
STATUTORY INSTRUMENTS

2013 No. 442

The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013

PART 12

Companies Act 1989

Request for assistance by overseas regulatory authority

64.—(1) Section 82(3) of the Companies Act 1989⁽¹⁾ (request for assistance by overseas regulatory authority) is modified as set out in paragraph (2) if, before the commencement date, the Authority was satisfied as is mentioned in that section 82(3) in respect of the assistance requested.

(2) In that section 82(3), for “and the corresponding UK regulator (if any) are” substitute “is”.

(3) Section 82(5)⁽²⁾ of the Companies Act 1989 does not apply if, before the commencement date, the Secretary of State consulted the Authority in accordance with that section 82(5) in respect of the assistance requested.

Change in default rules

65.—(1) This article applies if a recognised UK clearing house has given the Authority notice under section 157(1)⁽³⁾ of the Companies Act 1989 (change in default rules) on a day which is 14 days or less before the commencement date.

(2) If the Authority gave a direction under that provision before the commencement date, the direction is to be treated as if it had been given by the Bank of England.

(3) If the Authority did not give a direction under that provision before the commencement date, the notice is to be treated as if it had been given to the Bank of England.

Duty to report on completion of default proceedings

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

(a) the Authority gave notice to a recognised overseas clearing house under section 162(1A)⁽⁴⁾ of the Companies Act 1989 (duty to report on completion of default proceedings); and

(b) a report in respect of a proceeding was not provided to the Authority in accordance with section 162(1) of that Act.

(2) The report is to be provided to the Bank of England.

(1) 1989 c.40. Section 82(3) was amended by S.I. 2001/3649 and is further amended by the 2012 Act, Schedule 18, paragraph 63.

(2) Section 82(5) was amended by the Bank of England Act 1998, Schedule 5, paragraph 66 and is further amended by the 2012 Act, Schedule 18, Part 2, paragraph 63.

(3) Section 157 was amended by S.I. 2001/3649 and is further amended by the 2012 Act, Schedule 18, Part 2, paragraph 65.

(4) Section 162 was amended by S.I. 1991/880 and 2001/3649, and is further amended by the 2012 Act, Schedule 18, Part 2, paragraph 66.

- (3) Paragraph (4) applies if, before the commencement date—
- (a) a recognised clearing house was under an obligation to report on a proceeding to the Authority in accordance with section 162 of the Companies Act 1989, and
 - (b) the recognised clearing house did not report to the Authority on the proceeding.
- (4) The recognised clearing house must report to the Bank of England on the proceeding.
- (5) Paragraph (6) applies if, before the commencement date, the Authority—
- (a) received a report from a recognised clearing house in accordance with section 162 of the Companies Act 1989; and
 - (b) had not published notice of that fact in accordance with subsection (4) of that section.
- (6) The Bank of England must publish notice of that fact in accordance with that subsection (4).

Powers to give directions

67.—(1) This article applies in any case where, before the commencement date, a clearing house has not taken action under its default rules.

- (2) Paragraph (3) applies if, before the commencement date, the Authority—
- (a) had consulted the clearing house for the purposes of section 166(3)(5) of the Companies Act 1989 (powers to give directions); and
 - (b) had not given a direction for the purposes of section 166(2) of the Companies Act 1989.
- (3) The Bank of England is to be treated as if it had consulted the clearing house for the purposes of section 166(3) of the Companies Act 1989.
- (4) A direction given, before the commencement date, by the Authority for the purposes of section 166 of the Companies Act 1989 is to be treated for the purposes of sections 166 and 167(6) (application to determine whether default proceedings to be taken) of that Act as if it had been given by the Bank of England.
- (5) In this article, “default rules” has the meaning given in section 188(1)(7) of the Companies Act 1989 (meaning of “default rules” and related expressions).

Application to determine whether default proceedings to be taken

- 68.**—(1) Paragraph (2) applies if, before the commencement date, the Authority—
- (a) had received an application made under section 167(1B) of the Companies Act 1989 and in accordance with section 167(2) of that Act; and
 - (b) had not—
 - (i) notified the clearing house; or
 - (ii) given a direction under section 166(2)(a) of that Act.
- (2) The application is to be treated as if it had been made to the Bank of England.
- (3) Paragraph (4) applies if, before the commencement date, a clearing house—
- (a) notified the Authority that it proposed to take action under its default rules; and
 - (b) had not taken such action.

(5) Section 166 was amended by [S.I. 2001/3649](#) and is further amended by the 2012 Act, section 111.

(6) Section 167 was amended by [S.I. 2001/3649](#) and [2009/853](#) and is further amended by the 2012 Act, Schedule 18, Part 2, paragraph 67.

(7) Section 188(1) was amended by [S.I. 2009/853](#).

(4) The duty to take action is enforceable, on the application of the Bank of England, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988⁽⁸⁾.

⁽⁸⁾ 1988 c.36.