

Draft laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010

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| Made | - | - | - | - | 2010 |
| Coming into force | - | - | | | 6 April 2010 |

The Treasury are a government department designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to investment firms and to the provision of investment services and to the operation of regulated markets and clearing or settlement systems and in relation to credit and financial institutions;

A draft of this instrument has been laid before Parliament in accordance with paragraph 2(2) of Schedule 2 to that Act and approved by a resolution of each House of Parliament;

The Treasury make these Regulations in exercise of the powers conferred on them by section 2(2) of that Act:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Amendments to Part 18A etc.) Regulations 2010 and come into force on 6 April 2010.

(2) In these Regulations “the Act” means the Financial Services and Markets Act 2000⁽³⁾.

Amendment of section 313A

2.—(1) Section 313A of the Act (Authority’s power to require suspension or removal of financial instruments from trading) is amended as follows.

(2) In subsection (1), after “an institution” insert “or a class of institutions”.

(1) [S.I. 1993/2661](#) and [2001/3495](#).

(2) [1972 c.68](#); by virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act [1993 \(c. 51\)](#) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p. 572). For the decision of the EEA Joint Committee in relation to Directive [2004/39/EC](#), see Decision No 65/2005 of 29th April 2005 (OJ No L 239, 15.9.2005, p.50).

(3) [2000 c. 8](#). Part 18A of the Act was inserted by regulation 3(3) of, and Schedule 3 to, [S.I. 2007/126](#).

(3) For subsection (2), substitute—

“(2) If the Authority exercises the power conferred by subsection (1), the matter may be referred to the Tribunal by—

- (a) the institution or, as the case may be, any institution in the class, or
- (b) the issuer of the financial instrument (if any).”.

Amendment of section 313B

3.—(1) Section 313B of the Act (suspension or removal of financial instruments from trading: procedure) is amended as follows.

(2) In subsection (2)—

- (a) after “an institution,” insert “or a class of institutions,”;
- (b) for “give written notice” to the end of the subsection, substitute—
“give notice—

(a) by written notice to—

- (i) the institution or, as the case may be, each institution in the class, and
- (ii) the issuer of the financial instrument in question (if any); or

(b) by publishing a notice by means of a regulatory information service.”.

(3) In subsection (3), for “The notice” substitute “A notice given under subsection (2)(a)”.

(4) After subsection (3), insert—

“(3A) A notice published under subsection (2)(b) must—

- (a) give details of the relevant requirement;
- (b) specify the institution, or the class of institutions, to which it applies;
- (c) state the Authority’s reasons for imposing the requirement and choosing the date on which it took effect or takes effect;
- (d) state that any institution to which the requirement applies or the issuer of the financial instrument in question may make representations to the Authority within such period as may be specified by the notice (whether or not the institution or the issuer has referred the matter to the Tribunal);
- (e) state the date on which the requirement took effect or takes effect; and
- (f) state that any institution to which the requirement applies or the issuer of the financial instrument in question has a right to refer the matter to the Tribunal, and give an indication of the procedure on such a reference.”.

(5) Omit subsections (5) to (12).

Suspension or removal of financial instruments from trading: further procedure

4. After section 313B of the Act (suspension or removal of financial instruments from trading: procedure) insert—

“Procedure following consideration of representations

313BA.—(1) This section applies where, within the period specified under section 313B(3), (3A) or (4), representations are made to the Authority in relation to a requirement that it has proposed to impose or has imposed under section 313A.

(2) The Authority must decide whether to impose the requirement or (in the case of a requirement that has been imposed) whether to revoke it.

(3) In the case of a requirement that the Authority has proposed to impose on a class of institutions, the Authority may decide to impose the requirement—

- (a) on the class;
- (b) on the class apart from one or more specified members of it; or
- (c) only on one or more specified members of the class.

(4) In the case of a requirement that the Authority has imposed on a class of institutions, the Authority may decide to revoke it in relation to—

- (a) the class;
- (b) the class apart from one or more specified members of it; or
- (c) one or more specified members of the class only.

(5) The Authority must give written notice of its decision to—

- (a) any institution which has made representations, and
- (b) the issuer of the financial instrument in question (if any).

(6) In the case of a requirement that the Authority has proposed to impose or has imposed on a class, the Authority must also give notice of its decision by publishing it by means of a regulatory information service unless the decision is—

- (a) to impose the requirement on the class, or
- (b) not to revoke the requirement in relation to the class or any member of it.

(7) An institution to which notice is required to be given under subsection (5) may refer the matter to the Tribunal if the Authority's decision is that the requirement will be imposed on, or will continue to apply to, the institution.

(8) An issuer to whom notice is required to be given under subsection (5) may refer the matter to the Tribunal if the Authority's decision is that the requirement will be imposed on, or will continue to apply to, the institution or (in the case of a requirement relating to a class) any of the institutions in the class.

(9) A notice given under subsection (5) must inform the recipient if the recipient has a right to refer the matter to the Tribunal.

Revocation of requirements: applications by institutions

313BB.—(1) This section applies where the Authority has imposed a requirement on an institution or a class of institutions under section 313A.

(2) The institution or any of the institutions in the class may apply to the Authority for the revocation of the requirement.

(3) The Authority must decide whether to revoke the requirement.

(4) In the case of a requirement imposed on a class of institutions, the Authority may decide to revoke it in relation to—

- (a) the class;
- (b) the class apart from one or more specified members of it; or
- (c) one or more specified members of the class only.

(5) The Authority must give a warning notice if—

- (a) in the case of a requirement imposed on an institution, the Authority proposes not to revoke the requirement, or