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# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 2 **U.K.**

#### AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

##### *Recognised investment exchanges and clearing houses*

VALID FROM 01/04/2013

#### **28 Exemption for recognised investment exchanges and clearing houses **U.K.****

- (1) Section 285 of FSMA 2000 (exemption from general prohibition for recognised investment exchanges and recognised clearing houses) is amended as follows.
- (2) In subsection (2), for paragraph (b) substitute—
  - “(b) which is carried on for the purposes of, or in connection with, the provision by the exchange of services designed to facilitate the provision of clearing services by another person.”
- (3) In subsection (3) for the words from “activity which” to the end substitute “activity—
  - (a) which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house, or
  - (b) which is carried on for the purposes of, or in connection with, the provision by the clearing house of services designed to facilitate the provision of clearing services by another person.”
- (4) After that subsection insert—
  - “(4) The Treasury may by order amend paragraph (b) of subsection (2) or (3).”

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## 29 Powers in relation to recognised investment exchanges and clearing houses **U.K.**

(1) After section 285 of FSMA 2000 insert—

### **“285A Powers exercisable in relation to recognised investment exchanges and clearing houses**

- (1) For the purposes of this Part, the FCA is “the appropriate regulator” in relation to recognised investment exchanges.
- (2) For the purposes of this Part, the Bank of England is “the appropriate regulator” in relation to recognised clearing houses.
- (3) In Schedule 17A—
  - (a) Part 1 makes provision for a memorandum of understanding between the appropriate regulators and the PRA with respect to the exercise of their functions in relation to recognised investment exchanges and clearing houses;
  - (b) Part 2 applies certain provisions of this Act in relation to the Bank of England in consequence of the conferring of functions on the Bank under this Part of this Act;
  - (c) Part 3 makes provision relating to the winding up, administration or insolvency of UK clearing houses; and
  - (d) Part 4 makes provision about fees.”

(2) After Schedule 17 of FSMA 2000 insert the Schedule 17A set out in Schedule 7 to this Act.

#### **Commencement Information**

- I1** [S. 29](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#)  
**I2** [S. 29](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#)

## 30 Recognition requirements: power of FCA and Bank to make rules **U.K.**

In section 286 of FSMA 2000 (qualification for recognition), after subsection (4E) insert—

“(4F) Regulations under subsection (1) may confer power on the appropriate regulator to make rules for the purposes of the regulations or of any specified provision made by the regulations.”

#### **Commencement Information**

- I3** [S. 30](#) in force at 24.1.2013 for specified purposes by [S.I. 2013/113](#), [art. 2\(1\)\(b\)](#), [Sch. Pt. 2](#)

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VALID FROM 01/04/2013

### 31 Additional power to direct UK clearing houses **U.K.**

After section 296 of FSMA 2000 insert—

#### “296A Additional power to direct UK clearing houses

- (1) The Bank of England may direct a UK clearing house to take, or refrain from taking, specified action if the Bank is satisfied that it is necessary to give the direction, having regard to the public interest in—
  - (a) protecting and enhancing the stability of the UK financial system,
  - (b) maintaining public confidence in the stability of the UK financial system,
  - (c) maintaining the continuity of the central counterparty clearing services provided by the clearing house, and
  - (d) maintaining and enhancing the financial resilience of the clearing house.
- (2) The direction may, in particular—
  - (a) specify the time for compliance with the direction,
  - (b) require the rules of the clearing house to be amended, and
  - (c) override such rules (whether generally or in their application to a particular case).
- (3) The direction may not require the clearing house—
  - (a) to take any steps for the purpose of securing its compliance with—
    - (i) the recognition requirements, or
    - (ii) any obligation of a kind mentioned in section 296(1)(b) or (1A), or
  - (b) to accept a transfer of property, rights or liabilities of another clearing house.
- (4) If the direction is given in reliance on section 298(7) the Bank must, within a reasonable time of giving the direction, give the clearing house a statement of its reasons—
  - (a) for giving the direction, and
  - (b) for relying on section 298(7).
- (5) The direction is enforceable, on the application of the Bank, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (6) The Bank may revoke a direction given under this section.”

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VALID FROM 01/04/2013

### 32 **Recognised bodies: procedure for giving directions under s.296 etc** **U.K.**

- (1) Section 298 of FSMA 2000 (directions under section 296 and revocation orders under section 297(2) or (2A): procedure) is amended as follows.
- (2) In subsection (1), omit paragraphs (b) and (c) (requirements to bring notice to attention of members of the body and other persons).
- (3) In subsection (3), omit paragraphs (b) and (c) (members of the body and other persons may make representations).
- (4) For subsection (4) substitute—
  - “(4) The period for making representations is such period as is specified in the notice (which may, in any particular case, be extended by the appropriate regulator).”
- (5) In subsection (6), omit paragraph (b) (notice of decision to members of the body and others) and the “and” before it.
- (6) In subsection (7), for “considers it essential” substitute “ reasonably considers it necessary ”.

