
STATUTORY INSTRUMENTS

2013 No. 504

**The Financial Services and Markets Act 2000 (Over
the Counter Derivatives, Central Counterparties
and Trade Repositories) Regulations 2013**

PART 2

Amendments to the Financial Services and Markets Act 2000

Amendments to the Financial Services and Markets Act 2000

3.—(1) The Act is amended as follows.

(2) In section 55G(3)(a)(1) (giving permission: special cases), for “section 285(2) or (3)” substitute “any of subsections (2) to (3C) of section 285”.

(3) In section 285(2) (exemption for recognised investment exchanges and clearing houses)—

(a) in subsection (1), for paragraph (b) and the “and” immediately before it substitute—

“(b) “recognised clearing house” means—

(i) a central counterparty in relation to which a recognition order is in force (in this Part referred to as a “recognised central counterparty”), or

(ii) a clearing house which provides clearing services in the United Kingdom without doing so as a central counterparty, and in relation to which a recognition order is in force;

(c) “EEA central counterparty” means a person established in an EEA State other than the United Kingdom who has been authorised by the competent authority of that State as a central counterparty pursuant to Article 17 of the EMIR regulation; and

(d) “third country central counterparty” means a person established in a State which is not an EEA State who has been recognised by ESMA as a central counterparty pursuant to Article 25 of the EMIR regulation.”;

(b) in subsection (3) for “A recognised clearing house” substitute “A recognised clearing house which is not a recognised central counterparty”;

(c) after subsection (3) insert—

“(3A) A recognised central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its recognition order.

(3B) An EEA central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the

(1) Section 55G was inserted by section 11 of the Financial Services Act 2012.

(2) Section 285 was amended by section 28 of the Financial Services Act 2012.

services or activities specified in its authorisation granted pursuant to Article 17 of the EMIR regulation.

(3C) A third country central counterparty is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the services or activities specified in its recognition by ESMA pursuant to Article 25 of the EMIR regulation.”.

(4) In section 285A(3) (powers exercisable in relation to recognised investment exchanges and clearing houses), in subsection (3)(c), for “UK clearing houses” substitute “recognised clearing houses”.

(5) In section 288(4) (application by a clearing house)—

(a) for subsection (1) substitute—

“(1) A body corporate or unincorporated association which is established in the United Kingdom may, where it intends to provide clearing services as a central counterparty, apply to the Bank of England in accordance with Article 17 of the EMIR regulation for an order granting authorisation for the purposes of that Article and declaring it to be a recognised central counterparty for the purposes of this Act.

(1A) A body corporate or unincorporated association may, where it intends to provide clearing services in the United Kingdom without doing so as a central counterparty, apply to the Bank of England for an order declaring it to be for the purposes of this Act a recognised clearing house which is not a recognised central counterparty.”;

(b) in subsection (2), for “The application” substitute “An application under subsection (1A)”.

(6) In section 289(5) (applications: supplementary), after subsection (3) insert—

“(4) In relation to an application under section 288(1), this section does not apply to information which can be required under Article 17 of the EMIR regulation.”.

(7) In section 290(6) (recognition orders)—

(a) for subsection (1) substitute—

“(1) If it appears to the appropriate regulator that the applicant satisfies the recognition requirements applicable in its case, the regulator may—

(a) where the application is made under section 287, make a recognition order declaring the applicant to be a recognised investment exchange;

(b) where the application is made under section 288(1) and Article 17 of the EMIR regulation allows authorisation to be granted, make a recognition order (“a central counterparty recognition order”) granting authorisation for the purposes of that Article and declaring the applicant to be a recognised central counterparty; or

(c) where the application is made under section 288(1A), make a recognition order declaring the applicant to be a recognised clearing house which is not a recognised central counterparty.”;

(b) after subsection (1C) insert—

“(1D) A central counterparty recognition order must specify the services or activities linked to clearing which the applicant may provide or perform and the classes of financial instruments covered by the order.”;

(c) in subsection (3) after “an application”, insert “made under section 287 or 288(1A)”;

(3) Section 285A was inserted by section 29 of the Financial Services Act 2012.

(4) Section 288 was amended by Schedule 8 to the Financial Services Act 2012.

(5) Section 289 was amended by Schedule 8 to the Financial Services Act 2012.

(6) Section 290 was amended by [S.I. 2007/126](#) and Schedule 8 to the Financial Services Act 2012.

(d) in subsection (5), after “recognition order”, insert “in respect of an investment exchange or a clearing house which is not a central counterparty”;

(e) after subsection (5) insert—

“(7) Where—

(a) a body corporate or unincorporated association has made an application under section 288(1), and

(b) the Bank of England has determined that application in accordance with Article 17 of the EMIR regulation,

any previous recognition order under section 290(1)(c) or 292(2)(b) shall cease to be valid.”.

(8) After section 290 insert—

“Variation of central counterparty recognition order

290ZA.—(1) On an application made to it in accordance with Article 15 of the EMIR regulation, the Bank of England may in accordance with Article 17 of that regulation vary a central counterparty recognition order by specifying an additional service or activity or class of financial instruments.

(2) Where Article 20(5) of the EMIR regulation applies, the Bank of England may vary a central counterparty recognition order by removing a service or activity or class of financial instruments from those specified in the order.

(3) The Bank of England may at any time vary a central counterparty recognition order for the purpose of correcting an error in, or omission from, the order.”.

