



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 9A

RULES AND GUIDANCE

CHAPTER 2

RULES: MODIFICATION, WAIVER, CONTRAVENTION AND PROCEDURAL PROVISIONS

Modification or waiver of rules

[^{F1}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—
 - [^{F2}(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) [^{F3}, 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** Pt. 9A Ch. 2 applied (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **209(6)** (with reg. 209(7)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- C2** Pt. 9A Ch. 2 applied (31.12.2020) by [The Financial Services and Markets Act 2000 \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/632\)](#), regs. 1(3), **208(7)** (with reg. 208(8)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- C3** Pt. 9A applied (with modifications) (31.12.2020) by [The Transparency of Securities Financing Transactions and of Reuse \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/542\)](#), regs. 1, **35** (as amended by S.I. 2020/1385, regs. 1(4), **56(7)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- C4** Pt. 9A applied (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), 4, **Sch. 3** (as amended by S.I. 2020/1301, regs. 1, 3, [Sch. para. 27\(a\)](#) and S.I. 2020/1385, regs. 1(2), 54(2))
- C5** Pt. 9A applied (with modifications) (31.12.2020) by [The Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/335\)](#), regs. 1(1), **74** (as amended by S.I. 2020/1385, regs. 1(4), **52(7)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- C6** 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)**
- C7** 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)**
- C8** 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)**
- C9** 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)**

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- C10** 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)**)
- C11** 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)**)
- C12** 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)**)
- C13** S. 138A applied (with modifications) by 2013 c. 13, **Sch. 4 para. 9A(5)(6)** (as inserted (26.10.2018) by The Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), **regs. 1(2), 10(5)(c)**)
- C14** S. 138A applied (31.12.2020) by The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/266), **regs. 1(3), 4(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- C15** 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)**)
- C16** 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)
- C17** 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)**)
- C18** 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)**)
- C19** 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)**)
- C20** 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)**)
- C21** 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)**)
- C22** 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)**)
- C23** 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)
- C24** 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)**)
- C25** 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)**)
- C26** 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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