
STATUTORY INSTRUMENTS

2010 No. 906

FINANCIAL SERVICES AND MARKETS

The Credit Rating Agencies Regulations 2010

Made - - - - 22nd March 2010
Laid before Parliament 23rd March 2010
Coming into force - - 7th June 2010

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to—

- (a) credit ratings and credit rating agencies⁽²⁾;
- (b) credit and financial institutions and the taking of deposits or other repayable funds from the public⁽³⁾; and
- (c) measures relating to investment firms and to the provision of investment services⁽⁴⁾.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 349(1)(b) of the Financial Services and Markets Act 2000⁽⁵⁾, make the following Regulations:

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Credit Rating Agencies Regulations 2010 and shall come into force on 7th June 2010.

Interpretation

2.—(1) In these Regulations—

(1) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by the Schedule to the European Union (Amendment) Act 2008 (c.7).
(2) S.I. 2009/3214.
(3) S.I. 2001/3495.
(4) S.I. 1993/2661.
(5) 2000 c. 8.

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

“the Authority” means the Financial Services Authority;

“the EC Regulation” means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies⁽⁶⁾;

“overseas competent authority” means an authority designated by a Member State other than the United Kingdom in accordance with Article 22(1) of the EC Regulation (competent authorities);

“protected item” has the same meaning as in section 413 of the Act (protected items).

(2) Expressions used in these Regulations which are listed in Article 3 of the EC Regulation (definitions) have the meaning given in that Article.

PART 2

The Authority

Designation of competent authority

3. The Authority is the competent authority for the purposes of the EC Regulation.

Fees

4. A registration or supervisory fee charged by the Authority under Article 19 of the EC Regulation (registration and supervisory fees) may be recovered as a debt owed to the Authority.

Disclosure of confidential information

5. Section 348(1) of the Act (restrictions on disclosure of confidential information by Authority etc) does not prevent the Authority from disclosing confidential information where the disclosure is permitted by the EC Regulation.

Guidance

6.—(1) The Authority may give guidance consisting of such information and advice as it considers appropriate with respect to—

- (a) the operation of the EC Regulation or these Regulations;
- (b) any matter relating to the functions of the Authority under the EC Regulation;
- (c) any other matter about which it appears to the Authority to be desirable to give information or advice in connection with the EC Regulation or these Regulations.

(2) The Authority may—

- (a) publish its guidance;
- (b) offer copies of its published guidance for sale at a reasonable price;
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(6) OJ L 302, 17.11.2009, p. 1.

Miscellaneous

7. The functions of the Authority under the EC Regulation are to be treated for the purposes of Part 1 (general) and paragraphs 13 (status) and 19 (exemption from liability in damages) of Schedule 1(7) to the Act as functions conferred on the Authority under the Act.

PART 3

Applications for certification and registration

Language for applications

8. Where a credit rating agency submits an application for registration under Article 15 of the EC Regulation (application for registration), the application must be in English if the United Kingdom is the home Member State of that agency.

Approval decisions

9. Where the Authority adopts—

- (a) a certification decision in respect of an application for certification submitted by a credit rating agency under Article 5(2) of the EC Regulation (equivalence and certification based on equivalence); or
- (b) a registration decision in respect of an application for registration submitted by a credit rating agency under Article 15 of the EC Regulation,

the decision takes effect when it is adopted.

Refusal decisions

10. Where the Authority adopts a refusal decision in respect of an application for certification submitted by a credit rating agency under Article 5(2) of the EC Regulation, or an application for registration submitted by a credit rating agency under Article 15 of the EC Regulation, the decision takes effect—

- (a) on the expiry of the time period within which the credit rating agency may refer the matter to the Upper Tribunal under sub-paragraph (a) or (c) of regulation 29(1); or
- (b) if the credit rating agency refers the matter to the Upper Tribunal within that period, on the determination of that reference, unless the Upper Tribunal directs otherwise.

PART 4

Investigatory Powers

Application of this Part

11. The powers conferred on the Authority by this Part—

- (a) may only be used to obtain information, documents or a report which is necessary for the exercise of the Authority's functions under the EC Regulation; and

(7) Paragraph 10 was amended by article 3(1) of, and paragraph 213 of Part 2 of Schedule 1 to, the Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948); there are other amendments to Part 1 which are not relevant to these Regulations.

