

2010 No. 1193

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010

Made - - - - - *7th April 2010*

Coming into force - - - - - *9th April 2010*

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to investment firms and to the provision of investment services and to the operation of regulated markets and clearing or settlement systems and in relation to credit and financial institutions;

A draft of this instrument has been laid before Parliament in accordance with paragraph 2(2) of Schedule 2 to that Act and approved by a resolution of each House of Parliament;

The Treasury make these Regulations in exercise of the powers conferred on them by section 2(2) of that Act:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 and come into force on 9th April 2010.

(2) In these Regulations “the Act” means the Financial Services and Markets Act 2000(c).

Amendment of section 313A

2.—(1) Section 313A of the Act (Authority’s power to require suspension or removal of financial instruments from trading) is amended as follows.

(2) In subsection (1), after “an institution” insert “or a class of institutions”.

(3) For subsection (2), substitute—

“(2) If the Authority exercises the power conferred by subsection (1), the matter may be referred to the Tribunal by—

(a) the institution or, as the case may be, any institution in the class, or

(a) S.I. 1993/2661 and 2001/3495.

(b) 1972 c.68; by virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p. 572). For the decision of the EEA Joint Committee in relation to Directive 2004/39/EC, see Decision No 65/2005 of 29th April 2005 (OJ No L 239, 15.9.2005, p.50).

(c) 2000 c.8. Part 18A of the Act was inserted by regulation 3(3) of, and Schedule 3 to, S.I. 2007/126.

- (b) the issuer of the financial instrument (if any).”.

Amendment of section 313B

3.—(1) Section 313B of the Act (suspension or removal of financial instruments from trading: procedure) is amended as follows.

(2) In subsection (2)—

- (a) after “an institution,” insert “or a class of institutions,”;
- (b) for “give written notice” to the end of the subsection, substitute—
“give notice—
 - (a) by written notice to—
 - (i) the institution or, as the case may be, each institution in the class, and
 - (ii) the issuer of the financial instrument in question (if any); or
 - (b) by publishing a notice by means of a regulatory information service.”.

(3) In subsection (3), for “The notice” substitute “A notice given under subsection (2)(a)”.

(4) After subsection (3), insert—

“(3A) A notice published under subsection (2)(b) must—

- (a) give details of the relevant requirement;
- (b) specify the institution, or the class of institutions, to which it applies;
- (c) state the Authority’s reasons for imposing the requirement and choosing the date on which it took effect or takes effect;
- (d) state that any institution to which the requirement applies or the issuer of the financial instrument in question may make representations to the Authority within such period as may be specified by the notice (whether or not the institution or the issuer has referred the matter to the Tribunal);
- (e) state the date on which the requirement took effect or takes effect; and
- (f) state that any institution to which the requirement applies or the issuer of the financial instrument in question has a right to refer the matter to the Tribunal, and give an indication of the procedure on such a reference.”.

(5) Omit subsections (5) to (12).

Suspension or removal of financial instruments from trading: further procedure

4. After section 313B of the Act (suspension or removal of financial instruments from trading: procedure) insert—

“Procedure following consideration of representations

313BA.—(1) This section applies where, within the period specified under section 313B(3), (3A) or (4), representations are made to the Authority in relation to a requirement that it has proposed to impose or has imposed under section 313A.

(2) The Authority must decide whether to impose the requirement or (in the case of a requirement that has been imposed) whether to revoke it.

(3) In the case of a requirement that the Authority has proposed to impose on a class of institutions, the Authority may decide to impose the requirement—

- (a) on the class;
- (b) on the class apart from one or more specified members of it; or
- (c) only on one or more specified members of the class.

(4) In the case of a requirement that the Authority has imposed on a class of institutions, the Authority may decide to revoke it in relation to—

- (a) the class;
- (b) the class apart from one or more specified members of it; or
- (c) one or more specified members of the class only.

(5) The Authority must give written notice of its decision to—

- (a) any institution which has made representations, and
- (b) the issuer of the financial instrument in question (if any).

(6) In the case of a requirement that the Authority has proposed to impose or has imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service unless the decision is—

- (a) to impose the requirement on the class, or
- (b) not to revoke the requirement in relation to the class or any member of it.

