

Draft Order laid before Parliament under paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000 and section 94 of the Financial Services Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. X) Order 2015

Made - - - -

Coming into force - -

1st April 2015

In accordance with paragraph 26(a) of Schedule 2 to the Financial Services and Markets Act 2000(b) and section 94 of the Financial Services Act 2012(c), 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)(d) and (5) and 428(3) and paragraph 25(e) of Schedule 2 to the Financial Services and Markets Act 2000 and section 93(4) of the Financial Services Act 2012, make the following Order.

In the opinion of the Treasury, one of the effects of the following order is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000) will become a regulated activity and a benchmark that is not a relevant benchmark (within the meaning of section 93(4) of the Financial Services Act 2012) will become a relevant benchmark.

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. X) Order 2015 and comes into force on 1st April 2015.

Interpretation

2. In this Order—

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

“administering” a specified benchmark has the meaning given in paragraph (2)(b) of article 63O(f) of the Regulated Activities Order (specified benchmarks);

(a) Paragraph 26 was substituted by the Financial Services Act 2012, section 8(1), (3).

(b) 2000 c.8.

(c) 2012 c.21.

(d) Section 22(1A) was inserted by the Financial Services Act 2012, section 7(1)(a).

(e) Paragraph 25 was amended by the Financial Services Act 2012, section 8(1), (2).

(f) Article 63O was inserted by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2013, SI 2013/655, arts 4, 5.

“providing information” in relation to a specified benchmark has the meaning given in paragraph (2)(a) of article 63O of the Regulated Activities Order; and
“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a).

Amendments to the Regulated Activities Order

3. For Schedule 5 to the Regulated Activities Order substitute—

“Article 63R

Schedule 5

Specified benchmarks

The benchmarks known by the following names are specified—

1. The London Interbank Offered Rate, also known as LIBOR;
2. ISDAFIX;
3. Sterling Overnight Index Average, also known as SONIA;
4. Repurchase Overnight Index Average, also known as RONIA;
5. WM/Reuters London 4 p.m. Closing Spot Rate;
6. London Gold Fixing(b);
7. LBMA Silver Price;
8. ICE Brent Index.”.

Transitional provisions

4.—(1) Paragraph (2) applies to a person (“A”) who, on the working day immediately before 1st April 2015, was an authorised person whose Part 4A permission did not include any of the activities specified in article 63O of the Regulated Activities Order in relation to a specified benchmark and—

- (a) who provided information to the administrator of a benchmark, which, if provided on 1st April 2015, would be provided in relation to a specified benchmark; or
- (b) who administered a benchmark that on 1st April 2015 is a specified benchmark.

(2) A is to be treated as having a Part 4A permission varied on 1st April 2015 to carry on the activity of providing information in relation to the relevant specified benchmark or the activity of administering a relevant specified benchmark, as applicable.

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

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

(a) S.I. 2001/544. The relevant amending instruments are S.I. 2009/1389 and S.I. 2013/655

(b) It is proposed that the London Gold Fixing benchmark will be known as LBMA Gold Price from some time in 2015.

- (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

5.—(1) Paragraph (2) applies to a person (“B”) who is not an authorised person and who immediately before 1st April 2015 was carrying on the activities of providing information in relation to or administering a benchmark that on 1st April 2015 would be the activities of providing information in relation to or administering a specified benchmark.

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

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

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

- (a) the date specified in a notice of cancellation of permission given under this subparagraph by the FCA;
- (b) the cancellation of permission by the FCA under section 55H(a) of the Act (variation by FCA at request of authorised person); or
- (c) the exercise by the FCA of its power under section 55J(b) of the Act (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 B or another person, a 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 in relation to or administering, that benchmark; or
- (b) B fails to make an application for a Part 4A permission within 3 months beginning with 1st April 2015.

(6) A notice of cancellation of permission given to B 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(c) of the Act (cancellation of Part 4A permission: procedure) does not apply.

