

2013 No. 441

FINANCIAL SERVICES AND MARKETS

**The Financial Services Act 2012 (Transitional Provisions)
(Enforcement) Order 2013**

Made - - - - *27th February 2013*

Laid before Parliament *1st March 2013*

Coming into force - - *1st April 2013*

The Treasury make the following Order in exercise of the powers conferred by sections 115(2) and section 119(3), (4) and (5) of the Financial Services Act 2012(a).

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013 and comes into force on 1st April 2013.

(2) In this Order—

“the 2012 Act” means the Financial Services Act 2012;

“the Authority” means the Financial Services Authority;

“the commencement date” means 1st April 2013.

(3) A reference in this Order to a provision of an Act is a reference to a provision of FSMA 2000(b), except where indicated otherwise.

(4) A term used in this Order which is defined in FSMA 2000 has the same meaning as in FSMA 2000.

(5) For the purpose of this Order, a reference to a permission, approval or requirement under FSMA 2000, or to any other thing done under or for the purposes of that Act, includes a reference to a permission, approval or a requirement or other thing treated as having effect or having been done under FSMA 2000, however described, by an order under—

(a) section 426 (consequential and supplementary provision);

(b) section 2(2) of the European Communities Act 1972(c) (general implementation of Treaties).

(a) 2012 c.21.

(b) Section 117 of the 2012 Act defines “FSMA 2000” as meaning the Financial Services and Markets Act 2000 (c. 8).

(c) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27 and by the European Union (Amendment) Act 2008 (c.7), section 3 and Schedule, Part 1.

PART 2

Controlled functions

Power to impose penalties

2.—(1) Paragraphs (2) to (5) apply if—

(a) before the commencement date—

- (i) a person performed or began to perform a controlled function,
- (ii) the performance of that controlled function by that person was not approved for the purposes of section 59(a) (approval for particular arrangements), and
- (iii) the Authority had not given a warning notice in accordance with section 63B(1)(b) (procedure and right to refer to Tribunal) in relation to the performance of the controlled function without approval; and

(b) the PRA(c) would have been the appropriate regulator within the meaning of section 63A(5A) (power to impose penalties) had the person performed or begun to perform that function without approval on the commencement date.

(2) Sections 63A to 63C apply as if section 63A(5A) defined both the FCA(d) and the PRA as the appropriate regulator.

(3) Section 63A(4) applies as if for “the appropriate regulator” there were substituted “one of the regulators(e)”.

(4) Section 63A(5) applies as if for “the appropriate regulator” there were substituted “a regulator”.

(5) For the purposes of section 63C(10) (statement of policy), in its application to the performance by a person of a controlled function without approval—

- (a) where the function was performed and ceased to be performed before the commencement date, the statement of policy to which the PRA must have regard is the statement published by the Authority and in force at the time that the function was performed;
- (b) where the function was performed before the commencement date and continued to be performed on or after the commencement date, the statement of policy to which the PRA must have regard is the first statement published by the PRA under that section.

Disciplinary powers

3.—(1) Paragraphs (2) to (4) apply if—

- (a) it appears to a regulator that a person was, before the commencement date, guilty of misconduct (within the meaning of section 66(f) (disciplinary powers) as it applied at the time of the misconduct);
- (b) the controlled function which the person was approved to perform is, on the commencement date, a significant-influence function in relation to the carrying on by a PRA-authorised person of a regulated activity;

(a) Section 59 was amended by S.I. 2012/1906 and is further amended by the 2012 Act, section 14 and Schedule 5, paragraph 3.

(b) Sections 63A to 63D were inserted by the Financial Services Act 2010 (c.28), section 11 and are further amended by the 2012 Act, Schedule 5, paragraphs 8 to 11.

(c) Section 117 of the 2012 Act defines “the PRA” as meaning the Prudential Regulation Authority.

(d) Section 117 of the 2012 Act defines “the FCA” as meaning the Financial Conduct Authority.

(e) Section 3A(2) of FSMA 2000 defines the “regulators” as the FCA and the PRA; section 3A is substituted by the 2012 Act, section 6.

(f) Section 66 was amended by the Financial Services Act 2010 (c.28), section 12 and Schedule 2, paragraph 8 and S.I. 2007/126, 2011/1613 and 2012/1906, and is further amended by the 2012 Act, Schedule 5, paragraph 14.

- (c) the Authority had not, before the commencement date, given a warning notice in accordance with section 67(1)(a) (disciplinary measures: procedure and right to refer to Tribunal) in respect of the misconduct.
- (2) Either regulator may take action under section 66 in respect of the misconduct.
- (3) For the purposes of a regulator taking action under section 66 in respect of misconduct which occurred before the commencement date, section 66 is modified as follows—
 - (a) for subsections (2) and (2A), substitute section 66(2) as it applied at the time of the misconduct; and
 - (b) in subsection (4), for “the regulator knew” substitute “one of the regulators knew”.
- (4) For the purposes of section 69(8)(b) (statement of policy), the statement of policy to which the PRA must have regard—
 - (a) where the misconduct occurred and ceased to occur before the commencement date, is the statement published by the Authority and in force at the time that the misconduct occurred;
 - (b) where the misconduct occurred before the commencement date and continued to occur on or after the commencement date, is the first statement published by the PRA under that section.