(7) An institution to which notice is required to be given under subsection (5) may refer the matter to the Tribunal if the Authority's decision is that the requirement will be imposed on, or will continue to apply to, the institution.

(8) An issuer to whom notice is required to be given under subsection (5) may refer the matter to the Tribunal if the Authority's decision is that the requirement will be imposed on, or will continue to apply to, the institution or (in the case of a requirement relating to a class) any of the institutions in the class.

(9) A notice given under subsection (5) must inform the recipient if the recipient has a right to refer the matter to the Tribunal.

Revocation of requirements: applications by institutions

313BB.—(1) This section applies where the Authority has imposed a requirement on an institution or a class of institutions under section 313A.

(2) The institution or any of the institutions in the class may apply to the Authority for the revocation of the requirement.

(3) The Authority must decide whether to revoke the requirement.

(4) In the case of a requirement imposed on a class of institutions, the Authority may decide to revoke it in relation to—

- (a) the class;
- (b) the class apart from one or more specified members of it; or
- (c) one or more specified members of the class only.

(5) The Authority must give a warning notice if—

- (a) in the case of a requirement imposed on an institution, the Authority proposes not to revoke the requirement, or
- (b) in the case of a requirement imposed on a class, the Authority proposes to make a decision which would have the effect that the requirement continues to apply to the applicant (whether or not it would have the effect that it continues to apply to other members of the class).

(6) The warning notice must be given to—

- (a) the applicant, and
- (b) the issuer of the financial instrument in question (if any).

Decisions on applications for revocation by institutions

313BC.—(1) This section applies where, having considered any representations made in response to a warning notice, the Authority has decided whether to grant an application for revocation made under section 313BB.

- (2) The Authority must give written notice in accordance with subsection (3) if—
- (a) in the case of a requirement imposed on an institution, the Authority decides to revoke the requirement, or
 - (b) in the case of a requirement imposed on a class, the Authority makes a decision which has the effect that the requirement will no longer apply to the applicant (whether or not it will continue to apply to other members of the class).
- (3) The written notice must be given to—
- (a) the applicant, and
 - (b) the issuer of the financial instrument in question (if any).

(4) If the Authority is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service.

- (5) The Authority must give a decision notice in accordance with subsection (6) if—
- (a) in the case of a requirement imposed on an institution, the Authority decides not to revoke the requirement, or
 - (b) in the case of a requirement imposed on a class, the Authority makes a decision which has the effect that the requirement will continue to apply to the applicant (whether or not it will continue to apply to other members of the class).
- (6) The decision notice must be given to—
- (a) the applicant, and
 - (b) the issuer of the financial instrument in question (if any).

(7) If the Authority is required to give a decision notice in relation to a requirement imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service.

(8) If the Authority gives a decision notice, the recipient may refer the matter to the Tribunal.

Revocation of requirements: applications by issuers

313BD.—(1) This section applies where the Authority has imposed a requirement on an institution or a class of institutions under section 313A.

(2) The issuer of the financial instrument may apply to the Authority for the revocation of the requirement.

(3) The Authority must decide whether to revoke the requirement.

(4) In the case of a requirement imposed on a class of institutions, the Authority may decide to revoke it in relation to—

- (a) the class;
- (b) the class apart from one or more specified members of it; or
- (c) one or more specified members of the class only.

(5) The Authority must give the issuer a warning notice if—

- (a) in the case of a requirement imposed on an institution, the Authority proposes not to revoke the requirement, or
- (b) in the case of a requirement imposed on a class, the Authority proposes not to revoke the requirement or to revoke it in relation to—

- (i) the class apart from one or more specified members of it, or
- (ii) one or more specified members of the class only.

Decisions on applications for revocation by issuers

313BE.—(1) This section applies where, having considered any representations made in response to a warning notice, the Authority has decided whether to grant an application for revocation made under section 313BD.

(2) The Authority must give written notice to the issuer if the Authority decides to revoke the requirement.

(3) If the Authority is required to give written notice under subsection (2) in relation to a requirement imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service.