(b) may not be used to require the production, disclosure or inspection of a protected item.

Interpretation of this Part

12. In this Part—

“document” includes information recorded in any form;

“information requirement” means a requirement imposed by the Authority under regulation 13(1), or by an investigator under sub-paragraph (a) or (b) of regulation 16(1);

“investigator” means a person appointed to conduct an investigation under regulation 15(1);

“person under investigation” means a person who is the subject of an investigation under regulation 15(1);

“premises” includes a vehicle;

“relevant person” means any of the persons referred to in the last sub-paragraph of Article 23(3) of the EC Regulation.

Information and documents

13.—(1) A relevant person must give the Authority such information or documents as the Authority may direct.

(2) Information or documents required under this regulation must be given at such times, in such form and at such place, and verified in such manner, as the Authority may reasonably direct.

Reports by skilled persons

14.—(1) The Authority may, by written notice, require a credit rating agency which is registered in accordance with the EC Regulation to provide the Authority with a report on any relevant matter.

(2) The Authority may require the report to be in such form, and to be provided by such date, as may be specified in the notice.

(3) The person appointed to make a report required under paragraph (1) (the “skilled person”) must be a person—

(a) nominated or approved by the Authority; and

(b) appearing to the Authority to have the skills necessary to make a report on the matter concerned.

(4) The agency must—

(a) require the skilled person to prepare a report in accordance with the notice;

(b) permit the skilled person to disclose information to the Authority in accordance with paragraph (5)(b); and

(c) give the skilled person such assistance as the skilled person may reasonably require.

(5) The skilled person must—

(a) give the Authority such assistance in connection with the report as the Authority may reasonably require; and

(b) disclose to the Authority any information which—

(i) the skilled person receives in their capacity as a skilled person; and

(ii) might reasonably suggest that the agency has not complied with a requirement imposed on the agency by the EC Regulation.

(6) A relevant person who is providing, or who has provided, services to the reporting agency in relation to a matter on which a report is required under paragraph (1) must give the skilled person such assistance as the skilled person may reasonably require.

(7) The obligations imposed by paragraphs (4) to (6) are enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988(8).

Investigations

15.—(1) If it appears to the Authority that there is good reason for doing so, the Authority may appoint a competent person to conduct an investigation on its behalf.

(2) Only a relevant person who is, or has been, a credit rating agency or a member of the senior management of such an agency may be the subject of an investigation under paragraph (1).

(3) The Authority must give written notice of the appointment of an investigator to the person under investigation.

(4) The notice under paragraph (3) must state the reason for the investigator's appointment.

(5) Nothing prevents the Authority from appointing a person who is a member of its staff as an investigator.

(6) An investigator must make a report of the investigation to the Authority.

(7) The Authority may, by a direction to an investigator, control—

- (a) the scope of the investigation;
- (b) the period during which the investigation is to be conducted;
- (c) the conduct of the investigation; and
- (d) the reporting of the investigation.

(8) A direction may, in particular—

- (a) confine the investigation to particular matters;
- (b) extend the investigation to additional matters;
- (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction;
- (d) require the investigator to make such interim reports as are so specified.

(9) If there is a change in the scope or conduct of the investigation and, in the opinion of the Authority, the person under investigation is likely to be significantly prejudiced by not being made aware of it, that person must be given written notice of the change.

(10) Paragraphs (3) and (9) do not apply if the notice required by paragraph (3) or (9) would be likely to result in the investigation being frustrated.

Investigators: powers and evidence

16.—(1) An investigator may require a relevant person to—

- (a) attend before the investigator at a specified time and place and answer questions;
- (b) give the investigator such information or documents as the investigator may require; or
- (c) give the investigator all assistance in connection with the investigation as the person is reasonably able to give.

(2) A requirement under paragraph (1)—

(8) 1988 c. 36.

