



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### [<sup>F1</sup>PART 9A

#### RULES AND GUIDANCE

### CHAPTER 2

#### RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

##### *Modification or waiver of rules*

#### [<sup>F1</sup>138A Modification or waiver of rules

- (1) Either regulator may, on the application or with the consent of a person who is subject to rules made by that regulator, direct that all or any of those rules—
  - (a) are not to apply to that person, or
  - (b) are to apply to that person with such modifications as may be specified in the direction.
- (2) Subsection (1) does not apply to—
  - [<sup>F2</sup>(za) rules made by either regulator under section 64A (rules of conduct);]
  - (a) rules made by either regulator under section 137O (threshold condition code);
  - (b) rules made by the FCA under section 247 (trust scheme rules) [<sup>F3</sup>, section 248 (scheme particulars rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules)].
- (3) An application must be made in such manner as the regulator may direct.
- (4) A regulator may not give a direction unless it is satisfied that—
  - (a) compliance by the person with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made, and

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- (b) the direction would not adversely affect the advancement of any of the regulator's objectives.
- (5) In subsection (4)(b) “objectives”, in relation to the FCA, means operational objectives.
- (6) A direction may be given subject to conditions.
- (7) The regulator may—
- (a) revoke a direction, or
  - (b) vary it on the application, or with the consent, of the person to whom it relates.
- (8) “Direction” means a direction under this section.]

#### Textual Amendments

- F1** Pt. 9A substituted for ss. 138-164 (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), ss. 24\(1\), 122\(3\) \(with Sch. 20\); S.I. 2013/113, art. 2\(1\)\(c\), Sch. Pt. 3; S.I. 2013/423, art. 3, Sch.](#)
- F2** S. 138A(2)(za) inserted (25.7.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 3 para. 8; S.I. 2014/1819, art. 2\(4\)\(b\)](#)
- F3** Words in s. 138A(2)(b) substituted (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\), regs. 1, 3\(4\) \(with reg. 24\)](#)

#### Modifications etc. (not altering text)

- C1** S. 138A applied by S.I. 2008/2674, art. 29(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 149\(b\)\(aa\)\(ii\)](#)
- C2** S. 138A modified by S.I. 2002/1775, reg. 3(2)(a) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 77\(4\)\(b\)](#)
- C3** S. 138A applied by S.I. 2009/3226, art. 20(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 182\(a\)\(aa\)\(ii\)](#)
- C4** S. 138A applied (with modifications) by S.I. 2008/432, art. 15(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 136\(d\)\(aa\)\(ii\)](#)
- C5** S. 138A applied by S.I. 2008/2644, art. 27(2) (as substituted) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 147\(b\)\(aa\)\(ii\)](#)
- C6** S. 138A applied by S.I. 2008/2666, art. 18(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 148\(b\)\(aa\)\(ii\)](#)
- C7** S. 138A applied by S.I. 2008/2546, art. 37(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 146\(c\)\(aa\)\(ii\)](#)
- C8** S. 138A(1) modified by S.I. 2009/814, art. 9(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 167\(b\)\(ii\)](#)
- C9** S. 138A(1)(6)(7) excluded by S.I. 2006/3221, reg. 8(2) (as amended) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 118\(h\)\(iii\) \(with Sch. 2 para. 119\)](#)

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- C10** Ss. 138A(3)-(7) modified by S.I. 2001/1228, reg. 7(3)(4) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 41(4)**
- C11** Ss. 138A(3)-(7) applied (with modifications) by S.R. 2004/335, reg. 7(3)(4) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 87(4)**
- C12** S. 138A(4) restricted by S.I. 2009/3226, art. 20(3) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 182(a)(aa)(iii)**
- C13** S. 138A(4) restricted by S.I. 2008/432, art. 15(3) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 136(d)(aa)(iii)**
- C14** S. 138A(4) restricted by S.I. 2008/2666, art. 18(3) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 148(b)(aa)(iii)**
- C15** S. 138A(4) restricted by S.I. 2008/2546, art. 37(3) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 146(c)(aa)(iii)**
- C16** S. 138A(4) excluded by S.I. 2006/3221, reg. 8(2) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 118(h)(iii)** (with Sch. 2 para. 119)
- C17** S. 138A(4) restricted by S.I. 2008/2644, art. 27(3) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 147(b)(aa)(ii)**
- C18** S. 138A(4) modified by S.I. 2009/814, art. 9(3)-(5) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 167(b)(iii)(iv)**
- C19** S. 138A(4) restricted by S.I. 2008/2674, art. 29(3) (as amended) (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 149(b)(aa)(iii)**

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