PART 3

Official listing

Disciplinary powers in respect of sponsors

4. Section 88A(2)(a) to (c) and (7)(c) (disciplinary powers: contravention of section 88(3)(c) or (e)) do not apply in respect of a contravention of rules made by the Authority under section 88(3)(c)(d) (sponsors) which occurred (and ceased to occur) before the commencement date.

PART 4

Incoming firms: intervention

General grounds on which power of intervention is exercisable

5. Information given to the Authority before the commencement date by a person who is, on the commencement date, a PRA-authorised person, is to be treated for the purposes of section 194(1)(b)(e) (general grounds on which power of intervention is exercisable) as if it had been given to the PRA (as well as to the FCA).

Contravention by relevant EEA firm

- 6.—(1) Paragraph (2) applies if—
 - (a) before the commencement date, the Authority—

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- (a) Section 67(1) was amended by the Financial Services Act 2010, Schedule 2, paragraph 9 and is further amended by the 2012 Act, Schedule 5, paragraph 15.
 - (b) Section 69 was amended by the Financial Services Act 2010, Schedule 2, paragraph 10 and is further amended by the 2012 Act, Schedule 5, paragraph 17.
 - (c) Section 88A is inserted by the 2012 Act, section 18.
 - (d) Section 88 is amended by the 2012 Act, sections 16 and 18. There are other amending instruments but none is relevant.
 - (e) Section 194 is amended by the 2012 Act, Schedule 4, Part 4, paragraph 32. There are other amending instruments but none is relevant.

- (i) gave a notice under section 194A(4)(a) (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive) or section 195A(4)(b) (contravention by relevant EEA firm or EEA UCITS of directive requirements: home state regulator primarily responsible for securing compliance), and
 - (ii) had not exercised its power of intervention further to that notice in respect of the firm to whom the notice was given; and
 - (b) the notice under section 194A(4) or section 195A(4) could have been given by the PRA as the appropriate regulator (within the meaning of section 194A(10) or section 195A(12), as the case may be) had the notice had been given on the commencement date.
- (2) The following are to be treated as if given by the PRA (as well as by the FCA, in a case in which either the FCA or the PRA could be the appropriate regulator)—
- (a) the notice given under section 194A(4) or section 195A(4);
 - (b) information given before the commencement date by the Authority to the firm's home state regulator, for the purposes of section 194A(5)(c) or section 195A(9), of an intention to exercise a power of intervention.

Exercise of power in support of overseas regulator

7.—(1) Paragraph (2) applies if—

- (a) before the commencement date, the Authority—
 - (i) received a request or a notification within the meaning of section 195(1) or (5)(c) (exercise of power in support of overseas regulator) from an overseas regulator (within the meaning of section 195(3)), and
 - (ii) had not exercised its power of intervention further to that request or notification; and
- (b) the request or notification could have been made to the PRA as the appropriate regulator (within the meaning of section 195(2A)) had the request or notification been made on the commencement date.

(2) The request or notification is to be treated as having been made to the PRA (as well as to the FCA).

Power to apply to court for injunction in respect of certain overseas insurance companies

8.—(1) Paragraph (2) applies if before the commencement date, the Authority—

- (a) had received a request within the meaning of section 198(1)(d) (request in respect of an overseas insurance company); and
- (b) had not made an application to the court within the meaning of section 198(2) pursuant to that request.

(2) The request is to be treated as if it had been made to the PRA.

Additional procedure for EEA firms in certain cases

9.—(1) Paragraphs (2) and (3) apply if—

- (a) before the commencement date—

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- (a) Section 194A was inserted by S.I. 2007/126 and was amended by S.I. 2012/916; it is further amended by the 2012 Act, Schedule 4, Part 4, paragraph 33.
 - (b) Section 195A was substituted by 2011/1613 and amended by S.I. 2012/916; it is further amended by the 2012 Act, Schedule 4, Part 4, paragraph 35.
 - (c) Section 195 was amended by S.I. 2005/1433, 2007/2194 and 2011/1043 and is further amended by the 2012 Act, Schedule 4, Part 4, paragraph 34.
 - (d) Section 198 was amended by S.I. 2004/3379 and 2007/3253 and is further amended by the 2012 Act, Schedule 4, Part 4, paragraph 38.