- (a) may be imposed only so far as the investigator reasonably considers the question, the provision of the information or production of the document, or the assistance to be relevant to the purposes of the investigation; and
 - (b) may not be imposed so as to require the production, disclosure or inspection of a protected item.
- (3) Information or documents required under paragraph (1)(b) must be given at such times, in such form and at such place, and verified in such manner, as the investigator may reasonably direct.
- (4) Section 174 of the Act (admissibility of statements made to investigators) applies for the purposes of these Regulations as it applies for the purposes of the Act with the following modifications—
- (a) in subsection (2), omit “or in proceedings in relation to action to be taken against that person under section 123”;
 - (b) at the end of subsection (3)(a) insert “as applied by regulations 24 and 25 respectively of the Credit Rating Agencies Regulations 2010”; and
 - (c) for subsections (4) and (5), substitute—
 - “(4) “Investigator” and “information requirement” have the meaning given in regulation 12 of the Credit Rating Agencies Regulations 2010.”.

Information and documents: supplemental provisions

17. Section 175 of the Act (information and documents: supplemental provisions) applies for the purposes of these Regulations as it applies for the purposes of Part 11 of the Act (information gathering and investigations) with the following modifications—
- (a) omit subsection (1);
 - (b) in subsection (2)(b), omit “, or any relevant person,”;
 - (c) omit subsection (7); and
 - (d) for subsection (8) substitute—
 - “(8) “Investigator” means a person appointed to conduct an investigation under regulation 15(1) of the Credit Rating Agencies Regulations 2010.”.

Entry of premises under warrant

- 18.—(1) A justice of the peace may, on an application by the Authority, issue a warrant under this regulation if satisfied on information on oath given on behalf of the Authority, an overseas competent authority or an investigator that there are reasonable grounds for believing that the first or second set of conditions is satisfied.
- (2) The first set of conditions is—
 - (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and
 - (b) that on the premises specified in the warrant—
 - (i) there are documents which have been required; or
 - (ii) there is information which has been required.
 - (3) The second set of conditions is—
 - (a) that the premises specified in the warrant are premises used by a relevant person;
 - (b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and

- (c) that if such a requirement were imposed—
 - (i) it would not be complied with; or
 - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (4) A warrant under this regulation shall authorise a constable—
 - (a) to enter the premises specified in the warrant;
 - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which a warrant under this regulation was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
 - (c) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
 - (d) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
 - (e) to use such force as may be reasonably necessary.
- (5) In England and Wales, sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984⁽⁹⁾ (execution of search warrants and safeguards) apply to warrants issued under this regulation.
- (6) In Northern Ireland, Articles 17(5) to (8) and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989⁽¹⁰⁾ apply to warrants issued under this regulation.
- (7) Any document of which possession is taken under this regulation may be retained—
 - (a) for a period of three months; or
 - (b) if within that period proceedings to which the document is relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (8) In the application of this regulation to Scotland—
 - (a) for the reference in paragraph (1) to a justice of the peace substitute a reference to a justice of the peace or a sheriff; and
 - (b) for the reference in paragraph (1) to information on oath substitute a reference to evidence on oath.
- (9) In the application of this regulation to Northern Ireland, for the reference in paragraph (1) to a justice of the peace substitute a reference to a lay magistrate appointed under section 9(1) of the Justice (Northern Ireland) Act 2002⁽¹¹⁾.

⁽⁹⁾ 1984 c. 60; subsections (5) to (8) of section 15 were amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of the Serious Organised Crime and Police Act 2005 (Amendment) Order 2005 (S.I. 2005/3496); section 16 was amended by section 109(1) of, and paragraph 281 of Schedule 8 to, the Courts Act 2003 (c. 39), section 2 of the Criminal Justice Act 2003 (c. 44), sections 113 and 114 of the Serious Organised Crime and Police Act 2005 and article 8 of the Serious Organised Crime and Police Act 2005 (Amendment) Order 2005.

⁽¹⁰⁾ S.I. 1989 No. 1341 (N.I. 12); article 17 was amended by article 9 of the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007 No. 288 (N.I. 2)).

⁽¹¹⁾ 2002 c. 26.

