STATUTORY INSTRUMENTS

2015 No. 1946

FINANCIAL SERVICES AND MARKETS

The Small and Medium Sized Business (Finance Platforms) Regulations 2015

Made - - - - 26th November 2015

Coming into force - - 1st January 2016

The Treasury make these Regulations in exercise of the powers conferred by sections 5, 6(1) to (4) and (9), 7(1) and (2), 28(2) and 161(2) of the Small Business, Enterprise and Employment Act 2015(**1**).

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with sections 6(10) and 161(4) of that Act.

PART 1

Introductory provisions

Citation and commencement

1.—(1) These Regulations may be cited as the Small and Medium Sized Business (Finance Platforms) Regulations 2015.

(2) These Regulations come into force on 1st January 2016.

Interpretation

2.—(1) In these Regulations—

"the 2000 Act" means the Financial Services and Markets Act 2000(**2**);

"designated firm" means a designated bank or a designated finance platform;

"the FCA" means the Financial Conduct Authority;

"finance application" means a request in any form for a finance facility, whether such request is made for a new facility or for the renewal or extension of an existing facility, where—

(**1**) 2015 c. 26.
(**2**) 2000 c. 8.

(a) the request is supported by sufficient information to enable the recipient to make an informed decision as to whether to provide the requested finance facility, or

(b) the recipient has responded by requesting further specific information to enable it to make an informed decision as to whether to provide the requested finance facility;

"finance facility" means a facility which provides access to finance which is denominated in sterling and is a loan agreement, an overdraft agreement, a credit card account, an invoice discounting or factoring agreement, a hire purchase agreement or a finance leasing agreement;

"formal demand" means a demand issued by a finance provider, made in writing and in circumstances where, or pursuant to which, monies are due in accordance with the terms of a finance facility, declaring all outstanding monies (including both the principal debt and any interest owing) under that finance facility to be immediately due and payable under the terms of such finance facility;

"generic platforms information" means information, in writing, summarising the services that designated finance platforms provide to small or medium sized businesses, including details of designated finance platforms and information about how a business may refer itself to designated finance platforms;

"group" means a group as defined in section 474 of the Companies Act 2006(**3**);

"the PRA" means the Prudential Regulation Authority;

"relevant requirement" means a requirement on a designated bank under regulation 3, 4 or 5, a requirement on a designated finance platform under regulation 6, 7 or 8 or any requirement or prohibition on a person other than the FCA imposed by or under Part 4 or Part 5;

"small or medium sized business" means a business of the type described in section 7(1) of the Small Business, Enterprise and Employment Act 2015, which—

(a) has an address in the United Kingdom,

(b) carries out commercial activities as its principal activity,

(c) is not part of a group which as a whole has an annual turnover which is equal to or greater than £25 million;

"specified information" means information of the kinds specified in the Schedule;

"subsidiary" means a subsidiary as defined in section 1159 of the Companies Act 2006;

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**4**) in any part of the United Kingdom.

(2) In these Regulations a reference to a finance provider does not include a reference to a finance provider that provides credit only by providing goods or services before payment of part or all of the amount to be paid for such goods or services.

(3) For the purposes of these Regulations, a finance application made by a small or medium sized business to a designated bank is unsuccessful if—

(a) such application is declined by the bank; or

(b) the bank offers the business a finance facility on a different basis to that which the business sought in its application, and where—

(i) the business rejects such an offer; and

(ii) any reasons the business provides for rejecting the offer do not relate to proposed fees or interest to be charged for the use of the facility.

(**3**) 2006 c. 46.
(**4**) 1971 c. 80.

PART 2

Provision of specified information about small and medium sized businesses by banks to finance platforms

Designated banks to provide information to designated finance platforms

3.—(1) This regulation and regulation 4 apply where—

(a) a small or medium sized business has made a finance application to a designated bank; and

(b) the application has been unsuccessful.

(2) Subject to paragraphs (3) and (4), the bank must provide all specified information that it holds in relation to the application to all designated finance platforms.

(3) Paragraph (2) does not apply where—

(a) the value of the finance facility applied for is less than £1,000;

(b) the facility applied for is sought for a period of less than 30 days;

(c) the bank is aware that the business is subject to a statutory demand for payment, enforcement proceedings or other legal proceedings in relation to payment obligations arising under an existing finance facility; or

(d) the bank is aware that the business is subject to a formal demand.

(4) Paragraph (2) applies only if the business to which the information relates has agreed to the information being provided.

Indication of agreement by businesses and incomplete information

4.—(1) The designated bank must—

(a) ask the small or medium sized business whether it agrees to information being provided under regulation 3(2); and

(b) if the business does agree to such information being provided, ask the business to provide any of the specified information which the bank does not hold.