- (i) an incoming EEA firm (within the meaning of section 199(1)(a) (additional procedure for EEA firms in certain cases)) had contravened a relevant requirement (within the meaning of section 199(2) as it applied at the time of the contravention), and
 - (ii) the firm had not remedied the contravention; and
- (b) the firm is, on the commencement date, a PRA-authorised person.
- (2) The matters specified in paragraph (3) are to be treated—
 - (a) subject to paragraph (b), as if they had been made, imposed or given by the PRA as well as by the FCA;
 - (b) as if they had not been made, imposed or given by the FCA, if they could not have been made or given on the commencement date by the FCA.
- (3) The matters are—
 - (a) any requirement imposed under section 199(3);
 - (b) any reference made by the Authority under section 199(3A);
 - (c) any notice given by the Authority under section 199(4);
 - (d) any information given by the Authority under section 199(7); and
 - (e) any information given by the Authority under section 199(9).
- (4) Paragraph (5) applies if, before the commencement date, the Authority—
 - (a) became subject to an obligation under section 199(7) to give information to a firm's home state regulator, ESMA and the Commission but had not discharged that obligation in full;
 - (b) became subject to an obligation under section 199(8) to rescind or vary a requirement but had not rescinded or varied the requirement.
- (5) The obligation is to be discharged by the PRA unless—
 - (a) the firm is not a PRA-authorised person; or
 - (b) the PRA—
 - (i) is satisfied that the power of intervention could have been exercised on the commencement date by the FCA; and
 - (ii) notifies the FCA that the FCA is to discharge the obligation.
- (6) A notice given for the purposes of paragraph (5) must—
 - (a) be in writing;
 - (b) set out details of the obligation to be discharged; and
 - (c) be made within the period of 45 days which begins on the commencement date.

Rescission and variation of requirements

- 10.**—(1) Paragraph (2) applies if, before the commencement date, the Authority—
- (a) had received an application under section 200(1)(b) (rescission and variation of requirements); and
 - (b) had not—
 - (i) rescinded or varied the requirement, or
 - (ii) given a warning notice that it proposed to refuse the application.
- (2) The application is to be treated as if it had been received by the PRA if the applicant is, on the commencement date, a PRA-authorised person.

(a) Section 199 was amended by S.I. 2007/126 and 3253, 2011/1613, and 2012/916 and 2015 and is further amended by the 2012 Act, Schedule 4, Part 4, paragraph 39.

(b) Section 200 is amended by the 2012 Act, Schedule 4, Part 4, paragraph 41.

PART 5

Disciplinary measures

Disciplinary measures

11.—(1) Paragraphs (5) and (6) apply in respect of a contravention of a requirement listed in paragraph (2)—

- (a) which occurred or began before the commencement date; and
- (b) in respect of which—
 - (i) the Authority had not given a warning notice under section 207(1)(a) (proposal to take disciplinary measures), and
 - (ii) the PRA would have been the appropriate regulator within the meaning of section 204A(b) (meaning of “relevant requirement” and “appropriate regulator”) had the act or omission which constituted the contravention occurred or begun to occur on the commencement date.

(2) The requirements are—

- (a) a requirement within the meaning of section 205(c) or 206(d) as they applied at the time of the contravention;
- (b) a relevant requirement within the meaning of section 206A(e) as it applied at the time of the contravention.

(3) Paragraphs (5) and (6) also apply in respect of a contravention, beginning on or after the commencement date, of a requirement which—

- (a) was imposed before the commencement date under a provision listed in paragraph (4); and
- (b) is to be treated as if it had been imposed by the PRA by virtue of an order made under section 119(3) of the 2012 Act.

(4) The provisions are—

- (a) section 43 (imposition of requirements);
- (b) section 44 (variation etc. at request of authorised person);
- (c) section 45 (variation etc. on the Authority’s own initiative), including the exercise of powers under section 45 by virtue of section 47 (exercise of power in support of overseas regulator);
- (d) section 46 (variation of permission on acquisition of control);
- (e) section 196 (the power of intervention).

(5) Section 204A applies as if it defined both the PRA and the FCA as the appropriate regulator in respect of the contravention for the purposes of Part 14 (disciplinary measures).

(6) For the purposes of section 210(7)(f), the statement to which the PRA must have regard—

- (a) where the misconduct occurred and ceased to occur before the commencement date, is the statement published by the Authority and in force at the time that the misconduct occurred;

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- (a) Section 207 was amended by the Financial Services Act 2010, Schedule 2, Part 1, paragraph 18 and is further amended by the 2012 Act, Schedule 9, Part 4, paragraph 14.
 - (b) Section 204A is inserted by the 2012 Act, Schedule 9, Part 4, paragraph 10.
 - (c) Section 205 was amended by S.I. 2007/126, 2011/1613 and 2012/1906, and is further amended by the 2012 Act, Schedule 9, Part 4, paragraph 11.
 - (d) Section 206 was amended by S.I. 2007/126, 2011/1613 and 2012/1906, and is further amended by the 2012 Act, Schedule 9, Part 4, paragraph 12.
 - (e) Section 206A was inserted by the Financial Services Act 2010, section 9 and amended by S.I. 2011/1613 and 2012/1906, and is further amended by the 2012 Act, Schedule 9, Part 4, paragraph 13.
 - (f) Section 210 is amended by the 2012 Act, Schedule 9, Part 4, paragraph 17.

- (b) where the misconduct occurred before the commencement date and continued to occur on or after the commencement date, is the first statement published by the PRA under that section.

PART 6

Collective investment schemes

Disciplinary measures: auditors of unit trust schemes

12.—(1) Paragraph (2) applies if a failure for the purposes of section 249(a) (disciplinary measures) of an auditor to comply with a duty imposed on the auditor by trust scheme rules occurred (and ceased to occur) before the commencement date.

(2) Section 249(1) applies as if sub-paragraphs (b) and (c) were omitted.

