

2013 No. 419

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

<i>Made</i>	- - - -	<i>26th February 2013</i>
<i>Laid before Parliament</i>		<i>27th February 2013</i>
<i>Coming into force</i>	- -	<i>1st April 2013</i>

The Treasury, in the exercise of the powers conferred on them by the following sections of the Financial Services and Markets Act 2000(a): 1A(6)(d); 1L(2)(b); 2A(6)(d); 39(4)(b); 66(2)(b), (2A)(b); 168(4)(k); 204A(2), (4); 293A; 296(1A), 297(2A)(c); 312E(2), (3); 380(6)(a), (9); 382(9)(a), (12); 384(7)(a), (10); and paragraph 23(2) of Schedule 1ZA, paragraph 31(2) of Schedule 1ZB and paragraphs 14(2)(d), 26(2)(c), 30(c) and 36(2)(b) of Schedule 17A to that Act(b) make this Order.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 and comes into force on 1st April 2013.

(2) For the purposes of this Order—

“the Act” means the Financial Services and Markets Act 2000;

“the European market infrastructure regulation” means Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories(c).

Qualifying EU provisions: general

2.—(1) The instruments listed in paragraph (2) are specified qualifying EU provisions for the purposes of sections 1A(6)(d), 1L(2)(b), 39(4)(b), 66(2)(b) and 168(4)(k) of the Act.

(2) The instruments are—

(a) any directly applicable regulation made under the markets in financial instruments directive;

(b) any directly applicable regulation made under the UCITS directive;

(a) 2000 c. 8. Sections 1A to 3S were inserted by section 6 of the Financial Services Act 2012 (c.21); section 39(4) was substituted by Schedule 18 to that Act; section 66(2) and (2A) were substituted by Schedule 5 to that Act; section 168 was amended by Schedule 12 to that Act; sections 204A, 380, 382 and 384 were amended by Schedule 9 to that Act; section 293A was inserted by Schedule 8 to that Act; sections 296 and 297 were amended by Schedule 8 to that Act; section 312E was inserted by section 33 of that Act. There are other amendments to these provisions which are not relevant to this Order.

(b) Schedules 1ZA and 1ZB were inserted by Schedule 3 to the Financial Services Act 2012. Schedule 17A was inserted by Schedule 7 to that Act.

(c) OJ no L 201, 27.7.2012, p1.

- (c) the emission allowance auctioning regulation;
- (d) the European market infrastructure regulation;
- (e) any directly applicable regulation made under the European market infrastructure regulation.

(3) The instruments listed in paragraph (4) are also specified qualifying EU provisions for the purposes of sections 1A(6)(d), 1L(2)(b) and 168(4)(k) of the Act.

(4) The instruments are—

- (a) the short selling regulation;
- (b) any directly applicable regulation made under the short selling regulation.

(5) The instruments listed in paragraph (6) are specified qualifying EU provisions for the purposes of sections 2A(6)(d) and 66(2A)(b) of the Act.

(6) The instruments are—

- (a) any directly applicable regulation made under the markets in financial instruments directive;
- (b) the European market infrastructure regulation;
- (c) any directly applicable regulation made under the European market infrastructure regulation.

(7) The instruments listed in paragraph (8) are specified qualifying EU provisions for the purposes of section 293A of the Act.

(8) The instruments are—

- (a) any directly applicable regulation made under the markets in financial instruments directive;
- (b) the emission allowance auctioning regulation;
- (c) the European market infrastructure regulation;
- (d) any directly applicable regulation made under the European market infrastructure regulation.

Qualifying EU provisions: disciplinary measures

3.—(1) The instruments listed in paragraph (2) are specified qualifying EU provisions for the purposes of section 204A(2) of the Act.

(2) The instruments are—

- (a) any directly applicable regulation made under the markets in financial instruments directive;
- (b) any directly applicable regulation made under the UCITS directive;
- (c) the emission allowance auctioning regulation;
- (d) the European market infrastructure regulation;
- (e) any directly applicable regulation made under the European market infrastructure regulation.

(3) The appropriate regulator for the purposes of each provision in Part 14 of the Act in relation to the qualifying EU provisions specified by paragraph (1) is—

- (a) in relation to a contravention of a requirement imposed by a directly applicable regulation made under the markets in financial instruments directive—
 - (i) if the authorised person concerned is a PRA-authorised person, either the PRA or the FCA;
 - (ii) in any other case, the FCA;

- (b) in relation to a contravention of a requirement imposed by the emission allowance auctioning regulation or any directly applicable regulation made under the UCITS directive, the FCA;
- (c) in relation to a contravention of a requirement imposed by the European market infrastructure regulation—
 - (i) if the authorised person concerned is a PRA-authorised person, either the PRA or the FCA;
 - (ii) in any other case, the FCA;
- (d) in relation to a contravention of a requirement imposed by any directly applicable regulation made under the European market infrastructure regulation, the FCA.

Qualifying EU provisions etc.: recognised investment exchanges and clearing houses

4.—(1) The instruments listed in paragraph (5) are specified directly applicable EU provisions for the purposes of section 296(1A) of the Act.

(2) The instruments listed in paragraph (3) are specified directly applicable EU provisions for the purposes of section 297(2A)(c) of the Act.

(3) The instruments are—

- (a) any directly applicable regulation made under the markets in financial instruments directive;
- (b) the emission allowance auctioning regulation;
- (c) the European market infrastructure regulation;
- (d) any directly applicable regulation made under the European market infrastructure regulation.

(4) The instruments listed in paragraph (5) are specified qualifying EU provisions for the purposes of section 312E(2)(c) of the Act.