(4) The Authority must give the issuer a decision notice if—

- (a) in the case of a requirement imposed on an institution, the Authority decides not to revoke the requirement, or
- (b) in the case of a requirement imposed on a class, the Authority decides not to revoke the requirement or makes a decision to revoke the requirement in relation to—
 - (i) the class apart from one or more specified members of it, or
 - (ii) one or more specified members of the class only.

(5) If the Authority is required to give a decision notice under subsection (4)(b), it must also give notice of its decision by publishing it by means of a regulatory information service.

(6) If the Authority gives a decision notice under subsection (4), the issuer may refer the matter to the Tribunal.”.

Amendment of section 313C

5. In section 313C of the Act (notification in relation to suspension or removal of a financial instrument from trading), in subsection (1)(a), after “appropriate”, insert “unless the decision has already been published under section 313B(2)(b)”.

Amendment of section 313D

6. In section 313D of the Act (interpretation of Part 18A), insert each of the following definitions at the appropriate place—

““regulated information” has the meaning given in Article 2(1)(k) of the transparency obligations directive (as defined in section 103 of this Act);”

““regulatory information service” means—

- (a) a service approved by the Authority to disseminate regulated information in accordance with rules made under section 89A of this Act, or
- (b) a service established in an EEA state other than the United Kingdom which is used for the dissemination of regulated information for the purposes of Article 21 of the transparency obligations directive;”.

Amendments to the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(a)

7.—(1) The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 shall be amended as follows.

(2) In regulation 1, insert at the end—

“(7) Apart from regulation 6A, nothing in these Regulations shall apply to a notice given by publication by means of a regulatory information service under Part 18A of the Act.”.

(3) After regulation 6, insert—

“Deemed service by means of a regulatory information service

6A.—(1) A notice published by means of a regulatory information service under section 313B(2)(b) of the Act is to be treated as having been received by—

- (a) the institution or (as the case may be) each institution in the class of institutions specified in the notice, and
- (b) any issuer so specified,

at the time when it is first published.

(2) A notice of a decision published by means of a regulatory information service under section 313BA(6), 313BC(4) or (7) or 313BE(3) or (5) of the Act is to be treated as having been received by each institution in the class in question at the time when it is first published.

(3) Paragraph (2) does not apply to an institution which is entitled to receive written notice of the decision under section 313BA(5) or 313BC(2) or a decision notice under section 313BC(5).”

7th April 2010

Dave Watts
Tony Cunningham
Two of the Lords Commissions of Her Majesty’s Treasury

(a) S.I. 2001/1420, amended by the Enterprise Act 2002 c.40, and S.I. 2005/274.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations continue the implementation of part of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1) (“the Directive”). They amend Part 18A of the Financial Services and Markets Act 2000 (“the Act”), which transposed Articles 14.7, 41 and 50.2(j) and (k) of the Directive. A transposition note setting out how the main elements of the Directive, and the Community legislation adopted under it, have been given effect in UK law was set out as Annex A to the Explanatory Note to the Markets In Financial Instruments Directive (Consequential Amendments) Regulations 2007 (S.I. 2007/2932).

Regulation 2 amends section 313A of the Act to make it clear that the Financial Services Authority has power to require a class of institutions to suspend or remove a financial instrument from trading. Regulation 3 amends section 313B to provide that this power may be exercised by the publication of a notice by means of a regulatory information service, as an alternative to the provision of written notice to each of the institutions concerned, and specifies what information must be published.

Regulation 4 inserts sections 313BA to 313BE into Part 18A of FSMA, to clarify the procedure which will apply where representations are made against the imposition of such a requirement, or an institution or an issuer applies for the revocation of the requirement. These sections set out (a) what decisions the Authority may take in response to such representations or application where the requirement was made in relation to a class of institutions, (b) when the Authority is required to give written notice of its decisions, and (c) when information about those decisions must be published by means of a regulatory information system. Regulation 6 defines “regulatory information service” for the purpose of Part 18A of the Act.

Regulation 7 makes consequential amendments to the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (S.I. 2001/1420).

An Impact Assessment of the effect of this instrument on the costs of business has been prepared and is available on HM Treasury’s website (www.hm-treasury.gov.uk) and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

© Crown copyright 2010

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2010 No. 1193

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Amendments to
Part 18A etc.) Regulations 2010

£5.75