PART 7

Recognised investment exchanges and clearing houses

Disciplinary measures

13. Sections 312E to 312I(b) do not apply to a contravention which occurred (and ceased to occur) before the commencement date.

PART 8

Auditors and actuaries

Disciplinary measures: auditors and actuaries

14.—(1) Paragraph (2) applies if, immediately before the commencement date, a person was disqualified for the purposes of section 345(1)(c) (disqualification) from being the auditor of, or acting as the actuary for, any authorised person or class of authorised person.

(2) The disqualification is to be treated as if it had been imposed by the FCA under section 345(2)(a) (disciplinary measures).

(3) Paragraph (4) applies if—

- (a) it appears to the FCA that an auditor or actuary to whom section 342 (information given by an auditor or actuary to the Authority) applied had failed, at any time before the commencement date, to comply with a duty imposed on the auditor or actuary under FSMA 2000; and
- (b) the Authority had not disqualified the auditor or actuary before the commencement date pursuant to that failure.

(4) Section 345 applies as if section 345(2)(b) to (d) were omitted.

(5) Paragraph (6) applies where, before the commencement date, the Authority—

- (a) had given a warning notice under section 345(2) (whether as a result of that section or of section 249); and

(a) Section 249 is amended by the 2012 Act, Schedule 18, Part 1, paragraphs 9 and 10.

(b) Sections 312E to 312I are inserted by the 2012 Act, section 33.

(c) Sections 345 to 345E are substituted by the 2012 Act, Schedule 13, paragraph 7.

- (b) had not given a decision notice or a notice of discontinuance following that warning notice.
- (6) The warning notice is to be treated as if it had been given by the FCA under section 345B(1) (whether as a result of that section or of section 249, as the case may be).
- (7) Paragraph (8) applies where, before the commencement date, the Authority—
 - (a) had given a decision notice under section 345(3) (whether as a result of that section or of section 249); and
 - (b) had not given a final notice or a notice of discontinuance following that decision notice.
- (8) The decision notice is to be treated as if it had been given by the FCA under section 345B(4) (whether as a result of that section or of section 249, as the case may be).

PART 9

Injunctions and restitution

Injunctions

15.—(1) Paragraph (2) applies if—

- (a) a contravention of a relevant requirement occurred or began to occur before the commencement date;
- (b) the Authority had not, before the commencement date, made an application to the court under section 380(a) (injunctions) in respect of the contravention; and
- (c) the act or omission which constituted the contravention would have constituted a contravention in respect of which the PRA is the appropriate regulator within the meaning of section 380(8) to (10) had the act or omission occurred or begun to occur on the commencement date.

(2) Section 380 applies as if it defined both the FCA and PRA as the appropriate regulator in respect of the relevant requirement which was contravened.

(3) In this article “relevant requirement” means a relevant requirement within the meaning of section 380 as it applied at the time of the contravention.

Restitution orders

16.—(1) Paragraph (2) applies if—

- (a) a contravention of a relevant requirement occurred or began to occur before the commencement date;
- (b) the Authority had not, before the commencement date, made an application to the court under section 382(b) (restitution orders) in respect of the contravention; and
- (c) the act or omission which constituted the contravention would have constituted a contravention for which the PRA is the appropriate regulator within the meaning of section 382(11) to (13) had the act or omission occurred or begun to occur on the commencement date.

(2) Section 382 applies as if it defined both the FCA and PRA as the appropriate regulator in respect of the relevant requirement which was contravened.

(3) In this article “relevant requirement” means a relevant requirement within the meaning of section 382 as it applied at the time of the contravention.

(a) Section 380 was amended by S.I. 2007/126, 2011/1613 and 2012/1906 and 2554 and is further amended by the 2012 Act, Schedule 9, Part 5, paragraph 19.

(b) Section 382 was amended by S.I. 2007/126, 2011/1613 and 2012/1906 and 2554 and is further amended by the 2012 Act, Schedule 9, Part 5, paragraph 21.

Power to require restitution

17.—(1) Paragraph (2) applies if—

- (a) a contravention of a relevant requirement occurred or began to occur before the commencement date;
- (b) the Authority had not given a warning notice under section 385(1) before the commencement date in respect of the contravention; and
- (c) the act or omission which constituted the contravention would have constituted a contravention for which the PRA is the appropriate regulator within the meaning of section 384(9) to (11)(a) (power to require restitution) had the act or omission occurred or begun on the commencement date.

(2) Section 384 applies as if it defined both the FCA and PRA as the appropriate regulator in respect of the relevant requirement which was contravened.

(3) In this article “relevant requirement” means a relevant requirement within the meaning of section 384 as it applied at the time of the contravention.

Injunctions and restitution in respect of certain post-commencement contraventions

18.—(1) Paragraph (3) applies in respect of a contravention, beginning on or after the commencement date, of a requirement which—

- (a) was imposed before the commencement date under a provision listed in paragraph (2); and
- (b) is to be treated as if it had been imposed by the PRA by virtue of an order made under section 119(3) of the 2012 Act.

