

2014 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. X) Order 2014

Made - - - - *******

Laid before Parliament *******

Coming into force in accordance with article 1(2)

In accordance with paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000 and section 94 of the Financial Services Act 2012, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Treasury, in exercise of the powers conferred by sections 22(1A) and (5), and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000^(a) and section 93(4) of the Financial Services Act 2012^(b), make the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. X) Order 2014.

(2) This Order comes into force as follows—

- (a) article 11 comes into force on [31st December 2014];
- (b) all remaining articles come into force on [****** April 2015].

Interpretation

2. In this Order—

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

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(c);

“the FCA” means the Financial Conduct Authority;

“the PRA” means the Prudential Regulation Authority;

“authorised person” means a person authorised under section 31 of FSMA; and

“business day” means any day except Saturday, Sunday or a bank holiday, where “bank holiday” includes Christmas Day and Good Friday.

(a) c.8.
(b) c.21.
(c) S.I. 2001/544.

Amendments to the Regulated Activities Order

3. Schedule 5 to the Regulated Activities Order is amended as follows—

Schedule 5

4. In Schedule 5, for paragraph 1 substitute—

- “1. The London Interbank Offered Rate, also known as LIBOR;
2. ISDAFix;
3. The Sterling Overnight Index Average, also known as SONIA;
4. The Repurchase Overnight Index Average, also known as RONIA;
5. WM/Reuters 4pm London Closing Spot Rate;
6. [London Gold Fixing];
7. LBMA Silver Price;
8. ICE Brent.”

Disapplication of transitional and interim provisions

5. Articles 6 to 8 do not apply to persons who immediately before [the date of coming into force of this article] were authorised to carry on any of the activities specified in article 63O of the Regulated Activities Order.

Transitional provisions

6.—(1) Paragraph (2) applies to a person (“B”) who, on the business day before [the date of coming into force of this article] was an authorised person whose Part 4A permission did not include any of the activities specified in article 63O of the Regulated Activities Order and—

- (a) who provided, or was required to provide, any information or expression of opinion to the administrator of a benchmark, that was required by the administrator for the purpose of determining that benchmark where, if provided on [the date of coming into force of this article], the information or expression of opinion would have been provided in relation to a specified benchmark; or
- (b) ‘administered’ (for the purpose of paragraph 2(b) of article 63O of the Regulated Activities Order) a benchmark that, on [the date of coming into force of this article] is a specified benchmark.

(2) B is to be treated as having Part 4A permission to carry on the activity of providing information in relation to a specified benchmark or the activity of administering a specified benchmark, as applicable.

(3) A Part 4A permission that is given under this article is to be treated as being given by—

- (a) in the case of a PRA authorised person, the PRA; or
- (b) in the case of any other authorised firm, the FCA.

(4) For the purposes of this article, the administrator of a benchmark is a person who is—

- (a) administering the arrangements for determining the benchmark;
- (b) collecting, analysing or processing information or expressions of opinion provided by third parties for the purpose of determining the benchmark; or
- (c) determining the benchmark through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose.

Interim permission

7.—(1) Paragraph (2) applies to a person (“P”) who is not an authorised person and, immediately before [the date of coming into force of this article] was carrying on the following activities in relation to a benchmark that, on [the date of coming into force of this article] is a specified benchmark (“S”)—

- (a) ‘Providing information’ as defined in paragraph (2)(a) of article 63O of the Regulated Activities Order; or
- (b) ‘Administering’ as defined in paragraph (2)(b) of article 63O of the Regulated Activities Order.

(2) P is to be treated as having Part 4A permission to carry on the activity of providing information or administering S, as applicable.

(3) The Part 4A permission which P is to be treated as having is referred to in this Order as an “interim permission”.

(4) P’s interim permission lapses on the earliest of—

- (a) the date specified in a notice of cancellation of permission given under this article by the FCA;
- (b) the cancellation of permission by the FCA under section 55H of FSMA (variation by FCA at request of authorised person); or
- (c) the exercise by the FCA of its power under section 55J of FSMA (variation or cancellation on initiative of regulator).

(5) A notice of cancellation of permission under paragraph (4)(a) may only be given by the FCA when—

- (a) whether in relation to P or another person, Part 4A permission is given or an existing Part 4A permission is varied so as to include permission to carry on the activity of providing information to, or administering, S; or
- (b) P fails to make an application for Part 4A permission within [timeframe].

(6) A notice of cancellation of permission given to P under paragraph (4)(a) must be given—

- (a) in writing; and
- (b) at least 7 days in advance of the cancellation of the interim permission.

(7) For the purposes of paragraph (4)(a), section 55Z of FSMA (Cancellation of permission: procedure) does not apply.