### 33 **Power to take disciplinary measures against recognised bodies** **U.K.**

After section 312D of FSMA 2000 insert—

#### **“CHAPTER 3B** **U.K.**

#### DISCIPLINARY MEASURES

#### **312E Public censure**

- (1) If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may publish a statement to that effect.
- (2) Where the FCA is the appropriate regulator, a requirement is a “relevant requirement” for the purposes of this Chapter if it is—
  - (a) a requirement that is imposed by or under any provision of this Part that relates to a recognised investment exchange,
  - (b) a requirement that is imposed under any other provision of this Act by the FCA that relates to a recognised investment exchange,
  - (c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or
  - (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the FCA has power to prosecute under this Act (see section 401).

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- (3) Where the Bank of England is the appropriate regulator, a requirement is a “relevant requirement” for the purposes of this Chapter if it is—
- (a) a requirement that is imposed by or under any provision of this Part that relates to a recognised clearing house,
  - (b) a requirement that is imposed under any other provision of this Act by the Bank,
  - (c) a requirement that is imposed by a qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order, or
  - (d) a requirement that is imposed by this Act and whose contravention constitutes an offence that the Bank has power to prosecute under this Act (see section 401, as applied by paragraph 31 of Schedule 17A).

### **312F Financial penalties**

If the appropriate regulator considers that a recognised body has contravened a relevant requirement imposed on the body, it may impose on the body a penalty, in respect of the contravention, of such amount as it considers appropriate.

### **312G Proposal to take disciplinary measures**

- (1) If the appropriate regulator proposes—
  - (a) to publish a statement in respect of a recognised body under section 312E, or
  - (b) to impose a penalty on a recognised body under section 312F,it must give the body a warning notice.
- (2) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (3) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

### **312H Decision notice**

- (1) If the appropriate regulator decides—
  - (a) to publish a statement in respect of a recognised body under section 312E (whether or not in the terms proposed), or
  - (b) to impose a penalty on a recognised body under section 312F (whether or not of the amount proposed),it must give the body a decision notice.
- (2) In the case of a statement, the decision notice must set out the terms of the statement.
- (3) In the case of a penalty, the decision notice must state the amount of the penalty.
- (4) If the appropriate regulator decides—
  - (a) to publish a statement in respect of a recognised body under section 312E, or
  - (b) to impose a penalty on a recognised body under section 312F,

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the body may refer the matter to the Tribunal.

### **312I Publication**

After an appropriate regulator publishes a statement under section 312E, it must send a copy of the statement to—

- (a) the recognised body concerned, and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

### **312J Statement of policy**

- (1) Each appropriate regulator must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 312F, and
  - (b) the amount of penalties under that section.
- (2) An appropriate regulator's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned, and
  - (b) the extent to which that contravention was deliberate or reckless.
- (3) An appropriate regulator may at any time alter or replace a statement issued by it under this section.
- (4) If a statement issued by an appropriate regulator under this section is altered or replaced, the regulator must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 312F in the case of any particular contravention, an appropriate regulator must have regard to any statement of policy published by it under this section and in force at a time when the contravention in question occurred.
- (6) A statement issued by an appropriate regulator under this section must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (7) An appropriate regulator may charge a reasonable fee for providing a person with a copy of the statement.
- (8) An appropriate regulator must, without delay, give the Treasury a copy of any statement which it publishes under this section.

### **312K Statement of policy: procedure**

- (1) Before issuing a statement under section 312J, an appropriate regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the regulator within a specified time.

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- (3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with subsection (2).
- (4) If the regulator issues the proposed statement it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with subsection (4)) publish details of the difference.
- (6) An appropriate regulator may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.”

#### Commencement Information

- I4** S. 33 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2  
**I5** S. 33 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3

VALID FROM 01/04/2013

#### 34 Repeal of special competition regime **U.K.**

In Part 18 of FSMA 2000 (recognised investment exchanges and clearing houses)

- (a) omit Chapter 2 (competition scrutiny), and
- (b) omit Chapter 3 (exclusion from the Competition Act 1998).

#### 35 Sections 28 to 34: minor and consequential amendments **U.K.**

Schedule 8 contains—

- (a) minor amendments of FSMA 2000 in connection with provision made by sections 28 to 34, and
- (b) other amendments of that Act in consequence of that provision.

#### Commencement Information

- I6** S. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3  
**I7** S. 35 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), Sch. Pt. 2

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