



# 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;”.

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**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)**

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