Application of the FCA’s rules etc to persons with interim permission

8.—(1) The FCA may direct in writing that any relevant provision which would otherwise apply to a person by virtue of an interim permission is not to apply, or is to apply to that person as modified in the way specified in the direction.

(2) Where the FCA makes a rule, gives guidance or issues a statement or code which applies only to persons with an interim permission (or only to a class of such persons), the following sections of FSMA do not apply to that rule, guidance, statement or code—

- (a) section 63D (statement of policy: procedure);
- (b) section 1381 (consultation by the FCA);
- (c) subsection 3 of section 139A (power of the FCA to give guidance).

(3) For the purpose of paragraph (1), a “relevant provision” is any provision made as a result of the exercise by the FCA of any of its legislative functions mentioned in paragraph 8(3) of Schedule 1ZA to FSMA (The Financial Conduct Authority).

Application of FSMA to persons with an interim permission

9.—(1) This article applies to every person to whom article 6(2) or article 7(2) of this Order applies or any person who immediately before [the date of coming into force of this article] was authorised to carry on any of the activities in article 63O of the Regulated Activities Order.

(2) A person with an interim permission is to be treated as an authorised person for the purposes of FSMA (and any provision made under FSMA), unless otherwise expressly provided for by this article.

(3) For the purpose of section 20 of FSMA (authorised person acting without permission), a person's interim permission is treated as having been given to that person under Part 4A of FSMA.

(4) For the purpose of section 55L(1) of FSMA (imposition of requirements by FCA), a person who obtains interim permission by virtue of this Order is treated as having applied for Part 4A permission or variation of Part 4A permission to the FCA

(5) For the purpose of section 55L(2) of FSMA, a person's interim permission is treated as having been given to that person by the FCA.

(6) A person's interim permission is to be disregarded for the purposes of the following sections of FSMA—

- (a) section 38(2) (exemption orders);
- (b) section 55A(3) (application for permission);
- (c) section 55E (giving permission: the FCA); and
- (d) section 55F (giving permission: the PRA).

Imposition of requirements by FCA

10.—(1) The FCA may exercise its power under section 55L(3) FSMA (imposition of requirements by FCA) in relation to a person who, immediately before [the coming into force of this article] had Part 4A permission to carry on any of the activities in article 63O of the Regulated Activities Order, if it appears to the FCA that it is necessary to ensure [regulation of any specified benchmark].

(2) Where the FCA exercises its power under section 55L(3) in accordance with paragraph (1), section 55Y of FSMA (exercise of own-initiative power: procedure) does not apply.

Amendments of the Misleading Statements and Impressions Order

11.—(1) The Financial Services 2012 (Misleading Statements and Impressions) Order 2013(a) is amended as follows—

(2) Omit article 3 and substitute—

“3. The benchmarks specified for the purposes of section 93(4) of the Act are;

- (a) The London Interbank Offered Rate, also known as LIBOR;
- (b) ISDAFix;
- (c) The Sterling Overnight Index Average, also known as SONIA;
- (d) The Repurchase Overnight Average, also known as RONIA;
- (e) WM/Reuters 4pm London Closing Spot Rate;
- (f) [London Gold Fixing];
- (g) LBMA Silver Price;
- (h) ICE Brent.”

(a) S.I. 2013/637.

Signed

Name

Name

DATE

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 so as to specify new benchmarks.

Article 4 of this Order makes amendments to Schedule 5 of the Regulated Activities Order to set out new specified benchmarks.

Article 5 disapplies transitional and interim provisions in respect of persons who already have Part 4A permission in respect of a specified benchmark.

Article 6 provides for Part 4A permission to be deemed to be extended to those persons who immediately before commencement of this Order were already carrying on the activity of providing information to the administrator of a specified benchmark and who already had Part 4A permission.

Article 7 provides for an interim permission to be granted to persons wishing to undertake administering, analysing or determining activities. This permission is granted automatically to those already undertaking these activities on commencement of this Order. An interim permission lapses on a notice of a cancellation of permission given by the FCA after an application for Part 4A permission to carry on these activities has been granted or varied or, if earlier, on either cancellation of permission under section 55H of FSMA or the exercise by the FCA of its power to cancel permission under section 55J of FSMA.

Article 8 enables the FCA to modify, amongst other things, its rules in their application to persons with interim permission.

Article 9 sets out the application of FSMA to persons with interim permission.

The Order also specifies relevant benchmarks for the purposes of Part 7 of the Financial Services Act 2012.

Article 10 specifies benchmarks which are “relevant benchmarks” in section 91 of the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013 in relation to benchmarks.

An impact assessment of the effect of this instrument on the costs of business and the voluntary sector has been prepared and is available from Her Majesty's Treasury, 1 Horse Guards Road, London, SW1A 2HQ, or on www.hm-treasury.gov.uk and is published with the Explanatory Memorandum alongside this Order on www.legislation.gov.uk.