PART 5

Supervisory measures

Appropriate measures

19.—(1) The Authority may for the purposes of Article 24(1)(d) (supervisory measures by the competent authorities of the home Member State) or Article 25(1)(b) (supervisory measures by competent authorities other than the competent authority of the home Member State) of the EC Regulation—

- (a) direct a credit rating agency to take such specified steps as are necessary for the purpose of securing its compliance with the EC Regulation; or
- (b) apply for an injunction under regulation 20.

(2) Where the Authority proposes to give a credit rating agency a direction under paragraph (1)(a), the Authority must give the agency a warning notice.

(3) A credit rating agency must comply with any directions given to it by the Authority under paragraph (1)(a).

(4) Paragraph (1) does not prevent the Authority from taking any other measures under Article 24(1) or 25(1) of the EC Regulation.

Injunctions

20.—(1) If, on the application of the Authority, the court is satisfied that—

- (a) there is a reasonable likelihood that a person will contravene a relevant requirement, or
- (b) a person has contravened a relevant requirement and there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If, on the application of the Authority, the court is satisfied that—

- (a) a person has contravened a relevant requirement, and
- (b) there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any person who has been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) The jurisdiction conferred by this regulation is exercisable by the High Court and the Court of Session.

(4) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

(5) “Relevant requirement” means a requirement which is imposed by virtue of the EC Regulation or by a direction given under regulation 19(1)(a).

PART 6

Penalties and offences

Financial penalties

21.—(1) The Authority may impose a penalty of such amount as it considers appropriate on a person—

- (a) which is, or has been, a credit rating agency and which has contravened a requirement imposed on that person by the EC Regulation; or
 - (b) who has contravened a requirement imposed on that person by or under these Regulations.
- (2) Where a credit rating agency has contravened a requirement imposed on the agency by the EC Regulation, or by or under these Regulations, the Authority may impose a penalty of such amount as it considers appropriate on any member of the senior management of the agency who has been knowingly concerned in the contravention.
- (3) Where the Authority proposes to impose a penalty under this regulation, it must give the person concerned a warning notice.
- (4) A penalty imposed under this regulation is payable to the Authority.
- (5) The Authority may not take action against a person under paragraph (2) after the end of the period of three years beginning with the first day on which it knew of the contravention unless proceedings against that person, in respect of the contravention, were begun before the end of that period.
- (6) For the purposes of paragraph (5)—
- (a) the Authority is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred; and
 - (b) proceedings against a person in respect of a contravention are to be treated as begun when a warning notice is given to that person under paragraph (3).

Statements of policy

22.—(1) Sections 69 (statement of policy) and 70 (statements of policy: procedure) of the Act apply in respect of the imposition and amount of penalties under regulation 21(2) as they apply in respect of the imposition and amount of penalties under section 66 of the Act (disciplinary powers), but with the following subsection inserted at the end of section 69—

“(9) Until such time as a statement of policy has been issued in respect of the imposition and amount of penalties under regulation 21(2) of the Credit Rating Agencies Regulations 2010, any statement issued under this section in relation to penalties under section 66 shall also apply for the purposes of this section as applied by regulation 22(1) of the Credit Rating Agencies Regulations 2010.”

(2) Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the Act apply in respect of the imposition and amount of penalties under regulation 21(1) as they apply in respect of the imposition and amount of penalties under Part 14 of the Act (disciplinary measures), but with the following subsection inserted at the end of section 210—

“(9) Until such time as a statement of policy has been issued in respect of the imposition and amount of penalties under regulation 21(1) of the Credit Rating Agencies Regulations 2010, any statement issued under this section in relation to penalties under this Part shall also apply for the purposes of this section as applied by regulation 22(2) of the Credit Rating Agencies Regulations 2010.”

(3) In determining its policy with respect to the amount of penalties to be imposed by it under regulation 21, the Authority must take no account of the expenses which it incurs, or expects to incur, in discharging its functions under the EC Regulation.

(4) The Authority must apply amounts paid to it by way of penalties imposed under regulation 21 towards expenses incurred in carrying out its functions under the EC Regulation or for any incidental purposes.

Publication of penalties

23.—(1) Where the Authority has—

- (a) imposed a penalty on a person under regulation 21; and
- (b) given that person a final notice about the penalty under section 390(5) of the Act (final notices) as applied by regulation 30,

it must publish a statement that it has imposed the penalty on that person.

