



# Financial Services and Markets Act 2023

## 2023 CHAPTER 29

### PART 1

#### REGULATORY FRAMEWORK

### CHAPTER 2

#### NEW REGULATORY POWERS

##### *Financial market infrastructure: general rules and requirements*

## **9 Rules relating to central counterparties and central securities depositories**

- (1) FSMA 2000 is amended as follows.
- (2) After section 300E (power to disallow excessive regulatory provision: supplementary) insert—

##### *“General rule-making powers*

### **300F Rules relating to central counterparties and central securities depositories**

- (1) The Bank of England may make such rules applying to FMI entities—
  - (a) with respect to the carrying on by them of relevant regulated activities, or
  - (b) with respect to the carrying on by them of an activity which is not a relevant regulated activity,as appear to the Bank to be necessary or expedient for the purpose of advancing its Financial Stability Objective.
- (2) Each of the following is an “FMI entity” for the purposes of this section—

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- (a) a recognised central counterparty;
  - (b) a recognised CSD;
  - (c) a third country central counterparty;
  - (d) a third country CSD.
- (3) The power to make rules under subsection (1), so far as applying to a third country central counterparty or a third country CSD, is subject to section 300G.
- (4) In this section “relevant regulated activity”—
- (a) in relation to a recognised central counterparty, means a regulated activity described in section 285(3A);
  - (b) in relation to a recognised CSD, means a regulated activity described in section 285(3D);
  - (c) in relation to a third country central counterparty, means a regulated activity described in section 285(3C);
  - (d) in relation to a third country CSD, means a regulated activity described in section 285(3G).
- (5) Rules under this section may include—
- (a) provision applying to an FMI entity even though there is no relationship between the entity to which the rules will apply and the persons whose interests will be protected by the rules;
  - (b) requirements which take into account, in the case of an FMI entity which is a member of a group, any activity of another member of the group.

### **300G Section 300F: rules in relation to overseas FMI entities**

- (1) The power to make rules under section 300F, so far as applying to an FMI entity of the kind mentioned in subsection (2)(c) or (d) of that section (an “overseas FMI entity”), is exercisable—
- (a) only by the application of corresponding rules, and
  - (b) except in the case of systemic third country CCPs (see subsection (6)), only so far as authorised by regulations made by the Treasury.
- (2) The reference in subsection (1)(a) to “corresponding rules” is—
- (a) in relation to rules that would apply to a third country central counterparty, rules under section 300F that apply to a recognised central counterparty;
  - (b) in relation to rules that would apply to a third country CSD, rules under section 300F that apply to a recognised CSD.
- (3) Rules may be applied in accordance with subsection (1)(a)—
- (a) by applying all corresponding rules or only such corresponding rules as the Bank considers appropriate;
  - (b) with such modifications as the Bank considers appropriate for the purpose of ensuring the effectiveness of the rules in their application to the overseas FMI entities concerned (having regard in particular to the establishment of such entities in countries other than the United Kingdom).

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- (4) Regulations under subsection (1)(b) may authorise the making of rules generally in respect of overseas FMI entities or only in respect of overseas FMI entities which—
    - (a) are specified or described in the regulations, or
    - (b) satisfy conditions specified in the regulations.
  - (5) Regulations under subsection (1)(b) may—
    - (a) provide for the power to make rules under section 300F, so far as applying to an overseas FMI entity, to be subject to such limitations or conditions as may be specified in the regulations;
    - (b) make provision by reference to matters to be determined by the Bank;
    - (c) provide for exemptions.
  - (6) The restriction imposed by subsection (1)(b) does not apply in the case of systemic third country CCPs (and accordingly references to overseas FMI entities in subsections (4) and (5) do not include references to systemic third country CCPs).
  - (7) A “systemic third country CCP” means any third country central counterparty that the Bank has determined is systemically important, or is likely to become systemically important, to the financial stability of the United Kingdom.
  - (8) The Bank must publish notice of any determination made under subsection (7).
  - (9) A determination under subsection (7) must be made in accordance with such criteria of general application as are set out in regulations made by the Treasury for the purposes of this section.
  - (10) In making a determination under subsection (7) the Bank must also have regard to any statement of policy prepared and published by the Bank for the purposes of providing further specification of the criteria of general application mentioned in subsection (9).
  - (11) The Bank—
    - (a) may alter or replace a statement of policy prepared for the purposes of this section;
    - (b) must publish a statement as altered or replaced.
  - (12) Publication under this section is to be made in such manner as the Bank considers best designed to bring the publication to the attention of the public.
  - (13) The Treasury must consult the Bank before making regulations under subsection (9).
  - (14) The Treasury may by regulations provide for other provisions of this Act to apply in relation to third country central counterparties, or third country CSDs, to which rules under section 300F apply, with such modifications as may be specified in the regulations.”
- (3) In section 165 (regulators’ power to require information: authorised persons etc) omit subsection (8A).
- (4) In section 165A (PRA’s power to require information: financial stability) omit subsection (7A).

