

2014 No. 882

FINANCIAL SERVICES AND MARKETS

**The Financial Services (Banking Reform) Act 2013 (Disclosure
of Confidential Information) Regulations 2014**

<i>Made</i>	- - - -	<i>1st April 2014</i>
<i>Laid before Parliament</i>		<i>2nd April 2014</i>
<i>Coming into force</i>	- -	<i>28th April 2014</i>

The Treasury make the following Regulations in exercise of the power conferred by sections 92 and 142(3) of the Financial Services (Banking Reform) Act 2013(a).

Citation and commencement

1. These Regulations may be cited as the Financial Services (Banking Reform) Act 2013 (Disclosure of Confidential Information) Regulations 2014 and come into force on 28th April 2014.

Interpretation

2. In these Regulations—

“the Act” means the Financial Services (Banking Reform) Act 2013;

“criminal investigation” means an investigation of any crime, including an investigation of any alleged or suspected crime and an investigation of whether a crime has been committed;

“Payment Systems Regulator” means the body established under section 40(1) of the Act as the Payment Systems Regulator;

“regulators” means the Payment Systems Regulator, the FCA, the PRA and the Bank of England, and “regulator” means any one of the regulators;

“regulator worker” means—

- (a) a person who is or has been employed by, or engaged to provide services to, one of the regulators;
- (b) an auditor or expert instructed by one of the regulators;
- (c) a person appointed under section 82(1)(b) of the Act (reports by skilled persons) to make a report; or
- (d) a person appointed under section 83 of the Act (appointment of persons to conduct investigations);

“Secretary of State worker” means—

- (a) a person who is or has been employed by the Secretary of State; or

- (b) an auditor or expert instructed by the Secretary of State;
“single market restrictions” has the meaning given in regulation 2 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(a).

Disclosure by and to a Schedule person

3.—(1) A primary recipient of confidential information, or a person obtaining such information directly or indirectly from a primary recipient, is permitted to disclose such information to a person specified in the first column in the Schedule for the purpose of enabling or assisting that person to discharge any function listed beside that person in the second column in the Schedule.

(2) A person specified in the first column in the Schedule is permitted to disclose confidential information to any person for the purpose of enabling or assisting the person making the disclosure to discharge any function listed beside that person in the second column in the Schedule.

(3) Paragraphs (1) and (2) do not permit disclosure in contravention of any of the single market restrictions.

Disclosure for the purposes of criminal proceedings and investigations

4. A primary recipient of confidential information, or a person obtaining such information directly or indirectly from a primary recipient, is permitted to disclose such information to any person—

- (a) for the purposes of any criminal investigation which is being or may be carried out, whether in the United Kingdom or elsewhere;
- (b) for the purposes of any criminal proceedings which have been or may be initiated, whether in the United Kingdom or elsewhere;
- (c) for the purposes of any proceedings under Part 2, 3 or 4 of the Proceeds of Crime Act 2002(b) which have been, or may be initiated; or
- (d) for the purpose of initiating or bringing to an end any such investigation or proceedings, or of facilitating a determination of whether it or they should be initiated or brought to an end.

Disclosure for the purposes of certain other proceedings

5.—(1) A primary recipient of confidential information, or a person obtaining such information directly or indirectly from a primary recipient, is permitted to disclose such information to—

- (a) a regulator or the Secretary of State, for the purpose of initiating proceedings to which this regulation applies, or of facilitating a determination of whether they should be initiated; or
- (b) any person, for the purposes of proceedings to which this regulation applies and which have been initiated, for the purpose of bringing to an end such proceedings, or of facilitating a determination of whether they should be brought to an end.

(2) A regulator or the Secretary of State (or a person who is employed by one of the regulators or the Secretary of State) is permitted to disclose confidential information to any person for a purpose mentioned in paragraph (1)(a).

(3) The proceedings to which this regulation applies are—

- (a) proceedings arising under or by virtue of Part 5 of the Act (regulation of payment systems);
- (b) proceedings before the Competition Appeals Tribunal;

(a) S.I. 2001/2188. The definition of “single market restrictions” was inserted by S.I. 2012/916 and amended by S.I. 2013/504, 1773 and 3115.

(b) 2002 c. 29.

- (c) proceedings before the Competition and Markets Authority;
- (d) proceedings before the Upper Tribunal;
- (e) any other civil proceedings to which one of the regulators is, or is proposed to be, a party;
- (f) proceedings under section 7 or 8 of the Company Directors Disqualification Act 1986(a) or article 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002(b) in respect of a director or former director of a participant in a payment system or a former participant in a payment system; or
- (g) proceedings under Parts 1 to 6 or 9 or 10 of the Insolvency Act 1986(c), the Bankruptcy (Scotland) Act 1985(d) or Parts 2 to 7 or 9 or 10 of the Insolvency (Northern Ireland) Order 1989(e) in respect of a participant in a payment system or a former participant in a payment system.

(4) Paragraphs (1) and (2) do not permit disclosure in contravention of any of the single market restrictions.

