



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 2

#### AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

##### *Official listing*

### **18 Listing rules: disciplinary powers in relation to sponsors**

- (1) FSMA 2000 is amended as follows.
- (2) In section 88 (provision that may be made by listing rules in relation to sponsors)—
  - (a) in subsection (3), at the end insert—
    - “(e) provide for limitations or other restrictions to be imposed on the services to which an approval relates (whether or not the approval has already been granted);
    - (f) provide for the approval of a sponsor to be suspended on the application of the sponsor.”,
  - (b) in subsection (4), in paragraph (a), for “for approval as a sponsor” substitute “ under sponsor rules ”,
  - (c) after that paragraph (but before the “or” at the end) insert—
    - “(aa) to impose limitations or other restrictions on the services to which a person's approval relates,”,
  - (d) in subsection (5), in paragraph (a), for “for approval” substitute “ under sponsor rules ”,
  - (e) after that paragraph (but before the “or” at the end) insert—
    - “(aa) not to impose limitations or other restrictions on the services to which a person's approval relates,”,
  - (f) in subsection (6), in paragraph (a), for “for approval” substitute “ under sponsor rules ”,
  - (g) after that paragraph (a) (but before the “or” at the end) insert—

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- “(aa) to impose limitations or other restrictions on the services to which a person's approval relates,”, and
- (h) after subsection (7) insert—
- “(8) In this section any reference to an application under sponsor rules means—
- (a) an application for approval as a sponsor,
- (b) an application for the suspension of an approval as a sponsor,
- (c) an application for the withdrawal of the suspension of an approval as a sponsor, or
- (d) an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates.”
- (3) The power to make provision under section 88(3)(e) of FSMA 2000 (as inserted by subsection (2)(a) above) includes power to make provision in relation to persons who were approved as sponsors before the coming into force of subsection (2)(a) above.
- (4) For section 89 substitute—

**“88A Disciplinary powers: contravention of s.88(3)(c) or (e)**

- (1) The FCA may take action against a sponsor under this section if it considers that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).
- (2) If the FCA is entitled to take action under this section against a sponsor, it may do one or more of the following—
- (a) impose a penalty on the sponsor of such amount as it considers appropriate;
- (b) suspend, for such period as it considers appropriate, the sponsor's approval;
- (c) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate;
- (d) publish a statement to the effect that the sponsor has contravened a requirement or restriction imposed on the sponsor by rules made as a result of section 88(3)(c) or (e).
- (3) The period for which a suspension or restriction is to have effect may not exceed 12 months.
- (4) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.
- (5) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.
- (6) The FCA may—
- (a) withdraw a suspension or restriction; or
- (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.

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- (7) The FCA may not take action against a sponsor under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the sponsor under section 88B(1).
- (8) “The limitation period” means the period of 3 years beginning with the first day on which the FCA knew that the sponsor had contravened the requirement or restriction.
- (9) For this purpose the FCA is to be treated as knowing that a sponsor has contravened a requirement or restriction if it has information from which that can reasonably be inferred.

#### **88B Action under s.88A: procedure and right to refer to Tribunal**

- (1) If the FCA proposes to take action against a sponsor under section 88A, it must give the sponsor a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal—
  - (a) to suspend an approval, or
  - (b) to impose a restriction in relation to the performance of a service,must state the period for which the suspension or restriction is to have effect.
- (4) A warning notice about a proposal to publish a statement must set out the terms of the statement.
- (5) If the FCA decides to take action against a sponsor under section 88A, it must give the sponsor a decision notice.
- (6) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (7) A decision notice about—
  - (a) the suspension of an approval, or
  - (b) the imposition of a restriction in relation to the performance of a service,must state the period for which the suspension or restriction is to have effect.
- (8) A decision notice about the publication of a statement must set out the terms of the statement.
- (9) If the FCA decides to take action against a sponsor under section 88A, the sponsor may refer the matter to the Tribunal.