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- (5) In section 293 (notification requirements)—
- (a) in subsection (7A) at the end insert “and a third country central counterparty”;
  - (b) in subsection (8) for “or an overseas clearing house” substitute “, an overseas clearing house or a third country central counterparty”.
- (6) In section 417(1) (definitions), at the appropriate place insert—
- ““Financial Stability Objective” means the objective set out in section 2A of the Bank of England Act 1998;”.

#### Commencement Information

- I1** S. 9 not in force at Royal Assent, see **s. 86(3)**
- I2** S. 9(1)-(5) in force at 1.1.2024 at 1.00 a.m. by S.I. 2023/1382, **reg. 10(a)**
- I3** S. 9(6) in force at 29.8.2023 by S.I. 2023/779, **reg. 4(f)**

## 10 Central counterparties and central securities depositories: other requirements

In Schedule 17A to FSMA 2000 (further provision in relation to exercise of Part 18 functions by Bank of England), before paragraph 10 (and the heading before it) insert—

### “Requirements

- 9B (1) The powers conferred by section 55L(3) (FCA own-initiative power to impose requirements on authorised persons) are exercisable by the Bank to impose requirements on a relevant FMI entity.
- (2) In this paragraph “relevant FMI entity” means—
- (a) a recognised central counterparty,
  - (b) a recognised CSD, or
  - (c) a systemic third country CCP as defined by section 300G(7).
- (3) The power under sub-paragraph (1) is exercisable only if it appears to the Bank that either (or both) of the following conditions is met.
- (4) The first condition is that it is desirable to exercise the power in order to advance the Financial Stability Objective.
- (5) The second condition is that the relevant FMI entity—
- (a) has failed, or is likely to fail, to satisfy the recognition requirements, or
  - (b) has failed to comply with any other obligation imposed on it by or under this Act.
- (6) The power conferred by sub-paragraph (1) may not be exercised so as to restrict or prohibit discretionary payments to employees or shareholders of a recognised central counterparty (and for this purpose “discretionary payment” has the meaning given by paragraph 13(11) of Schedule 11 to the Financial Services and Markets Act 2023 and “employee” has the meaning given by paragraph 154 of that Schedule).

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- (7) The powers conferred by section 55L(5) (FCA power to impose requirements on application of authorised persons with Part 4A permission) are exercisable by the Bank to impose requirements on a relevant FMI entity on the application of that entity.
- (8) A power conferred by this paragraph is exercisable whether or not there is a relationship between the entity in relation to which it is exercised and the persons whose interests will be protected by its exercise.
- (9) The following provisions apply in relation to requirements imposed by the Bank under this paragraph as they apply in relation to requirements imposed by the FCA under section 55L, with the modifications in sub-paragraph (10)—
- (a) section 55L(6) (power to refuse application to impose etc requirements);
  - (b) section 55N (further provision in relation to requirements);
  - (c) section 55P (prohibitions and restrictions);
  - (d) section 55Q (exercise of power in support of overseas regulator);
  - (e) section 55R(1) (persons connected with applicant);
  - (f) section 55U(3) to (8) (applications for requirement to be imposed etc);
  - (g) section 55V(1) to (6) (determination of applications);
  - (h) section 55X(2) and (4)(f) (warning and decision notices on refusal of applications);
  - (i) section 55Y (exercise of own-initiative power: procedure);
  - (j) section 55Z3(1) and (2) (right to refer matters to the Tribunal).
- (10) The modifications are—
- (a) any reference to the FCA is to be read as a reference to the Bank;
  - (b) any references to own-initiative powers are to be read as references to the power conferred by sub-paragraph (1);
  - (c) any references to an authorised person are to be read as references to relevant FMI entities;
  - (d) in section 55L(6), the reference to the FCA’s operational objectives is to be read as a reference to the Bank’s Financial Stability Objective;
  - (e) section 55N has effect as if the reference to regulated activities in subsection (2) were a reference to activities in respect of which a recognition order is in force.”

