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STATUTORY INSTRUMENTS

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**2013 No. 1882**

**The Financial Services Act 2012 (Consumer Credit) Order 2013**

**Application of provisions of FSMA 2000 in connection with failure to comply with the 1974 Act**

3.—(1) The following provisions of FSMA 2000 apply in relation to a requirement imposed by or under the provisions of Parts 2, 4, 5 and 6 to 12 of the 1974 Act (“a relevant requirement”) with the modifications specified.

(2) Section 1L (supervision, monitoring and enforcement)(1) applies as if—

- (a) in subsection (1) the reference to “supervising authorised persons” included a reference to determining whether authorised persons are complying with relevant requirements;
- (b) in subsection (2), the reference to requirements imposed by or under FSMA 2000 in a case where the FCA is the appropriate regulator for the purposes of Part 14 of FSMA 2000 (disciplinary measures)(2) included a reference to relevant requirements.

(3) Section 66 (disciplinary powers)(3) applies as if the reference in subsection (2)(b)(i) to a requirement imposed by or under FSMA 2000 included a reference to a relevant requirement, and sections 67 (disciplinary measures: procedure and right to refer to Tribunal)(4) and 68 (publication)(5) apply as if the references to section 66 were to that section as applied by this Order.

(4) Part 9 (hearings and appeals)(6) applies as if in section 133 (proceedings before Tribunal: general provision)(7)—

- (a) the references to decisions under sections 66 (disciplinary powers), 205 (public censure)(8), 206 (financial penalties)(9) and 206A (suspending permission to carry on regulated activities etc.)(10) of FSMA 2000 were references to decisions under those sections as applied by this Order;
- (b) the references to a reference or appeal to the Tribunal includes a reference to a reference or appeal to the Tribunal under FSMA 2000 as applied by this Order.

(5) Part 11 (information gathering and investigations)(11) (with the exception of section 169 (investigations etc. in support of overseas regulator)(12)) applies as if—

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- (1) Inserted by the Financial Services Act 2012, section 6.
  - (2) Part 14 was amended by the Financial Services Act 2010 (c.28), sections 9, 10 and Schedule 2, paragraphs 1, 13, 18, 19 and 20 and the Financial Services Act 2012, Schedule 9, paragraphs 1, and 10 to 18.
  - (3) Section 66 was amended by the Financial Services Act 2010, section 12 and Schedule 2, paragraphs 1 and 8 and the Financial Services Act 2012, Schedule 5, paragraphs 1 and 14.
  - (4) Section 67 was amended by the Financial Services Act 2010, Schedule 2, paragraphs 1 and 9, the Financial Services Act 2012, Schedule 5, paragraphs 1 and 15, and S.I. 2007/126.
  - (5) Section 68 was amended by the Financial Services Act 2012, Schedule 5, paragraphs 1 and 16.
  - (6) Part 9 was amended by the Financial Services Act 2012, section 23, and S.I. 2010/22.
  - (7) Section 133 was substituted (together with new sections 133A and 133B) for the original s.133 by S.I. 2010/22, and amended by the Financial Services Act 2012, section 23, and S.I. 2013/1388.
  - (8) Section 205 was amended by the Financial Services Act 2012, Schedule 9, paragraphs 1 and 11.
  - (9) Section 206 was amended by the Financial Services Act 2010, section 10, and the Financial Services Act 2012, Schedule 9, paragraphs 1 and 12.
  - (10) Section 206A was amended by the Financial Services Act 2010, section 9, and the Financial Services Act 2012, Schedule 9, paragraphs 1 and 13.
  - (11) Part 11 was amended by the Criminal Justice Act 2003 (c.44), Schedule 26, paragraph 54(1) and (2), the Counter-Terrorism Act 2008 (c.28), Schedule 7, paragraph 33(3), the Financial Services Act 2010, section 18 and Schedule 2, paragraphs 1 and

- (a) the reference in section 165(4) (regulators’ power to require information: authorised persons etc.) to functions conferred on the FCA by or under FSMA 2000 included a reference to functions conferred on it by this Order;
- (b) the reference in section 167(1) (appointment of persons to carry out general investigations) to a good reason included a good reason by virtue of the functions conferred on the FCA by this Order;
- (c) in section 168 (appointment of persons to carry out investigations in particular cases)—
- (i) subsection (1) included a reference to an offence under the 1974 Act;
  - (ii) subsection (4) included a reference to circumstances suggesting that a person may have failed to comply with a relevant requirement (excluding circumstances suggesting that an offence under the 1974 Act may have been committed).
- (6) Part 13 (incoming firms: intervention by FCA or PRA)(**13**) (with the exception of sections 195 (exercise of power in support of overseas regulator), 195A (contravention by relevant EEA firm or EEA UCITS of directive requirements), 198 (power to apply to court for injunction in respect of certain overseas insurance companies) and 199A (management companies: loss of authorisation)) applies as if—
- (a) in section 194(1) (general grounds on which power of intervention is exercisable) each reference to a requirement imposed by or under FSMA 2000 included a reference to a relevant requirement;
  - (b) in section 199 (additional procedure for EEA firms in certain cases) the reference in subsection (2)(a)(i) to a requirement imposed by the regulator under FSMA 2000 included a reference to a relevant requirement.
- (7) Part 14 (disciplinary measures) applies (with the exception of sections 210 (statements of policy)(**14**) and 211 (statements of policy: procedure)(**15**)) as if in section 204A (meaning of “relevant requirement” and “appropriate regulator”)(**16**)—
- (a) in subsection (2), the definition of “relevant requirement” included a relevant requirement;
  - (b) in subsection (6), the reference to any other requirement imposed by or under the Act included a relevant requirement.
- (8) Section 380 (injunctions)(**17**) applies as if the reference in subsection (6)(a)(i) to a requirement imposed by or under FSMA 2000 included a reference to a relevant requirement.
- (9) Section 382 (restitution orders)(**18**) applies as if the reference in subsection (9)(a)(i) to a requirement imposed by or under FSMA 2000 included a reference to a relevant requirement.
- (10) Section 384 (power of FCA or PRA to require restitution)(**19**) applies as if the reference in subsection (7)(a) to a relevant requirement imposed by or under FSMA 2000 included a reference to a relevant requirement; and accordingly sections 385 (warning notices)(**20**) and 386 (decision

