

2013 No. 655

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013

Made - - - - *13th March 2013*

Coming into force - - *2nd April 2013*

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000(a)) will become a regulated activity.

The Treasury, in exercise of the powers conferred by sections 22(1A)(b) and (5), and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000 make the following Order:

In accordance with paragraph 26 of Schedule 2 to that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1
GENERAL

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013 and comes into force on 2nd April 2013.

Interpretation

2. In this Order—

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

“the FCA” means the Financial Conduct Authority;

“the PRA” means the Prudential Regulation Authority; and

“the Principal Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c).

(a) 2000 c.8 as amended, most recently by the Financial Services Act 2012 (c. 21). Section 6 inserts sections 1G and 1H, section 11 inserts sections 55A, 55E, 55F, 55H, 55J, 55L and 55Z, section 24 inserts sections 138I and 139D and section 6 and Schedule 3 insert Schedule 1ZA.

(b) Section 22(1A) is inserted by section 7 of the Financial Services Act 2012.

(c) S.I. 2001/544 as amended by S.I. 2009/1389; there are other amending instruments but none are relevant.

PART 2
AMENDMENTS OF PRIMARY LEGISLATION

Amendments of the Financial Services and Markets Act 2000

- 3.**—(1) The Act is amended as follows.
- (2) In section 1G (meaning of “consumer”), in subsection (1)—
- (a) at the end of paragraph (c) omit “or”; and
 - (b) at the end of paragraph (d) insert—
“, or
 - (e) have rights, interests or obligations that are affected by the level of a regulated benchmark”.
- (3) In section 1H (further interpretative provisions for sections 1B to 1G), after subsection (7) insert—
“(7A) “Regulated benchmark” means a benchmark, as defined in section 22(6), in relation to which any provision made under section 22(1A)(b) has effect”.
- (4) In section 425A(a) (consumers: regulated activities etc carried on by authorised persons)—
- (a) at the end of subsection (2)(a), omit “or”;
 - (b) at the end of subsection (2)(b), after “services” insert—
“; or
 - (c) whose rights, interests or obligations are affected by the level of a regulated benchmark”; and
 - (c) in subsection (7), after the definition of “credit institution”, insert—
““regulated benchmark” means a benchmark, as defined in section 22(6), in relation to which any provision made under section 22(1A)(b) has effect.”.

PART 3
AMENDMENTS OF THE PRINCIPAL ORDER

Amendment of the Principal Order

- 4.** The Principal Order is amended as follows.

Specified benchmarks

- 5.** After article 63N(b) insert—

“CHAPTER 15E
SPECIFIED BENCHMARKS

(a) Inserted by sections 24(1) and (2) of and Schedule 2, Part 1, paragraphs 1 and 32 to the Financial Services Act 2010 (c. 28).
(b) Inserted by S.I. 2009/1389.

Specified benchmarks

- 63O.**—(1) The following are specified kinds of activity—
- (a) providing information in relation to a specified benchmark;
 - (b) administering a specified benchmark.
- (2) In this Chapter—
- (a) “providing information” in relation to a specified benchmark means providing any information or expression of opinion that is—
 - (i) provided to, or for the purpose of passing to, a person who has permission to carry on the activity specified in paragraph (1)(b) in relation to that specified benchmark;
 - (ii) required in connection with the determination of the specified benchmark; and
 - (iii) provided for the purpose of determining the specified benchmark;
 - (b) “administering” a specified benchmark means—
 - (i) administering the arrangements for determining a specified benchmark;
 - (ii) collecting, analysing or processing information or expressions of opinion provided for the purpose of determining a specified benchmark;
 - (iii) determining a specified benchmark through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose.