#### Commencement Information

**I4** S. 10 not in force at Royal Assent, see [s. 86\(3\)](#)

**I5** S. 10 in force at 1.1.2024 at 1.00 a.m. by [S.I. 2023/1382](#), [reg. 10\(b\)](#)

## 11 Rules relating to investment exchanges and data reporting service providers

- (1) FSMA 2000 is amended as follows.

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- (2) After section 300G (section 300F: rules in relation to overseas FMI entities) (inserted by section 9) insert—

**“300H Rules relating to investment exchanges and data reporting service providers**

- (1) The FCA may make such rules applying to recognised UK investment exchanges or data reporting service providers—
- (a) with respect to the carrying on by them of relevant activities, or
  - (b) with respect to the carrying on by them of an activity which is not a relevant activity,
- as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives.
- (2) In this section “relevant activity”—
- (a) in relation to a recognised UK investment exchange, means a regulated activity described in section 285(2);
  - (b) in relation to a data reporting service provider, means providing a data reporting service.
- (3) Rules under this section may include—
- (a) provision applying to a recognised UK investment exchange or data reporting service provider even though there is no relationship between that person and the persons whose interests will be protected by the rules;
  - (b) requirements which take into account, in the case of a recognised UK investment exchange or data reporting service provider which is a member of a group, any activity of another member of the group.
- (4) Rules under this section may not modify, amend or revoke any retained direct EU legislation (except retained direct EU legislation which takes the form of FCA rules).
- (5) In this section—
- “data reporting service” and “data reporting service provider” have the meanings given by regulation 2 of the Data Reporting Services Regulations 2017 (S.I. 2017/699);
- “recognised UK investment exchange” means a recognised investment exchange that is not an overseas investment exchange as defined in section 313(1).”
- (3) In section 166A (appointment of skilled person to collect and update information), after subsection (9) insert—
- “(9A) The powers conferred by this section may also be exercised by the FCA in relation to a recognised investment exchange (and references to an authorised person are to be read accordingly).”
- (4) In section 168 (appointment of persons to carry out investigations in particular cases), in subsection (4)(ca), at the end insert “or a rule made by the FCA under section 300H”.
- (5) In section 312E (public censure)—
- (a) in subsection (1)—

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- (i) after “recognised body” insert “or data reporting service provider”;
  - (ii) after “the body” insert “or provider”;
- (b) in subsection (2)(a) after “exchange” insert “or data reporting service provider”;
- (c) after subsection (3) insert—
  - “(4) In this Chapter “data reporting service provider” has the meaning given by regulation 2 of the Data Reporting Services Regulations 2017 (S.I. 2017/699).”
- (6) In section 312F (financial penalties), in subsection (1)—
  - (a) after “recognised body” insert “or data reporting service provider”;
  - (b) after “the body”, in both places, insert “or provider”.
- (7) In section 312G (proposal to take disciplinary measures), in subsection (1)—
  - (a) in paragraph (a), after “recognised body” insert “or data reporting service provider”;
  - (b) in the words after paragraph (b), after “body” insert “, provider”.
- (8) In section 312H (decision notice)—
  - (a) in subsection (1)—
    - (i) in paragraph (a), after “recognised body” insert “or data reporting service provider”;
    - (ii) in the words after paragraph (b), after “body” insert “, provider”;
  - (b) in subsection (4)—
    - (i) in paragraph (a), after “recognised body” insert “or data reporting service provider”;
    - (ii) in the words after paragraph (b), after “body” insert “, provider”.
- (9) In section 312I(a) (publication), after “recognised body” insert “, data reporting service provider”.

#### Commencement Information

- I6** S. 11 not in force at Royal Assent, see **s. 86(3)**
- I7** S. 11 in force at 29.8.2023 by **S.I. 2023/779, reg. 4(g)**

## 12 Treasury directions to Bank of England: restrictions

- (1) Section 4 of the Bank of England Act 1946 (Treasury directions to the Bank) is amended as follows.
- (2) In subsection (1), after paragraph (b) insert—
  - “(c) the exercise by the Bank of its functions under any enactment in relation to the following bodies—
    - (i) recognised central counterparties;
    - (ii) recognised CSDs;
    - (iii) third country central counterparties;
    - (iv) third country CSDs.”
- (3) After subsection (1) insert—

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“(2A) Expressions used in subsection (1)(c) have the same meaning as in section 285 of the Financial Services and Markets Act 2000 (exemption for recognised bodies etc).”

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**Commencement Information**

**18** S. 12 not in force at Royal Assent, see [s. 86\(3\)](#)

**19** [S. 12](#) in force at 1.1.2024 at 1.00 a.m. by [S.I. 2023/1382](#), [reg. 10\(c\)](#)



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