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STATUTORY INSTRUMENTS

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**2013 No. 3116**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000  
(Qualifying EU Provisions) (No. 2) Order 2013**

*Made* - - - - *9th December 2013*  
*Laid before Parliament* *10th December 2013*  
*Coming into force* - - *1st January 2014*

The Treasury, in exercise of the powers conferred on them by the following sections of the Financial Services and Markets Act 2000(1): 1A(6)(d); 1L(2)(b); 2A(6)(d); 39(4)(b); 66(2)(b)(ii); 66(2A)(b)(ii); 168(4)(k); 204A(2)(b), (4); 380(6)(a)(i), (9); 382(9)(a)(i), (12); 384(7)(a), (10); and paragraph 23(2)(b) of Schedule 1ZA and paragraph 31(2)(b) of Schedule 1ZB to that Act(2), makes the following Order:

**Citation, commencement and interpretation**

1. (1) This Order may be cited as the Financial Services and Markets Act 2000 (Qualifying EU Provisions) (No. 2) Order 2013 and comes into force on 1st January 2014.

(2) For the purposes of this Order—

“the CRA Regulation” means Regulation 1060/2009/EC of the European Parliament and of the Council of 16 September 2009 on credit rating agencies(3);

“the CRD4 instruments” means(4)—

(a) the capital requirements regulation; and

(b) any directly applicable regulation made under the capital requirements regulation or the capital requirements directive;

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

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- (1) 2000 c. 8; Sections 1A to 3S were inserted by section 6 of the Financial Services Act 2012 (c.21); section 39(4) was substituted by Schedule 18 to that Act; section 66(2) and (2A) were substituted by Schedule 5 to that Act; section 168 was amended by Schedule 12 to that Act; sections 204A, 380, 382 and 384 were amended by Schedule 9 to that Act. There are other amendments to these provisions which are not relevant to this Order.
- (2) Schedules 1ZA and 1ZB were inserted by Schedule 3 to the Financial Services Act 2012.
- (3) OJ no L302, 17/11/2009, p.1; the Regulation was amended by Directive 2011/61/EU (OJ no L 174 1.7.2011), Regulation (EU) No 513/2011(OJ no L 145 31.5.2011) and Regulation (EC) No 462/2013 ((OJ no L 146, 31.5.2013, p. 1) and was corrected by Corrigendum, OJ L 350, 29.12.2009 p. 59.
- (4) Definitions of “capital requirements regulation” and “capital requirements directive” are inserted into section 417 of FSMA by the Capital Requirements Regulations 2013.

### **Qualifying EU provisions**

2. Articles 4(1), 5a, 8b, 8c, 8d and 25a of the CRA Regulation are specified qualifying EU provisions for the purposes of the following provisions of FSMA—

- (a) sections 1A(6)(d), 1L(2)(b), 66(2)(b)(ii), 168(4)(k), 204A(2)(b), 380(6)(a)(i), 382(9)(a)(i) and 384(7)(a); and
- (b) paragraph 23(2)(b) of Schedule 1ZA.

3. The CRD4 instruments are specified qualifying EU provisions for the purposes of the following provisions of FSMA—

- (a) sections 1A(6)(d), 1L(2)(b), 2A(6)(d), 39(4)(b), 66(2)(b)(ii), 66(2A)(b)(ii), 168(4)(k), 204A(2)(b), 380(6)(a)(i), 382(9)(a)(i) and 384(7)(a);
- (b) paragraph 23(2)(b) of Schedule 1ZA; and
- (c) paragraph 31(2)(b) of Schedule 1ZB.

### **Appropriate regulator**

4. The appropriate regulator for the purposes of each provision of Part 14 and sections 380, 382 and 384 of FSMA is—

- (a) in relation to a contravention of a requirement imposed by Article 4(1), 5a, 8b, 8c or 8d of the CRA Regulation, the FCA;
- (b) in relation to a contravention of a requirement imposed by a CRD4 instrument—
  - (i) the PRA, in the case of a PRA-authorized person; and
  - (ii) the FCA, in the case of any other person.

9th December 2013

*David Evennett*  
*Mark Lancaster*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order specifies the following EU legislation as qualifying EU provisions for the purposes of various provisions of the Financial Services and Markets Act 2000 (c. 8) (“FSMA”):

- (a) Articles 4(1), 5a, 8b, 8c, 8d and 25a of Regulation 1060/2009/EC of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ no L302, 17/11/2009, p.1);
- (b) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ no L176, 27/6/2013, p.1, for corrigenda see OJ no L208, 2/8/2013 p.68 and OJ no L321, 30/11/2013 p. 6) (the “CRR”);
- (c) any directly applicable regulation made under the CRR or Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (OJ no L176, 27/6/2013, p. 338, for corrigenda see OJ no L208, 2/8/2013, p.73).

The effect of the Order is to apply certain provisions of FSMA for purposes connected with the qualifying EU provisions.

Articles 2 and 3 specify provisions of EU law for general purposes including sections 1A and 2A of FSMA (the functions of the Financial Conduct Authority (“FCA”) and the functions of the Prudential Regulation Authority (“PRA”)), section 168 of FSMA (power of the regulators to appoint an investigator) and disciplinary measures imposed under Part 14 of FSMA.

Article 4 specifies which of the FCA or PRA is responsible for taking disciplinary action in relation to each specified provision of EU law.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.