(2) Where the Authority publishes a statement under paragraph (1), it may publish such details of the penalty as it considers appropriate.

(3) Paragraph (1) does not apply where publication would seriously jeopardise the financial markets or cause disproportionate damage to any party involved.

Offences relating to investigatory powers

24. Section 177 of the Act (offences) applies for the purposes of Part 4 of these Regulations as it applies for the purposes of Part 11 of the Act (information gathering and investigations) with the following modifications—

- (a) in subsection (5)(a)—
 - (i) for “six months” substitute “three months”; and
 - (ii) for “the statutory maximum” substitute “level 5 on the standard scale”;
- (b) in subsection (6), for “section 176” substitute “regulation 18 of the Credit Rating Agencies Regulations 2010”; and
- (c) after subsection (7) insert—
 - “(8) “Investigator” means a person appointed to make a report required under regulation 14(1) of the Credit Rating Agencies Regulations 2010, or a person appointed to conduct an investigation under regulation 15(1) of those Regulations.”

Offence of misleading the Authority

25. Section 398 of the Act (misleading the Authority: residual cases) applies in respect of requirements imposed by the EC Regulation, or by or under these Regulations, as it applies in respect of requirements imposed by or under the Act, but for the reference to “the statutory maximum” in section 398(3)(a) substitute a reference to “level 5 on the standard scale”.

Offences by bodies corporate etc

26. Section 400 of the Act (offences by bodies corporate etc) applies for the purposes of these Regulations as it applies for the purposes of the Act, but with subsection (7) omitted.

Proceedings for offences

27. Section 401 of the Act (proceedings for offences) applies for the purposes of these Regulations as it applies for the purposes of the Act with the following modifications—

- (a) in subsection (1), omit “or subordinate legislation made under this Act”;
- (b) in subsections (2)(a) and (3)(a), omit “or the Secretary of State”; and
- (c) omit subsection (4).

Unincorporated associations

28. Section 403 of the Act (jurisdiction and procedure in respect of offences) applies for the purposes of these Regulations as it applies for the purposes of the Act.

PART 7

Appeals

Appeals

29.—(1) If the Authority—

- (a) adopts a refusal decision in respect of an application for certification submitted by a credit rating agency under Article 5(2) of the EC Regulation;
- (b) adopts a refusal decision in respect of an application for an exemption under Article 5(4) or Article 6(3) (independence and avoidance of conflicts of interest) of the EC Regulation;
- (c) adopts a refusal decision in respect of an application for registration submitted by a credit rating agency under Article 15 of the EC Regulation;
- (d) withdraws the certification or registration of a credit rating agency under Article 20(1) of the EC Regulation (withdrawal of registration);
- (e) takes action against a person under paragraphs (a) to (e) of Article 24(1), or paragraphs (a) to (c) of Article 25(1), of the EC Regulation;
- (f) gives a credit rating agency a direction under regulation 19(1)(a); or
- (g) imposes a penalty on a person under regulation 21,

the credit rating agency or the person concerned may refer the matter to the Upper Tribunal.

(2) Where a reference is made to the Upper Tribunal by a credit rating agency under paragraph (1) (a) or (c), and an overseas competent authority does not agree to the certification or registration of the agency, the Upper Tribunal is not required to determine for the purposes of section 133(5)(12) of the Act that the Authority must adopt a refusal decision.

PART 8

Notices

Application of Part 26 of the Act

30. Part 26 of the Act(13) (notices) applies for the purposes of these Regulations as it applies for the purposes of the Act with the following modifications—

- (a) in section 388 (decision notices), omit subsection (2);
- (b) in section 390 (final notices)—
 - (i) omit subsections (6) and (10); and
 - (ii) in subsection (8), omit “or (6)(c)”;
- (c) in section 391 (publication)—

(12) Section 133 was amended by article 5 of, and paragraph 45 of Schedule 2 to, the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22); by virtue of article 1(2)(e) of the Order, paragraph 45 comes into force on 6th April 2010.

