Draft Order laid before Parliament under section 429(1)(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 (Threshold Conditions) Order 2013

Made - - - -	*2013*
Coming into force - -	*1st April 2013*

In accordance with section 429(1) 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 55C and 428(3) of the Financial Services and Markets Act 2000(**2**) and section 118 of the Financial Services Act 2012(**3**), make the following Order:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Threshold Conditions) Order 2013 and comes into force on 1st April 2013.

Amendments of Schedule 6 to the Act

2.—(1) In the title to Schedule 6 to the Financial Services and Markets Act 2000, in the marginal reference, for "Section 41" substitute "Section 55B".

(2) For Parts 1 and 2 of that Schedule substitute the following—

(**1**) 2000 c.8. Section 429 was amended by section 49 of the Financial Services Act 2012 (c.21).

(**2**) Sections 55A to 55Z4 inserted by section 11 of the Financial Services Act 2012. By virtue of paragraph 5 of Schedule 20 to that Act, the Treasury are obliged to make an order under section 55C of the Financial Services and Markets Act 2000 which amends or replaces Parts 1 and 2 of Schedule 6 to that Act and which makes provision as to which of the conditions set out in those Parts of that Schedule are to relate to the discharge by each of the Prudential Regulation Authority and the Financial Conduct Authority of its functions.

(**3**) 2012 c.21.

"PART 1

Introduction

1A.—(1) In this Schedule—

"assets" includes contingent assets;

"consolidated supervision" has the same meaning as in section 3M(**4**);

"consumers" has the meaning given in section 425A(**5**);

"financial crime" is to be read with section 1H(3)(**6**);

"functions", in relation to the FCA or the PRA, means functions conferred on that regulator by or under this Act;

"liabilities" includes contingent liabilities;

"relevant directives" has the same meaning as in section 3M;

"Society" means the society incorporated by Lloyd's Act 1871(**7**) by the name of Lloyd's;

"subsidiary undertaking" includes all the instances mentioned in Article 1(1) and (2) of the Seventh Company Law Directive in which an entity may be a subsidiary of an undertaking.

(2) For the purposes of this Schedule, the "non-financial resources" of a person include any systems, controls, plans or policies that the person maintains, any information that the person holds and the human resources that the person has available.

(3) In this Schedule, References to "integrity" of the UK financial system are to be read in accordance section 1D(2)(**8**).

(4) References to the failure of a person are to be read in accordance with section 2J(3) and (4)(**9**).

PART 1B

Part 4A permission: authorised persons who are not PRA-authorised persons

Introduction

2A. If the person concerned ("A") carries on, or is seeking to carry on, regulated activities which do not consist of or include a PRA-regulated activity, the threshold conditions that are relevant to the discharge by the FCA of its functions in relation to A are the conditions set out in paragraphs 2B to 2F.

Location of offices

2B.—(1) Unless sub-paragraph (3) or (4)(applies, if A is a body corporate incorporated in the United Kingdom—

(a) A's head office, and

(b) if A has a registered office, that office,

(**4**) Inserted by section 6 of the Financial Services Act 2012.
(**5**) Inserted by section 24 of and Schedule 2 to the Financial Services Act 2010 (c.28).
(**6**) Inserted by section 6 of the Financial Services Act 2012.
(**7**) 34 Vict c xxi.
(**8**) Inserted by section 6 of the Financial Services Act 2012.
(**9**) Inserted by section 6 of the Financial Services Act 2012.

must be in the United Kingdom.

(2) If A is not a body corporate but A's head office is in the United Kingdom, A must carry on business in the United Kingdom.

(3) If—

(a) A is seeking to carry on, or is carrying on, a regulated activity which is any of the investment services and activities,

(b) A is a body corporate with no registered office, and

(c) A's head office is in the United Kingdom,

A must carry on business in the United Kingdom.

(4) If A is seeking to carry on, or is carrying on, an insurance mediation activity—

(a) where A is a body corporate incorporated in the United Kingdom, A's registered office, or if A has no registered office, A's head office, must be in the United Kingdom;

(b) where A is an individual, A is to be treated for the purposes of sub-paragraph (2) as having a head office in the United Kingdom if A is resident in the United Kingdom.

(5) "Insurance mediation activity" means any of the following activities—

(a) dealing in rights under a contract of insurance as agent;

(b) arranging deals in rights under a contract of insurance;

(c) assisting in the administration and performance of a contract of insurance;

(d) advising on buying or selling rights under a contract of insurance;

(e) agreeing to do any of the activities specified in paragraphs (a) to (d).

(6) Sub-paragraph (5) must be read with—

(a) section 22,

(b) any relevant order under that section, and

(c) Schedule 2.

Effective supervision

2C.—(1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including—

(a) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;

(b) the complexity of any products that A provides or will provide in carrying on those activities;

(c) the way in which A's business is organised;

(d) if A is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of A;

(e) whether A is subject to consolidated supervision required under any of the relevant directives;

(f) if A has close links with another person ("CL")—

(i) the nature of the relationship between A and CL,

(ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of A, and

(iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of A.

(2) A has close links with CL if—

(a) CL is a parent undertaking of A,

(b) CL is a subsidiary undertaking of A,

(c) CL is a parent undertaking of a subsidiary undertaking of A,

(d) CL is a subsidiary undertaking of a parent undertaking of A,

(e) CL owns or controls 20% or more of the voting rights or capital of A, or

(f) A owns or controls 20% or more of the voting rights or capital of CL.

Appropriate resources

2D.—(1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A has appropriate resources include—

(a) the nature and scale of the business carried on, or to be carried on, by A;

(b) the risks to the continuity of the services provided by, or to be provided by, A;

(c) A's membership of a group and any effect which that membership may have.

(3) The matters which are relevant in determining whether A has appropriate financial resources include—

(a) the provision A makes and, if A is a member of a group, which other members of the group make, in respect of liabilities;

(b) the means by which A manages and, if A is a member of a group, by which other members of the group manage, the incidence of risk in connection with A's business.

(4) The matters which are relevant in determining whether A has appropriate non-financial resources include—

(a) the skills and experience of those who manage A's affairs;

(b) whether A's non-financial resources are sufficient to enable A to comply with—

(i) requirements imposed or likely to be imposed on A by the FCA in the exercise of its functions, or

(ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.

Suitability

2E. A must be a fit and proper person having regard to all the circumstances, including—

(a) A's connection with any person;

(b) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;

(c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;

(e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity;

(f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner;

(g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.

Business model

2F.—(1) A's business model (that is, A's strategy for doing business) must be suitable for a person carrying on the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A satisfies the condition in sub-paragraph (1) include—

(a) whether the business model is compatible with A's affairs being conducted, and continuing to be conducted, in a sound and prudent manner;

(b) the interests of consumers;

(c) the integrity of the UK financial system.

PART 1C

Part 4A permission: conditions for which FCA is responsible in relation to PRA-authorised persons

Introduction

3A. If the person concerned ("B") carries on, or is seeking to carry on, regulated activities which consist of or include a PRA-regulated activity, the threshold conditions which are relevant to the discharge by the FCA of its functions in relation to B are the conditions set out in paragraphs 3B to 3E.

Effective supervision

3B.—(1) B must be capable of being effectively supervised by the FCA having regard to all the circumstances including—

(a) the nature (including the complexity) of the regulated activities that B carries on or seeks to carry on;

(b) the complexity of any products that B provides or will provide in carrying on those activities;

(c) the way in which B's business is organised;

(d) if B is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of B;

(e) whether B is subject to consolidated supervision required under any of the relevant directives;

(f) if B has close links with another person ("CL")—