#### **88C Action under s.88A: statement of policy**

- (1) The FCA must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties, suspensions or restrictions under section 88A,
  - (b) the amount of penalties under that section, and

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- (c) the period for which suspensions or restrictions under that section are to have effect.
- (2) The FCA's policy in determining what the amount of a penalty should be, or what the period for which a suspension or restriction is to have effect should be, must include having regard to—
  - (a) the seriousness of the contravention in question in relation to the nature of the requirement concerned,
  - (b) the extent to which that contravention was deliberate or reckless, and
  - (c) whether the sponsor concerned is an individual.
- (3) The FCA may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replacement statement.
- (5) In exercising, or deciding whether to exercise, its power under section 88A in the case of any particular contravention, the FCA must have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.
- (6) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.
- (8) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this section.

#### **88D Statement of policy under s.88C: procedure**

- (1) Before issuing a statement under section 88C, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with subsection (2).
- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.

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### **88E Powers exercisable to advance operational objectives**

- (1) The FCA may take action against a sponsor under this section if it considers that it is desirable to do so in order to advance one or more of its operational objectives.
- (2) If the FCA is entitled to take action under this section against a sponsor, it may—
  - (a) suspend, for such period as it considers appropriate, the sponsor's approval, or
  - (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which the sponsor's approval relates as it considers appropriate.
- (3) A suspension may relate only to the performance in specified circumstances of a service to which the approval relates.
- (4) A restriction may, in particular, be imposed so as to require the sponsor to take, or refrain from taking, specified action.
- (5) The FCA may—
  - (a) withdraw a suspension or restriction, or
  - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (6) A person against whom the FCA takes action under this section may refer the matter to the Tribunal.

### **88F Action under s.88E: procedure**

- (1) Action against a sponsor under section 88E takes effect—
  - (a) immediately, if the notice given under subsection (3) so provides, or
  - (b) on such later date as may be specified in the notice.
- (2) If the FCA—
  - (a) proposes to take action against a sponsor under that section, or
  - (b) takes action against a sponsor under that section with immediate effect,it must give the sponsor written notice.
- (3) The notice must—
  - (a) give details of the action,
  - (b) state the FCA's reasons for taking the action and for its determination as to when the action takes effect,
  - (c) inform the sponsor that the sponsor may make representations to the FCA within such period as may be specified in the notice (whether or not the matter has been referred to the Tribunal),
  - (d) inform the sponsor of when the action takes effect,
  - (e) inform the sponsor of the right to refer the matter to the Tribunal, and
  - (f) give an indication of the procedure on such a reference.

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- (4) The FCA may extend the period allowed under the notice for making representations.
- (5) If the FCA decides—
  - (a) to take the action in the way proposed, or
  - (b) if the action has taken effect, not to rescind it,
 the FCA must give the sponsor written notice.
- (6) If the FCA decides—
  - (a) not to take the action in the way proposed,
  - (b) to take action under section 88E that differs from the action originally proposed, or
  - (c) to rescind action which has taken effect,
 the FCA must give the sponsor written notice.
- (7) A notice under subsection (5) must—
  - (a) inform the sponsor of the right to refer the matter to the Tribunal, and
  - (b) give an indication of the procedure on such a reference.
- (8) A notice under subsection (6)(b) must comply with subsection (3).”
- (5) In section 392 (warning and decisions notices: application of provisions relating to third party rights and access to evidence)—
  - (a) for “section 89(2),” substitute “ section 88B(1), ”, and
  - (b) for “section 89(3),” substitute “ section 88B(5), ”.
- (6) In section 395(13) (meaning of “supervisory notice”), after paragraph (bza) insert—
  - “(bzb) section 88F(2), (5) or (6)(b);”.

**Commencement Information**

- I1** S. 18 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), Sch. Pt. 3
- I2** S. 18 in force at 19.3.2013 for specified purposes by S.I. 2013/651, art. 2(a)
- I3** S. 18 in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, Sch.

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