

**2013 No. 161**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services Act 2012 (Transitional Provisions)  
(Rules and Miscellaneous Provisions) Order 2013**

<i>Made</i>	- - - -	<i>29th January 2013</i>
<i>Laid before Parliament</i>		<i>30th January 2013</i>
<i>Coming into force</i>	- -	<i>20th February 2013</i>

The Treasury make the following Order in exercise of the powers conferred by section 115(2) and section 119(3), (4) and (5) of the Financial Services Act 2012(a):

**PART 1**

**Introductory**

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 and comes into force on 20th February 2013.

(2) In this Order—

“the 2012 Act” means the Financial Services Act 2012;

“the Authority” means the Financial Services Authority;

“the commencement date” means 1st April 2013;

“a designating body” means—

(i) the FCA(b);

(ii) the PRA;

(iii) the Bank of England;

“an FCA-authorized person” means an authorised person who is not a PRA-authorized person;

“relevant instrument” has the meaning given in section 119(6) of the 2012 Act(c).

(3) Terms defined in FSMA 2000(d) have the same meaning in this Order.

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(a) 2012 c. 21.

(b) Section 117 of the 2012 Act defines “the FCA” as meaning the Financial Conduct Authority and “the PRA” as meaning the Prudential Regulation Authority.

(c) Section 119(6) defines “relevant instrument” as meaning rules, guidance, requirements or a code, scheme, statement or direction.

(d) Section 117 of the 2012 Act defines “FSMA 2000” as meaning the Financial Services and Markets Act 2000 (c. 8).

(4) Paragraph 2 of Schedule 20(a) to the 2012 Act does not apply for the purposes of Parts 1, 2 and 3 of this Order.

## PART 2

### Designation of rules etc

#### Designation of rules etc

2.—(1) A designating body may designate a relevant instrument, or part of a relevant instrument, which was made, issued, given or imposed by the Authority if the designating body considers it necessary or expedient to do so in consequence of any provision made by or under the 2012 Act.

(2) If a designating body designates a relevant instrument or part, in accordance with this Part, the instrument or part is to be treated—

- (a) as having been made, issued, given or imposed by the designating body;
- (b) as having been made, issued, given or imposed (or also made, issued, given or imposed) under a corresponding provision of—
  - (i) the 2012 Act;
  - (ii) an enactment as amended by or under the 2012 Act.

(3) A designating body may make such modifications to a relevant instrument or part designated, or being designated, by that body as the body considers necessary or expedient in consequence of any provision made by or under the 2012 Act.

#### Designating instruments

3.—(1) To designate or modify a relevant instrument or part of a relevant instrument, the designating body must make an instrument in writing which specifies, or more than one instrument in writing which between them specify—

- (a) the relevant instrument or part;
- (b) any modifications being made to the relevant instrument or part;
- (c) the provision under which the relevant instrument or part was made;
- (d) where article 2(2)(b) applies, the corresponding provision; and
- (e) the date on which the designation is to come into effect.

(2) In this Part, an instrument which, by itself or taken together with one or more other instruments, satisfies the requirements of paragraph (1) is a “designating instrument”.

(3) Where a designating instrument specifies more than one relevant instrument or part, the requirements of paragraphs (1)(c) and (d) may be met by specifying the provisions and corresponding provisions relating to those relevant instruments or parts collectively.

(4) The designating body must publish each designating instrument in the way appearing to the designating body to be best calculated to bring it to the attention of the public.

(5) A person is not to be taken to have contravened a relevant instrument designated by a designating body if the person shows that, at the time of the alleged contravention, the designating instrument concerned had not been published.

(6) A designating instrument is to be treated as a rule-making instrument for the purposes of section 138H (verification of rules) of FSMA 2000(b).

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(a) Paragraph 2 of Schedule 20 provides for references to the Financial Services Authority to be read as references to the Financial Conduct Authority, and vice versa, in certain circumstances.  
(b) Section 138H is inserted by section 24 of the 2012 Act.