(2) The provisions are—

- (a) section 43 (imposition of requirements);
- (b) section 44 (variation etc. at request of authorised person);
- (c) section 45 (variation etc. on the Authority’s own initiative), including the exercise of powers under section 45 by virtue of section 47 (exercise of power in support of overseas regulator);
- (d) section 46 (variation of permission on acquisition of control);
- (e) section 196 (the power of intervention).

(3) Sections 380, 382 and 384 apply as if they defined both the PRA and the FCA as the appropriate regulator in respect of the contravention.

PART 10

Notices

CHAPTER 1

Transfer elections

Warning notices

19.—(1) Paragraph (2) applies where, before the commencement date, the Authority—

- (a) gave a warning notice under FSMA 2000; and
- (b) had not given a decision notice or a notice of discontinuance following that warning notice.

(a) Section 384 was amended by S.I. 2007/126, 2011/1613 and 2012/1906 and is further amended by the 2012 Act, Schedule 9, Part 5, paragraph 23.

(2) The FCA may make a transfer election (see article 24) in respect of the whole or part of the warning notice.

(3) This article does not apply to a warning notice given under the following provisions—

- (a) section 52(6) or (7) (determination of applications);
- (b) section 189(4)(b) (assessment: procedure);
- (c) section 191A(4) (objection);
- (d) section 321(8) (requirements imposed under section 320);
- (e) section 345(2) (disqualification), whether as a result of section 345 or of section 249;
- (f) paragraph 19(8) of Schedule 3 (establishment).

Written notices

20.—(1) Paragraph (2) applies where, before the commencement date, the Authority gave a written notice under—

- (a) section 53(4), (7) or (8)(b) (exercise of own-initiative power: procedure);
- (b) section 197(3), (6) or (7)(b) (procedure on exercise of power of intervention);
- (c) section 200(2) (rescission and variation of requirements).

(2) The FCA may make a transfer election (see article 24) in relation to the whole or part of the written notice provided that, before the transfer election is made—

- (a) the written notice was not referred to the Tribunal; or
- (b) where the written notice was referred to the Tribunal—
 - (i) the Tribunal remitted the matter to the Authority without an appeal being made in relation to the determination of the Tribunal, or
 - (ii) if such an appeal was brought, it was determined, and the FCA had not taken action in reliance on the written notice or given a further written notice.

Decision notices

21.—(1) Paragraph (2) applies where, before the commencement date, the Authority gave a decision notice under FSMA 2000.

(2) The FCA may make a transfer election (see article 24) in relation to the whole or part of the decision notice provided that, before the transfer election is made—

- (a) the decision notice was not referred to the Tribunal; or
- (b) where the decision notice was referred to the Tribunal—
 - (i) the Tribunal remitted the matter to the Authority without an appeal being made in relation to the determination of the Tribunal, or
 - (ii) if such an appeal was brought, it was determined, and the FCA had not given a final notice, a notice of discontinuance or a further decision notice.

(3) This article does not apply to a decision notice given under any of the following provisions—

- (a) section 52(9) (determination of applications);
- (b) section 189(7) (assessment: procedure);
- (c) section 191A(6) (objection);
- (d) section 321(9) (requirements imposed under section 320);
- (e) section 345(3) (disqualification), whether as a result of section 345 or of section 249;
- (f) paragraph 19(12) of Schedule 3 (establishment).

Final notices

22.—(1) Paragraph (2) applies where—

- (a) the Authority gave a final notice before the commencement date in accordance with section 390(3) (final notices) and, on the commencement date, the statement had not been published;
- (b) the Authority gave a final notice before the commencement date in accordance with section 390(4) and, on the commencement date, the order had not been complied with or had not yet come into effect;
- (c) the Authority gave a final notice before the commencement date in accordance with section 390(5) and, on the commencement date, the penalty had not been paid;
- (d) the Authority gave a final notice before the commencement date in accordance with section 390(6) and, on the commencement date, the required payment or distribution had not been made;
- (e) the Authority gave a final notice before the commencement date in accordance with section 390(7) and, on the commencement date, action had not yet been taken.

(2) The FCA may make a transfer election (see article 24) in relation to the whole or part of the final notice.

Suspension of permission to carry on regulated activities etc

23.—(1) Paragraph (2) applies if, before the commencement date—

- (a) the Authority had, under section 206A—
 - (i) suspended a permission, or
 - (ii) imposed a limitation or a restriction,for such period as it considered appropriate;
- (b) the period had not expired; and
- (c) the Authority had not withdrawn the suspension, limitation or restriction.

(2) The FCA may make a transfer election (see article 24) in relation to the suspension, limitation or restriction.

Transfer elections

24.—(1) The FCA may only make a transfer election—

- (a) within the period of 45 days which begins on the commencement date; and
- (b) with the consent of the PRA.

(2) A transfer election must—

- (a) be in writing;
- (b) specify the notice, suspension, limitation or restriction to which the transfer election relates;
- (c) in the case of a notice, specify whether the transfer election relates to the whole or to part of the notice; and
- (d) if the transfer election relates to part of a notice, specify—
 - (i) the part to which the transfer election relates, and
 - (ii) whether that part is to be treated as if it had been given—
 - (aa) by the PRA, or
 - (bb) by both regulators.