(5) The instruments are—

- (a) any directly applicable regulation made under the markets in financial instruments directive;
- (b) the emission allowance auctioning regulation;
- (c) the European market infrastructure regulation;
- (d) any directly applicable regulation made under the European market infrastructure regulation.

(6) The instruments listed in paragraph (7) are specified qualifying EU provisions for the purposes of section 312E(3)(c) of the Act.

(7) The instruments are—

- (a) any directly applicable regulation made under the markets in financial instruments directive;
- (b) the European market infrastructure regulation;
- (c) any directly applicable regulation made under the European market infrastructure regulation.

(8) The instruments listed in paragraph (9) are specified qualifying EU provisions for the purposes of paragraphs 14(2)(d) and 30(c) of Schedule 17A to the Act.

(9) The instruments are—

- (a) the European market infrastructure regulation;
- (b) any directly applicable regulation made under the European market infrastructure regulation.

Qualifying EU provisions: injunctions and restitution

5.—(1) The instruments listed in paragraph (2) are specified qualifying EU provisions for the purposes of sections 380(6)(a), 382(9)(a) and 384(7)(a) of the Act.

(2) The instruments are—

- (a) any directly applicable regulation made under the markets in financial instruments directive;
- (b) any directly applicable regulation made under the UCITS directive;
- (c) the emission allowance auctioning regulation;
- (d) the European market infrastructure regulation;
- (e) any directly applicable regulation made under the European market infrastructure regulation.

(3) The instruments listed in paragraph (4) are also specified qualifying EU provisions for the purposes of section 380(6)(a) and 382(9)(a) of the Act.

(4) The instruments are—

- (a) the short selling regulation;
- (b) any directly applicable regulation made under the short selling regulation.

(5) The appropriate regulator for the purposes of sections 380, 382 and 384 of the Act is—

- (a) in relation to a contravention of a requirement imposed by a directly applicable regulation made under the markets in financial instruments directive—
 - (i) if the authorised person concerned is a PRA-authorised person, the PRA or the FCA;
 - (ii) in any other case, the FCA;
- (b) in relation to a contravention of the emission allowance auctioning regulation or any directly applicable regulation made under the UCITS directive, the FCA;
- (c) in relation to a contravention of the European market infrastructure regulation—
 - (i) if the authorised person concerned is a PRA-authorised person, the PRA or the FCA;
 - (ii) in any other case, the FCA;
- (d) in relation to a contravention of any directly applicable regulation made under the European market infrastructure regulation, the FCA;
- (e) in relation to a contravention of the short selling regulation or any directly applicable regulation made under that regulation, the FCA.

(6) The specified qualifying EU provisions for the purposes of paragraph 26(2)(c) of Schedule 17A to the Act are—

- (a) the European market infrastructure regulation;
- (b) any directly applicable regulation made under the European market infrastructure regulation.

Qualifying EU provisions: fees

6.—(1) The instruments listed in paragraph (2) are specified qualifying EU provisions for the purposes of paragraph 23(2) of Schedule 1ZA to the Act.

(2) The instruments are—

- (a) any directly applicable regulation made under the markets in financial instruments directive;
- (b) any directly applicable regulation made under the UCITS directive;
- (c) the emission allowance auctioning regulation;
- (d) the European market infrastructure regulation;

- (e) any directly applicable regulation made under the European market infrastructure regulation;
- (f) the short selling regulation;
- (g) any directly applicable regulation made under the short selling regulation.

(3) The instruments listed in paragraph (4) are specified qualifying EU provisions for the purposes of paragraph 31(2) of Schedule 1ZB to the Act.

(4) The instruments are—

- (a) any directly applicable regulation made under the market in financial instruments directive;
- (b) the European market infrastructure regulation;
- (c) any directly applicable regulation made under the European markets infrastructure regulation.

(5) The instruments listed in paragraph (6) are specified qualifying EU provisions for the purposes paragraph 36(2)(b) of Schedule 17A to the Act.

(6) The instruments are—

- (a) the European market infrastructure regulation;
- (b) any directly applicable regulation made under the European market infrastructure regulation.

Mark Lancaster
David Evennett

26th February 2013

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order identifies the directly applicable provisions of EU law which are specified as qualifying EU provisions and directly applicable EU provisions for the purposes of various provisions in the Financial Services and Markets Act 2000 (c.8) (“the Act”). The effect of the Order is to apply certain provisions of the Act for purposes connected with the specified EU provisions.

Article 2 specifies provisions of EU law for general purposes including sections 1A and 2A of the Act (the functions of the Financial Conduct Authority (“FCA”) and the functions of the Prudential Regulation Authority (“PRA”)) and section 168 of the Act (power of the regulators to appoint an investigator).

Article 3 specifies provisions of EU law for the purposes of disciplinary measures imposed under Part 14 of the Act. Article 3 also specifies which of the FCA or PRA is responsible for taking disciplinary action in relation to each specified provision of EU law.

Article 4 specifies provisions of EU law for purposes connected with the regulation of clearing houses and investment exchanges under Part 18 of the Act.

Article 5 specifies provisions of EU law for the purposes of the powers under Part 25 (including that Part as applied by Schedule 17A to the Act in connection with recognised clearing houses) to obtain injunctions or provide for restitution.

Article 6 specifies provisions of EU law for the purposes of the fee-raising powers of the FCA, the PRA and the Bank of England under the Act.

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.hm-treasury.gov.uk and is published alongside the Regulations on www.legislation.gov.uk.

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STATUTORY INSTRUMENTS

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