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15 to 17, the Financial Services Act 2012, Schedule 12, paragraphs 1 to 15, and Schedule 18, paragraphs 1 and 8, and S.I. 2001/1090, 2005/1433, 2007/126, 2011/1043, 2011/2382, 2012/2554.

(12) Amended by the Financial Services Act 2012 Schedule 12, paragraph 9.

(13) Part 13 was amended by the Enterprise Act 2002 (c.40), Schedule 25, paragraph 40, the Consumer Credit Act 2006 (c.14), section 33, the Financial Services Act 2010, section 3, the Financial Services Act 2012, Schedule 4, paragraphs 29 to 43, and S.I. 2000/2952, 2004/3379, 2007/126, 2007/2194, 2007/3253, 2011/1043, 2011/1613, 2012/916 and 2012/2015.

(14) Section 210 was amended by the Financial Services Act 2010, Schedule 2, paragraphs 1 and 20, and the Financial Services Act 2012, Schedule 9, paragraphs 1 and 17.

(15) Section 211 was amended by the Financial Services Act 2012, Schedule 9, paragraphs 1 and 18.

(16) Inserted by the Financial Services Act 2012, Schedule 9, paragraphs 1 and 10.

(17) Amended by the Financial Services Act 2012, Schedule 9, paragraphs 1 and 19.

(18) Amended by the Financial Services Act 2012, Schedule 9, paragraphs 1 and 21.

(19) Section 384 was amended by the Financial Services Act 2012, Schedule 9, paragraphs 1 and 23, and S.I. 2007/126.

(20) Section 385 was amended by the Financial Services Act 2012, Schedule 9, paragraphs 1 and 24.

notices)(21) apply where there has been a contravention of a requirement under section 384 as applied by this Order.

(11) Part 26 (notices)(22) applies as if—

- (a) in section 391 (publication)(23), the references in subsection (1ZB) to warning notices given under sections 67 (disciplinary measures: procedure and right to refer to Tribunal) and 207 (proposal to take disciplinary measures)(24) of FSMA 2000 were to warning notices given under those sections as applied by this Order;
- (b) in section 392 (application of sections 393 and 394)(25), the references to a warning notice and a decision notice given under any of the provisions specified in that section included a warning notice and a decision notice given under any of those provisions as applied by this Order.

(12) Part 27 (offences)(26) applies as if—

- (a) references to an offence under FSMA 2000 included an offence under that Act as applied by this Order;
- (b) in section 401 (proceedings for offences)(27), in subsection (1), the definition of “offence” included an offence under the 1974 Act.

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(21) Section 386 was amended by the Financial Services Act 2012, Schedule 9, paragraphs 1 and 25.

(22) Part 26 was amended by the Regulation of Investigatory Powers Act 2000 (c.23), Schedule 4, paragraph 11, the Financial Services Act 2010, section 13 and Schedule 2, paragraphs 1, 28 and 29, the Financial Services Act 2012, sections 17, 18, 19, 24, Schedule 8, paragraphs 1, and 37, Schedule 9, paragraphs 1 and 26 to 35, and Schedule 13, paragraph 8, and by S.I.2005/381, 2005/1433, 2007/126, 2007/1973, 2009/534, 2010/22 and 2012/916.

(23) Section 391 was amended by the Financial Services Act 2010, sections 13 and 24 and Schedule 2, paragraphs 1 and 28, the Financial Services Act 2012, Schedule 9, paragraphs 1 and 30, and S.I. 2012/916 and 2013/1388.

(24) Section 207 was amended by the Financial Services Act 2010, Schedule 2, paragraphs 1 and 18, and the Financial Services Act 2012, Schedule 9 paragraphs 1 and 14.

(25) Section 392 was amended by the Financial Services Act 2010, Schedule 2, paragraphs 1 and 29, the Financial Services Act 2012, section 18, Schedule 8, paragraphs 1 and 37, Schedule 9, paragraphs 1 and 31, and Schedule 13, paragraph 8, and S.I. 2007/126 and S.I. 2013/1388.

(26) Part 27 was amended by the Enterprise Act 2002, Schedule 25, paragraph 40, the Counter Terrorism Act 2008, Schedule 7, paragraph 33(4), the Financial Services Act 2012, section 95 and Schedule 9, paragraphs 1 and 36 to 40, and S.I. 2012/2554.

(27) Section 401 was amended by the Enterprise Act 2002, Schedule 25, paragraph 40, and the Financial Services Act 2012, Schedule 9, paragraphs 1 and 38.