Publicly available factual data and subscription services

63P. A person does not carry on an activity of the kind specified by article 63O(1)(a) in relation to a specified benchmark where the information provided—

- (a) consists solely of factual data obtained from a publicly available source; or
- (b) is—
 - (i) compiled by a subscription service for purposes other than in connection with the determination of a specified benchmark;
 - (ii) provided to a person who has permission to carry on an activity of the kind specified by article 63O(1)(b) and who is a subscriber to the service; and
 - (iii) provided to such a person only in that person’s capacity as a subscriber.

Administration of a specified benchmark by the FCA

63Q.—(1) The FCA does not carry on the activity of the kind specified by article 63O(1)(b) in relation to a specified benchmark where the FCA administers the specified benchmark itself.

(2) Where a specified benchmark is administered by the FCA, the reference in article 63O(2)(a)(i) to a person who has permission to carry on the activity specified in 63O(1)(b) in relation to that specified benchmark is to be read as referring to the FCA.

Schedule

63R. Schedule 5 specifies benchmarks for the purposes of section 22(1A)(b) of the Act.”.

Schedule

6. After Schedule 4, insert—

SPECIFIED BENCHMARKS

The following benchmarks are specified:

1. The benchmarks that are known as the London Interbank Offered Rate, also known as LIBOR.”.

PART 4

TRANSITIONAL PROVISIONS

Transitional provisions

7.—(1) Paragraph (2) applies to a person (“A”) who, on the business day before 2nd April 2013—

- (a) had a Part 4 permission; and
- (b) provided, or was required to provide, any information or expression of opinion to the administrator of a benchmark, that was required by the administrator for the purpose of determining that benchmark where, if provided on 2nd April 2013, the information or expression of opinion would have been provided in relation to a specified benchmark.

(2) A is to be treated as having a Part 4A permission to carry on the activity of providing information in relation to a specified benchmark.

(3) A Part 4A permission that is given under this article is to be treated as being given by—

- (a) in the case of a PRA authorised person, the PRA; or
- (b) in the case of any other authorised firm, the FCA.

(4) For the purposes of this article, the administrator of a benchmark is a person who is—

- (a) administering the arrangements for determining the benchmark;
- (b) collecting, analysing or processing information or expressions of opinion provided by third parties for the purpose of determining the benchmark; or
- (c) determining the benchmark through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose.

Interim permission

8.—(1) Paragraph (2) applies to a person (“B”) who, immediately before 2nd April 2013 was carrying on any of the following activities in relation to a benchmark that, on 2nd April 2013 is a specified benchmark—

- (a) administering the arrangements for determining the benchmark;
- (b) collecting, analysing or processing information or expressions of opinion provided by third parties for the purpose of determining the benchmark;
- (c) determining the benchmark through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose.

(2) B is to be treated as having a Part 4A permission to carry on the activity of administering a specified benchmark.

(3) The Part 4A permission which B is to be treated as having is referred to in this Order as an “interim permission”.

(4) B’s interim permission lapses on the earliest of—

- (a) the date specified in a notice of cancellation of permission given under this article by the FCA;
- (b) the cancellation of the permission by the FCA under section 55H of the Act (variation by FCA at request of authorised person); or
- (c) the exercise by the FCA of its power under section 55J of the Act (variation or cancellation on initiative of regulator).

(5) A notice of cancellation of permission under paragraph (4)(a) may only be given by the FCA when, whether in relation to B or another person, a Part 4A permission is given or an existing Part 4A permission is varied so as to include permission to carry on the activity of administering a specified benchmark.

(6) A notice of cancellation of permission given to B under paragraph (4)(a) must be given—

- (a) in writing; and
- (b) at least 7 days in advance of the cancellation of the interim permission.

(7) For the purposes of paragraph (4)(a), section 55Z of the Act (cancellation of permission: procedure) does not apply.

Application of the FCA’s rules etc to persons with interim permission

9.—(1) The FCA may direct in writing that any relevant provision which would otherwise apply to a person by virtue of an interim permission is not to apply, or is to apply to that person as modified in the way specified in the direction.