- (7) A designating instrument may contain provision other than that required by paragraph (1).
- (8) The making of a designating instrument is a legislative function for the purposes of—
- (a) paragraph 8(2) of Schedule 1ZA to FSMA 2000<sup>(a)</sup> (arrangements for discharging functions);
  - (b) paragraph 16(2) of Schedule 1ZB to FSMA 2000<sup>(b)</sup> (arrangements for discharging functions);
  - (c) section 85 of the 2012 Act (relevant functions in relation to complaints scheme).
- (9) Paragraph 8(2) of Schedule 1ZA to FSMA 2000, to the extent that it is not already in force, is to be treated for the purposes of this order as if it were in force.

### **Relevant instruments not designated before 1st April 2013**

- 4.—(1) Paragraph (2) applies to any relevant instrument, or any part of a relevant instrument, which—
- (a) was made, issued, given or imposed by the Authority before the commencement date; and
  - (b) is not designated before the commencement date in accordance with this Part.
- (2) The relevant instrument or part ceases to have effect on the commencement date.
- (3) Nothing in this article prevents a designating body from designating, on or after the commencement date, a relevant instrument or part to which paragraph (2) applies.

## **PART 3**

### **Exercise of functions by the FCA before the commencement date**

#### **Appointment of persons to discharge certain functions before the commencement date**

- 5.—(1) The Authority may appoint one or more persons to discharge a function to which this article applies.
- (2) An appointment must be made—
- (a) in writing; and
  - (b) with the prior written approval of the Treasury.
- (3) The persons appointed may—
- (a) discharge functions to which this article applies as if they were the governing body of the FCA;
  - (b) determine their own procedure, subject to the terms and conditions of their appointment.
- (4) The function of the Authority under paragraph (1) is to be treated as a function conferred on the Authority by or under FSMA 2000.
- (5) An appointment under this article terminates on the earlier of—
- (a) the commencement date; and
  - (b) the date specified in the appointment (if any).

#### **Functions which may be discharged by appointed persons**

- 6.—(1) Article 5 applies to—
- (a) the function of the FCA of designating a relevant instrument under article 2;

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(a) Schedule 1ZA is inserted by Schedule 3 to the 2012 Act.  
(b) Schedule 1ZB is inserted by Schedule 3 to the 2012 Act.

- (b) any other function of the FCA which is exercisable before the commencement date (“a pre-commencement function”);
- (c) the functions of the Authority of making rules under, or by virtue of—
  - (i) the Regulated Covered Bond Regulations 2008(a);
  - (ii) the Payment Services Regulations 2009(b);
  - (iii) the Electronic Money Regulations 2011(c);
- (d) the functions of the Authority of giving guidance in relation to rules made, or in relation to functions of the Authority, under or by virtue of an enactment listed in sub-paragraph (c).

(2) But article 5 only applies to the functions of making of rules, and of giving guidance, under or by virtue of an enactment listed in paragraph (1)(c) if the rules or guidance come into effect on or after the commencement date.

(3) Paragraph (1)(c) and (d) and the enactments listed in paragraph (1)(c) apply as if references to the Authority were references to the FCA.

(4) For the purposes of paragraph (3) and the exercise of functions listed in paragraph (1)(c) and (d)—

- (a) references to provisions of FSMA 2000 in the enactments listed in paragraph (1)(c) are to be read as references to those provisions as amended by the 2012 Act or (as the case may be) as repealed and re-enacted by the 2012 Act;
- (b) the 2012 Act is to be treated as if it were fully in force for that purpose; and
- (c) modifications of those provisions by those enactments are to be construed accordingly.

### **Discharge of functions by appointed persons**

7.—(1) Anything done before the commencement date—

- (a) in discharge of a function to which article 5 applies, and
- (b) by persons appointed in accordance with that article,

is to be treated as if it had been done by the FCA acting through its governing body.