(13) Section 394(7) was amended by section 82(1) of, and paragraph 11 of Schedule 4 to, the Regulation of Investigatory Powers Act 2000 (c. 23); there are amendments to section 395(13), but they are not relevant to these Regulations.

- (i) after subsection (1) insert—
 - “(1A) Subsection (1) does not—
 - (a) prevent the Authority from taking any action under Article 24(1) or 25(1) of the EC Regulation; or
 - (b) apply to any information which is available to the public as a result of any action taken by the Authority or an overseas competent authority under Article 24(1) or 25(1) of the EC Regulation.
 - (1B) “EC Regulation” means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.
 - (1C) “Overseas competent authority” has the meaning given by regulation 2 of the Credit Rating Agencies Regulations 2010.”; and
- (ii) omit subsections (2) to (11);
- (d) omit section 392 (application of sections 393 and 394);
- (e) in section 394(7)(c) (access to Authority material), for “section 413” substitute “regulation 2 of the Credit Rating Agencies Regulations 2010”; and
- (f) in section 395 (the Authority’s procedures)—
 - (i) omit subsections (1)(a), (3), (4) and (13);
 - (ii) in subsection (9), omit the words “supervisory notice, or a”; and
 - (iii) at the end, insert—
 - “(14) Until such time as a statement of procedure has been issued under this section as applied by regulation 30 of the Credit Rating Agencies Regulations 2010, the statement issued under this section for the purposes of the Act shall apply for the purposes of this section as applied by that regulation.”.

PART 9

Capital Requirements Regulations 2006

Amendments to the Capital Requirements Regulations 2006

- 31.**—(1) The Capital Requirements Regulations 2006(14) are amended as follows.
- (2) In regulation 21 (interpretation), after the definition of “assessment methodology” insert—
- ““EC Regulation” means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;”.
- (3) In regulation 22 (recognition for exposure risk-weighting purposes), for paragraph (1) substitute—
- “(1) The Authority must recognise an ECAI as eligible for exposure risk-weighting purposes only if the Authority is satisfied—
- (a) where the requirements of Article 2(3) of the EC Regulation apply to the ECAI, that the ECAI has complied with those requirements; and
 - (b) taking into account the requirements set out in Schedule 1, that—
 - (i) the ECAI’s assessment methodology complies with the requirements of objectivity, independence, ongoing review and transparency; and

(ii) the ECAI's credit assessments meet the requirements of credibility and transparency.”.

(4) In regulation 23 (recognition for securitisation risk-weighting purposes), in paragraph (1), before sub-paragraph (a) insert “(za) where the requirements of Article 2(3) of the EC Regulation apply to the ECAI, that the ECAI has complied with those requirements;”.

22nd March 2010

Bob Blizzard
Dave Watts
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (“the EC Regulation”) (OJ L 302, 17.11.2009, p. 1).

The EC Regulation establishes a registration system for credit rating agencies, and requires registered agencies to comply with various provisions relating to independence, conflicts of interest, employees and analysts, methodologies and models, outsourcing, and disclosure and presentation of information. Specified financial institutions may only use credit ratings for regulatory purposes if they have been issued or endorsed by a registered credit rating agency, or issued by an overseas agency that has been certified in accordance with the EC Regulation.

Part 2 of the Regulations designates the Financial Services Authority (“the Authority”) as the competent authority in the United Kingdom for the purposes of the EC Regulation.

Part 3 makes provision relating to applications for certification and registration.

Part 4 makes provision for the investigatory powers of the Authority.

Part 5 provides powers for the Authority to take action where a credit rating agency breaches obligations arising from the EC Regulation.

Part 6 creates penalties and offences which may apply if a person breaches a requirement of the EC Regulation or these Regulations.

Part 7 makes provision for appeals and Part 8 provides for notices.

Part 9 amends the Capital Requirements Regulations 2006 (S.I. 2006/3221) to implement Article 2(3) of the EC Regulation in relation to external credit assessment institutions.

An Impact Assessment of the effect of these Regulations is available on HM Treasury’s website (www.hm-treasury.gov.uk) and is annexed to the Explanatory Memorandum which is available alongside these Regulations on the OPSI website (www.opsi.gov.uk).