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

6.—(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 the Act do not apply to that rule, guidance, statement or code—

- (a) section 63D(d) (statement of policy: procedure);
- (b) section 138I(e) (consultation by the FCA); and
- (c) subsection (3) of section 139A(f) (power of the FCA to give guidance).

(a) Inserted by the Financial Services Act 2012, section 11(2).

(b) Inserted by the Financial Services Act 2012, section 11(2).

(c) Inserted by the Financial Services Act 2012, section 11(2).

(d) Inserted by the Financial Services Act 2010, section 11 and amended by the Financial Services Act 2012, Schedule 5, paragraphs 11(2)(a), (b), 11(3), 11(4)(a), (b).

(e) Inserted by the Financial Services Act 2012, section 24(1).

(f) Inserted by the Financial Services Act 2012, section 24(1).

(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(a) to the Act (the financial conduct authority).

Application of the Act to persons with interim permission

7.—(1) This article applies to every person with interim permission under article 5(2) of this Order.

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

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

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

(5) For the purpose of section 55L(2) of the Act, 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 the Act—

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

Imposition of requirements by the FCA

8.—(1) The FCA may exercise its power under section 55L(3) of the Act (imposition of requirements by FCA) in relation to a person who immediately before 1st April 2015 had a 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(h) of the Act (exercise of own-initiative power: procedure) does not apply.

Amendments to the Financial Services 2012 (Misleading Statements and Impressions) Order 2013

9. For article 3 of the Financial Services 2012 (Misleading Statements and Impressions) Order 2013(i) substitute—

“Relevant benchmarks

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- (a) Inserted by the Financial Services Act 2012, section 6(2), Schedule 3 and amended by the Financial Services (Banking Reform) Act 2013 (c.33), section 35, Schedule 3, paragraph 16 and section 4(6); and the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 and S.I. 2013/1388.
 - (b) Inserted by the Financial Services Act 2012, Schedule 9(2) paragraphs 2(2)(a), (b), (c), 2(3), 2(4), 2(5), 2(6).
 - (c) Inserted by the Financial Services Act 2012, section 11(2)
 - (d) Inserted by the Financial Services Act 2012, section 114(1), Schedule 18, Pt 1, paragraphs 1, 4.
 - (e) Inserted by the Financial Services Act 2012, section 11(2).
 - (f) Inserted by the Financial Services Act 2012, section 11(2).
 - (g) Inserted by the Financial Services Act 2012, section 11(2).
 - (h) Inserted by the Financial Services Act 2012, section 11(2).
 - (i) S.I. 2013/637.

3. The benchmarks known by the following names are specified for the purposes of section 93(4) of the Act—

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

Signed

Name

Name

2014

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) It is proposed that the London Gold Fixing benchmark will be known as LBMA Gold Price from some time in 2015.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) so as to specify additional benchmarks.

Article 3 of this Order makes amendments to Schedule 5 to the Regulated Activities Order to specify additional benchmarks.

Article 4 provides for a Part 4A permission to be varied and deemed to be extended to those authorised persons who immediately before commencement of this Order were providing information to the administrator of, or administering a previously specified benchmark.

Article 5 provides for an interim permission to be granted to persons wishing to undertake the activities of providing information to the administrator of or administering a newly specified benchmark. This permission is granted automatically to those already undertaking these activities on commencement of this Order. An interim permission lapses once permission is cancelled by the FCA after an application for a Part 4A permission to carry on these activities has been granted or if no application is made within three months.

Article 6 enables the FCA to modify, amongst other things, its rules in their application to persons with interim permission.

Article 7 sets out the application of the Act to persons with interim permission.

Article 8 provides the FCA with powers to impose requirements on the existing benchmark administrator and submitters in respect of any additional benchmarks that they administer or for which they submit information.

Article 9 amends S.I. 2013/637 to specify the additional benchmarks as relevant benchmarks for the purposes of the offences in section 91 of the Financial Services Act 2012 (c.21) concerning false or misleading statements in relation to benchmarks.

An full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk and is published alongside the Regulations on www.legislation.gov.uk.