(2) Paragraph 7 of Schedule 20 to the 2012 Act (consultation) applies to the discharge of a function listed in article 6(1)(c) or (d) as it applies to the making of rules and the issuing of guidance under a provision of Part 5 or 6 of the 2012 Act or an amendment of FSMA 2000 made by any provision of the 2012 Act.

(3) The following provisions of Schedule 1ZA to FSMA 2000 apply to persons appointed in accordance with article 5, or meetings of such persons, as if the persons were members of the governing body of the FCA—

- (a) paragraph 10 (publication of records of meetings of the governing body);
- (b) paragraph 16 (status); and
- (c) paragraph 25 (exemption from liability in damages).

(4) For the purpose of paragraph (3), Schedule 3 to the 2012 Act is to be treated as if it were in force, but only to the extent that it—

- (a) substitutes the provisions listed in paragraph (3); and
- (b) is not already in force in respect of those provisions.

### **Rules replicating a pre-commencement threshold condition**

8.—(1) This article applies to rules made by the FCA—

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- (a) S.I. 2008/346.
  - (b) S.I. 2009/209.
  - (c) S.I. 2011/99.

- (a) before the commencement date;
- (b) which come into force on the commencement date; and
- (c) which make provision similar to any provision made in Schedule 6 to FSMA 2000 as it applied immediately before the commencement date.

(2) Sections 138I (consultation by the FCA) and 138K (consultation: mutual societies) of FSMA 2000<sup>(a)</sup> do not apply to the making of the rules.

## PART 4

### Transitional provisions: FSMA 2000

#### Modification or waiver of rules

9.—(1) Paragraphs (2) to (4) apply where—

- (a) immediately before the commencement date, a direction has effect for the purpose of section 148<sup>(b)</sup> of FSMA 2000 (modification or waiver of rules), and
- (b) the instrument by which the pre-commencement rules were made is designated in accordance with this Order.

(2) The direction is to be treated as if it had been given under section 138A(1) of FSMA 2000<sup>(c)</sup> (modification or waiver of rules) by the relevant regulator in respect of the post-commencement rules.

(3) Any direction published by the Authority before the commencement date for the purposes of section 148(6) of FSMA 2000 is to be treated as if it had been published by the relevant regulator for the purposes of section 138B of that Act<sup>(d)</sup> (publication of directions under section 138A).

(4) But section 138B of FSMA 2000 does not apply to the direction if the Authority was satisfied, before the commencement date, that it was inappropriate or unnecessary to publish the direction.

(5) Paragraph (6) applies where—

- (a) immediately before the commencement date, a direction has effect for the purpose of section 294 of FSMA 2000 (modification or waiver of rules) in relation to a recognised clearing house; and
- (b) the instrument by which the pre-commencement rules were made is designated in accordance with this Order by the Bank of England.

(6) The direction is to be treated as if it had been given by the Bank of England in relation to the recognised clearing house in respect of the post-commencement rules.

#### Applications for a modification or waiver of rules

10.—(1) Paragraph (2) applies if, before the commencement date, the Authority—

- (a) received an application under section 148(2) of FSMA 2000; and
- (b) had not determined the application.

(2) The application is to be treated as if it had been made under section 138A(1) of FSMA 2000 to the relevant regulator in respect of the post-commencement rules.

(3) Paragraph (4) applies if—

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(a) Sections 138I and 138K are inserted by section 24 of the 2012 Act.  
(b) Section 148(2) was substituted by S.I. 2007/1973.  
(c) Section 138A is inserted by section 24 of the 2012 Act.  
(d) Section 138B is inserted by section 24 of the 2012 Act.

- (a) before the commencement date, the Authority received an application under section 294(1) of FSMA 2000 in respect of a recognised clearing house; and
  - (b) had not determined the application.
- (4) The application is to be treated as if it had been made to the Bank of England in relation to the recognised clearing house in respect of the post-commencement rules.