(2) A request under paragraph (1) must be made—

(a) in the circumstances described in regulation 2(3)(a), at the time the bank first informs the business (whether in writing or otherwise) that its finance application has been unsuccessful; or

(b) in the circumstances described in regulation 2(3)(b), before the end of the working day following the day on which the business informs the bank that it rejects an offer made by the bank.

(3) If the business does not agree to such information being provided, the bank must send to the business the generic platforms information by the end of a period of five working days starting on the day on which the bank makes the request under paragraph (1).

Timing for provision of information to designated finance platforms and incomplete information

5.—(1) Subject to paragraph (2), the designated bank must provide information under regulation 3(2) before the end of the working day after the day on which the bank receives confirmation from the business to which the information relates of agreement to such information being provided.

(2) Where a bank holds incomplete specified information, a bank need not provide any information under regulation 3(2) until the end of the working day after the day on which the bank first holds complete information.

Designated finance platforms to provide information to finance providers

6.—(1) A designated finance platform must provide a finance provider with access to information that it has received from designated banks by virtue of regulation 3(2) if—

(a) the finance provider has requested that the platform provide such access;

(b) the finance provider has agreed to the terms on which the platform provides access to such information, including the payment of any fees; and

(c) the finance provider meets any conditions which are required by those terms to be met for access to be provided.

(2) The platform must ensure that information to which access is provided under paragraph (1)—

(a) subject to sub-paragraph (b), includes all information held by the platform five working days before the day on which the finance provider accesses such information;

(b) is in such a form that no individual business, and no person associated with the business, can be identified.

(3) The platform must provide a finance provider with the information that it holds in relation to a particular finance application including information that identifies the particular business that has made the application and any person associated with the business if—

(a) the finance provider has access to information by virtue of paragraph (1) and has requested such identifying information about that application; and

(b) the business that has made the application has agreed to such identifying information being provided to that finance provider.

(4) The platform must request the agreement of the business for the purposes of paragraph (3)(b) before the end of the working day following the day on which the platform receives a request for such identifying information from the finance provider.

(5) The platform must provide the information required by paragraph (3) by the end of the working day following the day on which the platform receives confirmation from the business of its agreement to such information being provided to the finance provider.

(6) If a finance provider has breached the terms referred to in paragraph (1)(b) the platform need not comply with paragraphs (1), (3) or (4).

(7) The platform must not charge any fee to a small or medium sized business in relation to the provision of information about a finance application made by that business, as required by these Regulations.

Maintenance and removal of access to finance providers

7.—(1) A designated finance platform must maintain access to information in relation to a finance application provided under regulation 6(1) until the earlier of—

(a) the end of a period of 30 days starting on the date by which such information states that the business to which the information relates requires finance or, if such date is not known, the date by which the business has requested finance; or

(b) the time at which the business to which the information relates informs the platform that—

(i) the business does not wish for any finance provider to further access such information; or

(ii) the business no longer requires finance, including where the reason for this is that finance has been provided to the business.

(2) The platform must not provide such access after either—

(a) the end of the period described in paragraph (1)(a); or

(b) the end of the first working day following the platform being informed that either of the circumstances described in paragraph (1)(b) applies.

Designated finance platforms to provide information to the Treasury and retention of information

8.—(1) A designated finance platform must provide to the Treasury on request statistical information relating to information received and provided under these Regulations.

(2) Information provided under paragraph (1) must be in such form that no individual business, and no person associated with the business, can be identified.

(3) The platform must retain information received and provided under these Regulations for a period of five years for the purposes of complying with paragraph (1), but such information may be retained in such form that no individual business and no person associated with such a business, can be identified.

PART 3

Designation of banks and finance platforms

Power to designate banks and finance platforms and to revoke designations

9.—(1) The Treasury may designate a bank or a finance platform for the purposes of these Regulations, and may revoke such designation.

(2) A designation, or the revocation of a designation—

(a) takes effect on the date specified by the Treasury, or

(b) if no such date is specified, takes effect immediately.

(3) The Treasury may exercise the power in paragraph (1) on its own initiative or at the request of another person.

Criteria for the designation of a bank

10.—(1) The Treasury may designate a bank only if it is—

(a) an institution that is a bank for the purposes of Part 1 of the Banking Act 2009(**5**), or

(b) a finance provider that is a member of a banking group as defined in section 1164 of the Companies Act 2006(**6**).

(2) The Treasury must revoke the designation of a bank that no longer falls within paragraph (1)(a) or (b).

(3) In considering whether to designate a bank or revoke the designation of a bank, the Treasury must have regard to—

(a) the value of current lending by the bank to small and medium sized businesses;

(**5**) 2009 c. 1.
(**6**) Section 1164 was amended by paragraph 12 of Schedule 18 to the Financial Services Act 2012 (c. 21).