(3) The FCA must send the transfer election, or a copy of it, to—

- (a) in the case of a notice—

- (i) each person to whom the notice to which the election relates was sent, and
- (ii) each person to whom a copy of the notice to which the election relates was sent;
- (b) in the case of a suspension, limitation or restriction, the person on whom the suspension, limitation or restriction was imposed; and
- (c) the PRA.

Effect of a transfer election

- 25.—**(1) Where a transfer election relates to—
- (a) the whole of a notice, the notice is to be treated as if it had been given by the PRA;
 - (b) a specified part of a notice, the specified part is to be treated as if it had been given by—
 - (i) where article 24(2)(d)(ii)(aa) applies, the PRA;
 - (ii) where article 24(2)(d)(ii)(bb) applies, both regulators;
 and section 394(a) (access to FCA and PRA material) applies accordingly.
- (2) Where the FCA makes a transfer election in relation to a notice or part of a notice—
- (a) any representations made—
 - (i) on or before the date of the transfer election,
 - (ii) to the Authority or to the FCA, and
 - (iii) in respect of the notice or specified part to which the election relates,
 are to be treated as if they had been made to the PRA (as well as, where relevant, to the FCA);
 - (b) if the period for making representations in respect of a notice or specified part had not expired before the date of the transfer election, representations are to be made to the PRA and, where article 24(2)(d)(ii)(bb) applies, the FCA, before the end of that period; and
 - (c) in a case to which article 20(2)(b) or 21(2)(b) applies, any directions given by the Tribunal in relation to the notice or the specified part are to be treated as if they had been given to the PRA (as well as, where relevant, to the FCA).

CHAPTER 2

Notices under Part 4, sections 189, 191A, 197 and 321, and paragraph 19 of Schedule 3

Determination of applications under Part 4: warning notices given by the Authority

- 26.—**(1) This article applies where, before the commencement date, the Authority—
- (a) gave a warning notice under section 52(6) or (7)(b) (determination of applications); and
 - (b) had not given a decision notice or a written notice following that warning notice.
- (2) The warning notice is to be treated as if it had been given by the relevant regulator under—
- (a) section 55X(1)(a) (determination of applications: warning notices and decision notices), where the notice was given by the Authority under section 52(6)(a) and the Authority proposed to exercise its power under section 42(7)(a) or (b) (giving permission);
 - (b) section 55X(1)(b) and (e), where the notice was given by the Authority under section 52(6)(a) and the Authority proposed to exercise its power under section 43(1) (imposition of requirements);
 - (c) section 55X(1)(c), where the notice was given by the Authority under section 52(6)(b) and the Authority proposed to exercise its power under section 42(7)(a) or (b);

(a) Section 394 is amended by the 2012 Act, Schedule 9, Part 1, paragraph 33.

(b) Sections 55A to 55Z4 are substituted for sections 40 to 55 by the 2012 Act, section 11.

- (d) section 55X(1)(d) and (e), where the notice was given by the Authority under section 52(6)(b) and the Authority proposed to exercise its power under section 43(1);
 - (e) section 55X(2), where the notice was given by the Authority under section 52(7).
- (3) Where the relevant regulator is the PRA—
- (a) any representations made to the Authority before the commencement date in respect of the warning notice are to be treated as if they had been made to the PRA; and
 - (b) if the period for making representations in respect of the warning notice had not expired before the commencement date, representations are to be made to the PRA.
- (4) In this article, the “relevant regulator” means—
- (a) in relation to section 55X(1)(e), the FCA; and
 - (b) in relation to section 55X(1)(a), (b), (c) and (d) and (2)—
 - (i) the PRA, if the application to which the warning notice relates would have been made to the PRA as the appropriate regulator within the meaning of section 55A had the application been made on the commencement date; and
 - (ii) in any other case, the FCA.
- (5) For the purposes of paragraph (2)(b) and (d)—
- (a) the service of a notice of discontinuance by the PRA in relation to part or the whole of the warning notice does not affect the validity of the notice in relation to the FCA for the purposes of section 55X(1)(e); and
 - (b) the service of a notice of discontinuance by the FCA in relation to its exercise of its power under section 55L (imposition of requirements by FCA) does not affect the validity of the notice in relation to the PRA for the purposes of section 55X(1)(b) or (d).

Determination of applications under Part 4: decision notices given by the Authority

- 27.—(1) This article applies where before the commencement date, the Authority—
- (a) gave a decision notice under section 52(9); and
 - (b) had not given a final notice on taking the action to which the decision notice related.
- (2) The decision notice is to be treated as if it had been given by the relevant regulator under—
- (a) section 55X(4)(a), where the notice was given by the Authority under section 52(9)(a) and the Authority decided to exercise its power under section 42(7)(a) or (b);
 - (b) section 55X(4)(b) and (e), where the notice was given by the Authority under section 52(9)(a) and the Authority decided to exercise its power under section 43(1);
 - (c) section 55X(4)(c), where the notice was given by the Authority under section 52(9)(b) and the Authority decided to exercise its power under section 42(7)(a) or (b);
 - (d) section 55X(4)(d) and (e), where the notice was given by the Authority under section 52(9)(b) and the Authority decided to exercise its power under section 43(1);
 - (e) section 55X(4)(f), where the notice was given by the Authority under section 52(9)(c).
- (3) In this article, the “relevant regulator” means—
- (a) where the decision notice had been referred to the Tribunal before the commencement date, the FCA; and
 - (b) where the decision notice had not been referred to the Tribunal before the commencement date—
 - (i) in relation to section 55X(4)(e), the FCA; and
 - (ii) in relation to section 55X(4)(a), (b), (c), (d) and (f)—
 - (aa) the PRA, if the application to which the decision notice relates would have been made to the PRA as the appropriate regulator within the meaning of section 55A (application for permission) had the application been made on the commencement date; and