## **Interpretation**

### **11. In this Part—**

“the post-commencement rules” means the rules which—

- (a) make provision similar or identical to that made by the pre-commencement rules; and
- (b) are treated as made by the relevant regulator by virtue of that regulator designating, in accordance with this Order, the instrument or the part of an instrument by which the pre-commencement rules were made;

“the pre-commencement rules” means the rules—

- (c) made by the Authority;
- (d) in force immediately before the commencement date; and
- (e) to which the direction or the application relates;

“the relevant regulator” means the designating body which designates, or (as the case may be) the designating bodies which designate, in accordance with this Order the instrument or the part of an instrument by which the pre-commencement rules were made.

## **PART 5**

### **The Bank of England Act 1998**

#### **Functions of the Oversight Committee**

**12.—**(1) Paragraphs (2) and (3) have effect until the commencement date.

(2) Paragraphs 5 and 9 of Schedule 2A to the Bank of England Act 1998<sup>(a)</sup> (the Financial Policy Committee) have effect as if for “the Oversight Committee”, in each place, there were substituted “the sub-committee constituted under section 3 of that Act”.

(3) Paragraph 15 of Schedule 1ZB to FSMA 2000<sup>(b)</sup> has effect as if—

- (a) in sub-paragraph (1) of that paragraph, for “the Oversight Committee” there were substituted “the sub-committee of the court of directors of the Bank constituted under section 3 of the Bank of England Act 1998”; and
- (b) in sub-paragraph (2) of that paragraph, for “that Committee” there were substituted “that sub-committee”.

29th January 2013

*Mark Lancaster*  
*Desmond Swayne*  
Two of the Lords Commissioners of Her Majesty’s Treasury

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<sup>(a)</sup> 1998 c.11. Schedule 2A is inserted by Schedule 1 to the 2012 Act.  
<sup>(b)</sup> Schedule 1ZB is inserted by Schedule 3 to the 2012 Act.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under the Financial Services Act 2012 (c.21) (“the 2012 Act”).

Article 1 provides that the Order comes into force on 20th February 2013, and sets out the interpretation of terms used in the purposes of the Order. Article 1(3) excludes the effect of paragraph 2 of Schedule 20, so that in the period up to 1st April 2013 references to the Financial Conduct Authority (“FCA”) are not treated as meaning the Financial Services Authority (“the Authority”) and vice versa.

Article 2 provides that the FCA, the Prudential Regulation Authority (“PRA”) and the Bank of England may designate various instruments made by the Authority, for example rules; designated instruments are to be treated as if they had been made by the designating body. Article 3 sets out procedural requirements for the designation of an instrument. Article 4 provides that instruments that are not designated before the commencement date cease to have effect.

Article 5 provides for the Authority to appoint persons to discharge, before 1st April 2013, certain functions of the FCA. Article 6(1) specifies the functions that may be discharged by appointed persons; article 6(2) provides that certain functions currently exercisable by the FSA are to be treated as exercisable by the FCA. Article 7 provides for: things done by appointed persons to be treated as if they had been done by the FCA acting through its governing body; certain duties on the FCA to consult various persons to be satisfied by consultation undertaken by the Authority; and for certain provisions relating to members of the governing body of the FCA also to apply to appointed persons. Article 8 sets aside procedural requirements for consultation in respect of rules made by the FCA where the rules replicate threshold conditions in Schedule 6 to the Financial Services and Markets Act 2000 (c.8) (“FSMA 2000”).

Article 9 makes transitional provision in respect of waivers and modifications of rules made under FSMA 2000; article 10 makes transitional provision in respect of applications for a waiver or modification of rules; and article 12 sets out definitions relevant for those purposes.

Article 12 makes transitional provision in respect of the Bank of England Act 1998 (c.11) as amended by the 2012 Act.

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from, Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on <http://www.hm-treasury.gov.uk/> and is published alongside the Regulations on <http://www.legislation.gov.uk/>.

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STATUTORY INSTRUMENTS

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