(9) In section 290A(7) (refusal of recognition on ground of excessive regulatory provision), for subsection (6) substitute—

“(6) This section does not apply to an application for recognition as an overseas investment exchange, an overseas clearing house or a recognised central counterparty.”.

(10) In section 292(8) (overseas investment exchanges and overseas clearing houses)—

(a) in subsection (1), for “288” substitute “288(1A)”;

(b) in subsection (2)(b) after “recognised clearing house” insert “which is not a central counterparty”;

(c) after subsection (5) insert—

“(6) Where a recognised clearing house is authorised as an EEA central counterparty or recognised as a third country central counterparty, any previous recognition order under section 290(1)(c) or 292(2)(b) shall cease to be valid.”.

(11) In section 296A(9) (additional power to direct UK clearing houses)—

(a) in the heading, for “UK clearing houses” substitute “recognised central counterparties”;

(b) in subsection (1)—

(i) for “UK clearing house” substitute “recognised central counterparty”;

(ii) in paragraph (c) omit “central counterparty”;

(c) in subsections (1) to (4), in each place, for “clearing house” substitute “recognised central counterparty”.

(7) Section 290A was inserted by section 4 of the Investment Exchanges and Clearing Houses Act 2006 (c.55) and amended by Schedule 8 to the Financial Services Act 2012.

(8) Section 292 was amended by S.I. 2006/2975 and Schedule 8 to the Financial Services Act 2012.

(9) Section 296A was inserted by section 31 of the Financial Services Act 2012.

- (12) In section 297(10) (revoking recognition)—
- (a) in subsection (1), after “recognition order” insert “in respect of a recognised investment exchange or in respect of a recognised clearing house which is not a recognised central counterparty”;
 - (b) after subsection (1) insert—

“(1A) A central counterparty recognition order may be revoked by an order made by the Bank of England in accordance with Article 20 of the EMIR regulation.”;
 - (c) in subsection (2), after “recognised body” insert “which is not a recognised central counterparty”;
 - (d) in subsection (2A), after “recognised body” insert “which is not a recognised central counterparty”.
- (13) In section 300E(11) (power to disallow excessive regulatory provision: supplementary), in subsection (3), for “or overseas clearing house” substitute “, overseas clearing house or recognised central counterparty”.
- (14) In section 313(12) (interpretation of Part 18), in subsection (1)—
- (a) insert at the appropriate places—

““central counterparty” means a body corporate or unincorporated association which interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

“central counterparty recognition order” means a recognition order made under section 290(1)(b);

“clearing”, in relation to a central counterparty, means the process of establishing positions, including the calculation of net obligations and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions; and “clearing services”, in relation to a central counterparty, is to be read accordingly;

“the EMIR regulation” means Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories(13), and any reference to the requirements contained in that Regulation includes a reference to requirements contained in any directly applicable EU regulation made under its provisions;

“recognised central counterparty” has the meaning given in section 285;”;
 - (b) for the definition of “overseas clearing house” substitute—

““overseas clearing house” means a body corporate or association which is not a central counterparty and has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;”;
 - (c) omit the definitions of “central counterparty clearing services” and “UK clearing house”.
- (15) In section 417 (definitions), in subsection (1), in the definition of “exempt person”, for “section 285(2) or (3)” substitute “any of subsections (2) to (3C) of section 285”.
- (16) In Schedule 17A(14) (further provision in relation to the exercise of Part 18 functions by the Bank of England)—

(10) Section 297 was amended by [S.I. 2007/126](#) and [2012/916](#) and Schedule 8 to the Financial Services Act 2012.

(11) Section 300E inserted by section 2 of the Investment Exchanges and Clearing Houses Act 2006.

(12) The definitions in section 313(1) of “central counterparty clearing services” and “UK clearing house” were inserted by Schedule 8 to the Financial Services Act 2012.

(13) OJ No L 201, 27.7.2012, p1.

(14) Schedule 17A was inserted by Schedule 7 to the Financial Services Act 2012.

- (a) in paragraph 11(2)—
 - (i) at the end of paragraph (b) omit “and”;
 - (ii) at the end of paragraph (c), insert—
 - “; and
 - (d) information or documents reasonably required in connection with the exercise by the Bank of its functions under the EMIR regulation.”;
- (b) in paragraph 18(2), after “statutory provision” insert “or the EMIR regulation”;
- (c) in paragraph 19(2)(a), after “statutory provision” insert “or the EMIR regulation”;
- (d) at the end of paragraph 23 insert “or any of its functions under the EMIR regulation”;
- (e) in the heading of Part 3, for “UK clearing houses” substitute “recognised clearing houses”;
- (f) in paragraph 34, in each place, for “UK clearing house” substitute “recognised clearing house”;
- (g) in paragraph 35—
 - (i) in sub-paragraph (1) for “UK clearing house” substitute “recognised clearing house”;
 - (ii) in sub-paragraph (2)(c) omit “central counterparty”;
- (h) in paragraph 36—
 - (i) in sub-paragraph (1) after “recognised clearing houses” insert “, EEA central counterparties or third country central counterparties”;
 - (ii) at the end of sub-paragraph (2)(a) omit “and”;
 - (iii) at the end of sub-paragraph (2)(b) insert—
 - “, and
 - (c) its functions under or as a result of Part 7 of the Companies Act 1989.”.

Commencement Information

II Reg. 3 in force at 1.4.2013 in accordance with reg. 1(2)

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013, PART 2.