- (bb) in any other case, the FCA.
- (4) For the purposes of paragraph (2)(b) and (d)—
 - (a) the service of a notice of discontinuance by the PRA in relation to part or the whole of the decision notice does not affect the validity of the notice in relation to the FCA for the purposes of section 55X(4)(e); and
 - (b) the service of a notice of discontinuance by the FCA in relation to its exercise of its power under section 55L does not affect the validity of the decision notice in relation to the PRA for the purposes of section 55X(4)(b) or (d).

Exercise of own-initiative power under Part 4: procedure

- 28.**—(1) This article applies where—
- (a) the Authority gave a written notice under section 53 before the commencement date; and
 - (b) (i) the variation was expressed to take effect before the commencement date and the period for making representations in respect of the notice had not expired before the commencement date, or
 - (ii) the date on which the variation is expressed to take effect is, or is after, the commencement date.
- (2) A written notice given under—
- (a) section 53(4) is to be treated as if it had been given under section 55Y(4);
 - (b) section 53(7) is to be treated as if it had been given under section 55Y(7);
 - (c) section 53(8)(b) is to be treated as if it had been given under section 55Y(8)(b).
- (3) The written notice is to be treated as if it had been given by the FCA except to the extent that the FCA—
- (a) makes a transfer election in relation to the notice or part of the notice in accordance with this Order; or
 - (b) is treated as having made such a transfer election.
- (4) The FCA is to be treated as having made such a transfer election where—
- (a) paragraph (1)(b)(i) applies; and
 - (b) the variation is to be treated as if it had been imposed by the PRA under section 55M (imposition of requirements by PRA) by virtue of an order made under section 119(3).

Cancellation of permission under Part 4: notices given by the Authority

- 29.**—(1) Paragraph (2) applies where, before the commencement date, the Authority—
- (a) gave a warning notice under section 54(1) (cancellation of Part 4 permission: procedure); and
 - (b) had not given a decision notice or a notice of discontinuance following that warning notice.
- (2) The warning notice is to be treated as if it had been given by the relevant regulator under section 55Z(1) (cancellation of Part 4A permission: procedure).
- (3) Paragraph (4) applies where, before the commencement date, the Authority—
- (a) gave a decision notice under section 54(2); and
 - (b) had not given a final notice or a notice of discontinuance following that decision notice.
- (4) The decision notice is to be treated as if it had been given by the relevant regulator under section 55Z(2).
- (5) In this article, the “relevant regulator” means the FCA unless the FCA makes a transfer election in accordance with this Order in relation to the relevant notice.

Control over authorised persons

30.—(1) Paragraphs (2), (3) and (4) apply if—

- (a) before the commencement date, the Authority—
 - (i) gave a warning notice under—
 - (aa) section 189(4)(b)(a) (assessment: procedure), or
 - (bb) section 191A(4) (objection by the Authority), and
 - (ii) had not given a decision notice or a notice of discontinuance following that warning notice; and
- (b) the warning notice relates to the acquisition of, or increase in, control over a UK authorised person who is, on the commencement date, a PRA-authorised person.

(2) The warning notice is to be treated as if it had been given by the PRA.

(3) Any representations made to the Authority before the commencement date in respect of the warning notice are to be treated as if they had been made to the PRA.

(4) If the period for making representations in respect of the warning notice had not expired before the commencement date, representations are to be made to the PRA.

(5) Paragraph (6) applies if—

- (a) before the commencement date, the Authority—
 - (i) gave a decision notice under—
 - (aa) section 189(7), or
 - (bb) section 191A(6), and
 - (ii) had not given a final notice on taking the action to which the decision notice related or a notice of discontinuance; and
- (b) the decision notice relates to the acquisition of, or increase in, control over a UK authorised person who is, on the commencement date, a PRA-authorised person.

(6) The decision notice is to be treated as if it had been given by the PRA.

Variation or revocation of requirements imposed on former underwriting members

31.—(1) Paragraphs (2), (3) and (4) apply if—

- (a) before the commencement date, the Authority gave a warning notice under section 321(8)(b) (requirements imposed under section 320), and
- (b) had not given a decision notice or a notice of discontinuance following that warning notice.

(2) The warning notice is to be treated as if it had been given by the PRA.

(3) Any representations made to the Authority before the commencement date in respect of the warning notice are to be treated as if they had been made to the PRA.

(4) If the period for making representations in respect of the warning notice had not expired before the commencement date, representations are to be made to the PRA.

(5) Paragraph (6) applies if—

- (a) before the commencement date, the Authority gave a decision notice under section 321(9), and
- (b) had not given a final notice on taking the action to which the decision notice related or a notice of discontinuance.