(2) Where the FCA makes a rule, gives guidance or issues a statement or code which applies only to persons with an interim permission (or only to a class of such persons), sections 63D(a) (statement of policy: procedure), 65 (statements and codes: procedure) and 138I (consultation by the FCA) and subsection (3) of section 139A(b) (power of the FCA to give guidance) of the Act do not apply to that rule, guidance, statement or code.

(3) For the purposes of paragraph (1), a “relevant provision” is any provision made as a result of the exercise by the FCA of any of its legislative functions mentioned in paragraph 8(3) of Schedule 1ZA to the Act (the Financial Conduct Authority).

Application of the Act to persons with an interim permission

10.—(1) This article applies to every person with an interim permission.

(2) A person with an interim permission is to be treated as an authorised person for the purposes of the Act (and any provision made under the Act), unless otherwise expressly provided for by this article.

(3) For the purpose of section 20(c) (authorised persons acting without permission) of the Act, a person’s interim permission is treated as having been given to that person under Part 4A of the Act.

(4) For the purpose of section 55L(2) (imposition of requirements by FCA) of the Act, a person’s interim permission is treated as having been given to that person by the FCA.

(5) A person’s interim permission is to be disregarded for the purposes of—

- (a) section 38(2) (exemption orders) of the Act;
- (b) section 55A(3) (application for permission) of the Act;
- (c) section 55E (giving permission: the FCA) of the Act; and
- (d) section 55F (giving permission: the PRA) of the Act.

(a) Inserted by section 11 of the Financial Services Act 2010.

(b) Inserted by section 24 of the Financial Services Act 2012.

(c) as amended by paragraph 2 of Schedule 9 to the Financial Services Act 2012.

*Anne Milton
David Evennett*

Two of the Lords Commissioners of Her Majesty's Treasury

13th March 2013

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“the Principal Order”) so as to specify new regulated activities. The Principal Order specifies kinds of activities and investments for the purposes of the Financial Services and Markets Act 2000 (c.8) (“the Act”). The regulated activities which may be specified include activities relating to the setting of benchmarks (paragraphs 24E to 24H of Schedule 2 to the Act, inserted by section 7 of the Financial Services Act 2012 (c.21)). This Order specifies the activities of providing information in relation to and administering a specified benchmark.

Article 3 of the Order makes consequential amendments to sections 1G, 1H and 425A of the Act to adjust the definition of a consumer in order that the consumer protection objective applies with regard to the new regulated activities and so that those affected by the carrying on of the new regulated activities may benefit from the provisions in the Act to protect consumers.

Articles 4 to 6 of the Order insert a new article and a new schedule into the Principal Order to specify the new regulated activities and to set out the specified benchmarks.

Article 7 of the Order provides for a Part 4A permission to be deemed to be extended to those firms which immediately before commencement of this Order were already carrying on the activity of providing information to the administrator of a benchmark listed in Schedule 5 to the Principal Order that was required for the determination of that benchmark and who already had a Part 4 permission.

Article 8 provides for an interim permission to be granted to persons wishing to undertake administering, analysing or determining activities. This permission is granted automatically to those already undertaking these activities on commencement of this Order. An interim permission lapses either on a notice of cancellation given by the Financial Conduct Authority after an application for Part 4A permission to undertake these activities has been granted or, if earlier, on either cancellation of permission under section 55H of the Act or the exercise by the Financial Conduct Authority of its power to cancel permission under section 55J of the Act.

Article 9 enables the Financial Conduct Authority to modify amongst other things, its rules in their application to persons with an interim permission.

Article 10 sets out the application of the Act to persons with interim permission.

An impact assessment of the effect of this instrument on the costs of business and the voluntary sector has been prepared and is available from Her Majesty's Treasury, 1 Horse Guards Road, London, SW1A 2HQ, or on www.hm-treasury.gov.uk and is published with the Explanatory Memorandum alongside this Order on www.legislation.gov.uk.

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STATUTORY INSTRUMENTS

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