Disclosure in pursuance of an EU obligation

6. A primary recipient of confidential information, or a person receiving such information directly or indirectly from a primary recipient, is permitted to disclose such information in pursuance of an EU obligation.

Restriction on use of confidential information

7. Where confidential information is disclosed under these Regulations to a person other than a regulator, the Secretary of State or the Treasury, and the disclosure is made subject to any conditions as to the use to which the information may be put, the person to whom the information has been disclosed may not use the information in breach of any such condition, without the consent of the person who disclosed it.

*Anne Milton
Mark Lancaster*

1st April 2014

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 3

Persons and functions in respect of which disclosure is permitted

<i>Person</i>	<i>Functions</i>
The Treasury	Their public functions
The Secretary of State	The public functions of the Secretary of State
A Secretary of State worker	The public functions of the Secretary of State or (where different) the public functions of the Secretary of State worker

(a) 1986 c. 46. Section 7 was amended by section 6 of, and paragraph 6 of Schedule 4 to, the Insolvency Act 2000 (c. 39) and by paragraph 42 of Schedule 17 to the Enterprise Act 2002 (c. 40). Section 8 was amended by section 6 of the Insolvency Act 2000 (c. 39), paragraph 28 of Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) and section 1039 of the Companies Act 2006 (c. 46), and by S.I. 2001/3649 and 2009/1941.

(b) S.I. 2002/3150 (N.I. 4). Article 10 was amended by S.I. 2005/1455 (N.I. 10). Article 11 was amended by S.I. 2009/1941.

(c) 1986 c. 45.

(d) 1985 c. 66.

(e) S.I. 1989/2405 (N.I. 19).

The Payment Systems Regulator	All of its functions
The FCA	All of its functions
The Bank of England	Its public functions
The European Central Bank, or the central bank of any country or territory outside the United Kingdom	(a) Its functions as a monetary authority (b) Its functions in relation to overseeing payment systems and clearing and settlement systems
The PRA	All of its functions
A regulator worker	The functions of a regulator mentioned in this Schedule or (where different) the public functions of the regulator worker
A person appointed under section 69 of the Financial Services Act 2012 ^(a) to hold an inquiry into events of the type described in section 68(3A) of that Act	The person's functions in respect of that inquiry
The Chief Ombudsman appointed in accordance with paragraph 5 of Schedule 17 ^(b) to FSMA 2000, and any other member of the panel of ombudsmen appointed in accordance with paragraph 4 of that Schedule	
The Department of Enterprise, Trade and Investment in Northern Ireland	Its functions under any enactment in so far as they relate to the supervision of participants or former participants in payment systems
A body (other than a central bank) in a country or territory outside the United Kingdom having (a) functions as a monetary authority or (b) responsibility for overseeing payment systems	Its functions as such
A body in a country or territory outside the United Kingdom that exercises functions similar to those of the Treasury, the FCA, the PRA or the Payment Systems Regulator in relation to payment systems	Its functions as such
The Bank for International Settlements	Its functions as such
The body known as the Panel on Takeovers and Mergers	All of its functions
The Competition and Markets Authority	Its functions as such
A body in a country or territory outside the United Kingdom that exercises functions as a competition authority	Its functions as such
The Office of Communications	Its functions as such

(a) 2012 c. 21. Section 68(3A) was inserted by section 105 of the Financial Services (Banking Reform) Act 2013.

(b) Various amendments have been made to Schedule 17, none of which is relevant here.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the circumstances in which confidential information, within the meaning of section 91 of the Financial Services (Banking Reform) Act 2013 (c. 33) (“the Act”), may be disclosed. That section provides that, except as permitted by such regulations, confidential information must not be disclosed without the consent of the person from whom the primary recipient obtained the information and (if different) the person to whom it relates. “Confidential information” is defined as information which relates to the business or other affairs of any person and was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Payment Systems Regulator (“the PSR”) under Part 5 of the Act.

But information is not “confidential information” if it has previously been lawfully made available to the public, or is in the form of a summary or collection of information which is so framed that it is not possible to ascertain from it information relating to any particular person.

“Primary recipients” of confidential information are the PSR; the Financial Conduct Authority; their current and former employees; their current or former service providers; auditors and experts instructed by them; persons appointed to make a report under section 82 of the Act; and persons appointed to conduct investigations under section 83 of the Act.

Disclosure of confidential information in breach of section 91 of the Act, or use of such information in breach of the Regulations, is an offence under section 93 of the Act.

Regulation 3 sets out the circumstances in which confidential information may be disclosed by or to certain bodies (which are set out in the Schedule) for the purposes of their functions.

Regulation 4 permits the disclosure of confidential information for the purposes of criminal proceedings and investigations.

Regulation 5 permits disclosure for the purposes of certain civil proceedings.

Regulation 6 permits disclosure in pursuance of an EU obligation.

Regulation 7 provides that where information is disclosed to certain persons and is subject to a restriction on use, it may not be used in breach of that condition without the consent of the person who disclosed it.

An impact assessment has not been produced for this instrument as no impact on the costs of business or the voluntary sector is foreseen. Further information is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and on the HM Treasury website (www.gov.uk/government/organisations/hm-treasury).

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