(6) The decision notice is to be treated as if it had been given by the PRA.

(a) Section 178, 189 and 191A were substituted by S.I. 2009/534 and are amended by the 2012 Act, section 26.

(b) Section 321 is amended by the 2012 Act, section 40.

(7) This article does not apply in the event that, on the commencement date, the activity of effecting or carrying out contracts of insurance as principal is not to any extent a PRA-regulated activity.

UK firm seeking to establish a branch

32.—(1) This article applies where—

- (a) before the commencement date, the Authority received a notice of intention within the meaning of paragraph 19(2)(a) of Schedule 3 (establishment); and
- (b) the notice would have been sent to the PRA as the appropriate UK regulator (within the meaning of paragraph 18A(b) of that Schedule (meaning of “the appropriate UK regulator”)) had the notice been sent on the commencement date.

(2) Paragraph (3) applies if, before the commencement date, the Authority—

- (a) gave a warning notice under paragraph 19(8) of Schedule 3; and
- (b) had not given a decision notice or a notice of discontinuance following that warning notice.

(3) The warning notice is to be treated as if it had been given by the PRA.

(4) Paragraph (5) applies if, before the commencement date—

- (a) the Authority—
 - (i) gave a decision notice under paragraph 19(12) of that Schedule; and
 - (ii) had not given a final notice or notice of discontinuance following that decision notice; and
- (b) the decision notice was not referred to the Tribunal.

(5) The decision notice is to be treated as if it had been given by the PRA.

CHAPTER 3

Publication of information concerning a warning notice

Publication

33. Section 391(1)(c)(e) (publication) does not apply to a warning notice given before the commencement date.

PART 11

Offences

Proceedings for offences

34.—(1) Paragraph (2) applies if—

- (a) an act or omission occurred before the commencement date;
- (b) the Authority had not, before the commencement date, instituted proceedings for an offence in relation to the act or omission, and

(a) Paragraph 19 was amended by S.I. 2003/1473 and 2066, 2007/126 and 3253, 2011/1613, 2012/916 and 1906 and is further amended by the 2012 Act, Schedule 4, Part 1, paragraph 10.

(b) Paragraph 18A is inserted by the 2012 Act, Schedule 4, Part 1, paragraph 9.

(c) Section 391 was amended by the Financial Services Act 2010, section 13 and Schedule 2, Part 1, paragraph 28 and S.I. 2012/916, and is further amended by the 2012 Act, section 24 and Schedule 9, Part 6, paragraph 30.

(c) the PRA would have been the appropriate regulator within the meaning of section 401(3A)(a) (proceedings for offences) in respect of proceedings for an offence in relation to the act or omission had the act or omission occurred on the commencement date.

(2) Section 401 applies as if it defined both the FCA and the PRA as the appropriate regulator in respect of proceedings for the offence.

Stephen Crabb
Robert Goodwill

27th February 2013

Two of the Lords Commissioners of Her Majesty's Treasury

(a) Section 401 is amended by the 2012 Act, Schedule 9, Part 7, paragraph 38. There are other amending instruments but none is relevant.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Financial Services Act 2012 (c.21) (“the 2012 Act”) and makes transitional provision in relation to the coming into force of various provisions of that Act which amend the Financial Services and Markets Act 2000 (c.8) (“FSMA 2000”).

Article 1 provides that the Order comes into force on 1st April 2013; that date is defined as the “commencement date” for the purpose of the Order.

Articles 2 and 3 make provision for the imposition of penalties and disciplinary measures under FSMA 2000 in relation to the performance of controlled functions before the commencement date.

Article 4 disapplies certain disciplinary powers under FSMA 2000 in relation to the contravention of listing rules before the commencement date.

Articles 5 to 10 make transitional provision in relation to the exercise of powers under FSMA 2000 over EEA firms exercising passporting rights under various single market directives.

Article 11 makes transitional provision in relation to the exercise of disciplinary powers under FSMA 2000 in relation to contravention of requirements occurring before the commencement date.

Article 12 disapplies certain disciplinary powers under FSMA 2000 in relation to failures by auditors to comply with trust scheme rules before the commencement date.

Article 13 disapplies certain disciplinary powers under FSMA 2000 in relation to contraventions by recognised clearing houses and recognised investment exchanges before the commencement date.

Article 14 makes transitional provision in relation to persons disqualified before the commencement date from being the auditor of, or acting as the actuary for, an authorised person or class of authorised person.

Articles 15 to 18 make transitional provision in relation to injunctions and restitution.

Articles 19 to 32 make provision for various notices and other matters given or imposed by the Financial Services Authority before the commencement date to be treated as if given or imposed by the Prudential Regulation Authority, or by the Prudential Regulation Authority and the Financial Conduct Authority.

Article 33 disapplies provisions relating to the publication of warning notices in relation to warning notices given before the commencement date.

Article 34 makes transitional provision in relation to the prosecution of offences which occurred before the commencement date.

A full impact assessment of the effect that this Order 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 <http://www.hm-treasury.gov.uk/> and is published alongside the Order on <http://www.legislation.gov.uk/>.

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