Draft Order laid before Parliament under section 22B(3)(a) of the Financial Services and Markets Act 2000 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013

Made - - - - 2013

Coming into force in accordance with article 1

In accordance with section 22B(1) and (3)(a) of the Financial Services and Markets Act 2000(**1**), a draft of this Order has been laid before Parliament and approved by a resolution of each House;

The Treasury, in exercise of the powers conferred by sections 22A and 428(3) of the Financial Services and Markets Act 2000, make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013.

(2) This Order comes into force as follows—

(a) articles 1, 2, 8 and 9 come into force on the day after the day on which this Order is made;

(b) articles 3 and 4 come into force on the day after the day on which this Order is made for the purpose of making designations under article 3 which are to take effect on or after 1st April 2013;

(c) otherwise, this Order comes into force on 1st April 2013.

(3) In this Order —

"the Act" means the Financial Services and Markets Act 2000;

"dealing in investments as principal" means an activity of the kind specified by article 14(1) of the Regulated Activities Order(**2**);

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**3**).

(**1**) 2000 c.8. Section 22B inserted, with section 22A, by section 9 of the Financial Services Act 2012 (c.21).
(**2**) Amended by S.I. 2006/3384.
(**3**) S.I. 2001/544.

Regulated activities which are PRA-regulated activities

2. For the purposes of the Act, the following regulated activities are PRA-regulated activities—

(a) the activity of accepting deposits as specified by article 5 of the Regulated Activities Order(**4**);

(b) the activity of effecting a contract of insurance as principal as specified by article 10(1) of the Regulated Activities Order;

(c) the activity of carrying out a contract of insurance as principal as specified by article 10(2) of the Regulated Activities Order;

(d) dealing in investments as principal where carried on by a person designated by the PRA under article 3 of this Order;

(e) the activity of managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's as specified by article 57 of the Regulated Activities Order;

(f) the activity of arranging, by the society incorporated by Lloyd's Act 1871(**5**) by the name of Lloyd's, of deals in contracts of insurance written at Lloyd's as specified by article 58 of the Regulated Activities Order;

(g) any other regulated activity carried on by that society in connection with, or for the purposes of, the activity specified in paragraph (f).

Dealing in investments as principal: designation by the PRA

3.—(1) The PRA may designate a person ("P") for the purposes of article 2(d) if—

(a) the condition in paragraph (2) is met in relation to P;

(b) the condition in paragraph (3) is also met in relation to P; and

(c) having regard to the objectives of the PRA and to the matters mentioned in paragraph (4), the PRA considers that it is desirable that the activity of dealing in investments as principal, when carried on by P, should be a PRA-regulated activity.

(2) The condition in this paragraph is that P—

(a) is an authorised person with permission to carry on the activity of dealing in investments as principal;

(b) is a person who has applied for Part 4A permission to carry on that activity; or

(c) is an EEA firm which has notified its home state regulator of its intention to—

(i) provide in the United Kingdom services or activities which consist of or include dealing on its own account in accordance with Article 31 of the markets in financial instruments directive; or

(ii) establish a branch in the United Kingdom and to provide services or activities which consist of or include dealing on its own account in accordance with Article 32 of that directive.

(3) The condition in this paragraph is that P—

(a) is an investment firm to which Article 9 of Directive 2006/49/EC of the European Parliament and of the Council on the capital adequacy of investment firms and credit institutions(**6**) (investment firms which are required to have initial capital of EUR 730,000) applies;

(**4**) Amended by S.I. 2002/682.
(**5**) 1871 c.21.
(**6**) OJ L 177, 30.6.2006, p.201.

(b) has applied for Part 4A permission and would meet the requirement specified in sub-paragraph (a) if permission were to be granted; or

(c) is established in a country which is not an EEA State but would meet the requirement specified in sub-paragraph (a) if P were established in an EEA State and had obtained the necessary authorisation from its home state regulator for its business.

(4) The matters specified in this paragraph are—

(a) the assets of P;

(b) where P is a member of a group—

(i) the assets of the members of that group who satisfy the conditions in paragraphs (2) and (3) (regardless of whether they have been designated under this article);

(ii) whether a person who has been designated under this article is a member of P's group;

(iii) whether P's activities have, or might have, a material impact on the ability of the PRA to advance any of its objectives in relation to PRA-authorised persons in the group.

(5) A designation under this article must relate to a particular person and may not relate to persons of a specified description.

(6) Before designating a person under this article, the PRA must consult the FCA.

Dealing in investments as principal: exercise of power to designate

4.—(1) This article applies to an exercise of the PRA's power to designate under article 3.

(2) The designation takes effect—

(a) immediately, if the notice given under paragraph (4) states that this is the case; or

(b) on such date as is specified in the notice.

(3) A designation may be expressed to take effect immediately only if the PRA considers that it is necessary for the designation to take effect immediately.

(4) If the PRA proposes to designate a person under article 3, or to designate a person under that article with immediate effect, it must give the person concerned ("P") written notice.

(5) The notice must—

(a) state the reasons for the designation;

(b) inform P of when the designation takes effect and state the reasons for the PRA's determination as to when the designation takes effect;

(c) inform P that P may make representations to the PRA within such period as may be specified in the notice (whether or not P has referred the matter to the Tribunal); and

(d) inform P of P's right to refer the matter to the Tribunal.

(6) The PRA may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by P, the PRA decides—

(a) to designate P; or

(b) if P has already been designated, not to rescind the designation,

the PRA must give P written notice.

(8) If, having considered any representations made by P, the PRA decides—

(a) not to designate P; or

(b) to rescind a designation which has taken effect,

the PRA must give P written notice.