.