

DRAFT PUBLISHED TO ASSIST PARLIAMENTARY CONSIDERATION OF THE  
FINANCIAL SERVICES BILL

*Draft Order laid before Parliament under section 22B] of the Financial Services Act \*\*\*, for approval by resolution of each House of Parliament.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**201\* No.**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (PRA-Regulated  
Activities) Order 201\***

*Laid before Parliament in draft*

In accordance with section [22B] of the Financial Services and Markets Act 2000, 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 [22A] and 428(3) of the Financial Services and Markets Act 2000(a), make the following Order:

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 201\* and comes into force on [ ].

(2) In this Order —

“dealing in investments as principal” means the activity specified by article 14(1) of the Regulated Activities Order(b);

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

**Regulated activities which are PRA-regulated activities**

**2.** For the purposes of the Act, the following regulated activities are PRA-regulated activities—

- (a) the activity of accepting deposits as specified by article 5 of the Regulated Activities Order(d);
- (b) the activity of effecting a contract of insurance as principal as specified by article 10(1) of the Regulated Activities Order;
- (c) the activity of carrying out a contract of insurance as principal as specified by article 10(2) of the Regulated Activities Order;
- (d) dealing in investments as principal, to the extent that that activity is designated by the PRA under article 3 of this Order;

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(a) 2000 c.8, section 22A was inserted by section X of the Financial Services Act 201\*.

(b) Amended by S.I. 2006/3384.

(c) S.I. 2001/544.

(d) Amended by S.I. 2002/682.

- (e) the activity of managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's as specified by article 57 of the Regulated Activities Order;
- (f) the activity of arranging, by the society incorporated by Lloyd's Act 1871<sup>(a)</sup> by the name of Lloyd's, of deals in contracts of insurance written at Lloyd's as specified by article 58 of the Regulated Activities Order or any other regulated activity carried on by that society in connection with, or for the purposes of, that activity.

**Dealing in investments as principal: designation by the PRA**

3.—(1) The PRA may designate that the activity of dealing in investments as principal is, to the extent it is carried on by a particular person ("P"), a PRA-regulated activity if—

- (a) P—
  - (i) is an authorised person with permission to carry on the activity of dealing in investments as principal;
  - (ii) is a person who has applied for Part 4A permission to carry on that activity; or
  - (iii) is an EEA firm which has notified its home state regulator of its intention to perform in the United Kingdom the activity of dealing on its own account in accordance with Article 31 of the markets in financial instruments directive or to establish a branch in the United Kingdom and to offer the service of dealing on its own account in accordance with Article 32 of that directive;
- (b) the PRA considers that one of the following requirements is satisfied—
  - (i) P is an investment firm to which Article 9 of Directive 2006/49/EC of the European Parliament and of the Council on the capital adequacy of investment firms and credit institutions<sup>(b)</sup> (investment firms which are required to have initial capital of EUR 730,000) applies;
  - (ii) P has applied for Part 4A permission and would meet the requirement specified in paragraph (i) if permission were to be granted;
  - (iii) P is established in a country which is not an EEA State but would meet the requirement specified in either paragraph (i) or (ii) if P were established in an EEA State and had obtained the necessary authorisation from its home state regulator for its business; and
- (c) the PRA considers that it is desirable, having regard to its objectives.

(2) In determining whether the condition in paragraph (1)(c) is satisfied, the PRA must have regard in particular to—

- (a) the assets of P;
- (b) where P is a member of a group—
  - (i) the assets of the members of that group who meet the requirements in paragraphs (1)(a) and (1)(b) (regardless of whether they have been designated under this article);
  - (ii) whether a person who has been designated under this article is a member of P's group;
  - (iii) whether P's activities have, or might have, a material impact on the ability of the PRA to advance any of its objectives in relation to PRA-authorised persons in the group.

(3) A designation under this article must relate to a particular person and may not relate to persons of a specified description.

(4) Before making a designation under paragraph (1), the PRA must consult the FCA.

**Dealing in investments as principal: exercise of power to designate**

4.—(1) This article applies to an exercise of the PRA's power to designate under article 3.

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(a) 1871 c.21.

(b) OJ L 177, 30.6.2006, p.201.

- (2) The designation takes effect—
  - (a) immediately, if the notice given under paragraph (4) states that this is the case; or
  - (b) on such date as is specified in the notice.
- (3) A designation may be expressed to take effect immediately only if the PRA reasonably considers that it is necessary for the designation to take effect immediately.
- (4) If the PRA proposes to designate a person (“P”) under article 3, or to designate P with immediate effect, it must give P written notice.
- (5) The notice must—
  - (a) state the reasons for the designation and for the PRA’s determination as to when the designation takes effect;
  - (b) inform P that P may make representations to the PRA within such period as may be specified in the notice (whether or not P has referred the matter to the Tribunal);
  - (c) inform P of when the designation takes effect; and
  - (d) inform P of P’s right to refer the matter to the Tribunal.
- (6) The PRA may extend the period allowed under the notice for making representations.
- (7) If, having considered any representations made by P, the PRA decides—
  - (a) to designate P; or
  - (b) if P has already been designated, not to rescind the designation,
 the PRA must give P written notice.
- (8) If, having considered any representations made by P, the PRA decides—
  - (a) not to designate P; or
  - (b) to rescind a designation which has effect,
 the PRA must give P written notice.
- (9) A notice under paragraph (7) must inform P of P’s right to refer the matter to the Tribunal.
- (10) If a notice informs P of P’s right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (11) A person who is aggrieved by the exercise of the PRA’s power to designate under article 3 may refer the matter to the Tribunal.

**Dealing in investments as principal: review of designations**

5. The PRA must keep under review all designations made under article 3.

**Dealing in investments as principal: withdrawal of designation**

6.—(1) The PRA may withdraw a designation under article 3 in relation to a person (“P”) if the PRA considers it appropriate to do so.

(2) If the PRA proposes to withdraw a designation in relation to P, the PRA must give P a warning notice.

(3) If the PRA decides to withdraw a designation in relation to P, the PRA must give P a decision notice.

(4) If the PRA decides to withdraw a designation in relation to P, P may refer the matter to the Tribunal.

(5) Before withdrawing a designation under paragraph (1), the PRA must consult the FCA.

**Dealing in investment as principal: cessation of designation**

7. A designation under article 3 in relation to a person (“P”) ceases to have effect if P ceases to have permission to carry on the activity of dealing in investments as principal.

### **Dealing in investments as principal: statement of policy**

- 8.**—(1) The PRA must prepare and issue a statement of its policy with respect to—
- (a) the exercise of the power to designate under article 3;
  - (b) the discharge of its duty to review designations under article 5; and
  - (c) the exercise of the power to withdraw a designation under article 6.
- (2) The statement of policy must include—
- (a) an indication of the matters that the PRA may take into account in exercising its power under article 3 or under article 6 or in discharging its duty under article 5;
  - (b) the procedures that the PRA propose to follow in relation to the exercise of its power under article 3 or under article 6.
- (3) The PRA may at any time alter or replace a statement issued under this article.
- (4) If a statement issued under this article is altered or replaced, the PRA must issue the altered or replaced statement.
- (5) In exercising or deciding whether to exercise its power under article 3 or under article 6 in any particular case, and in discharging its duty under article 5, the PRA must have regard to any statement published under this article and for the time being in force.
- (6) A statement under this article must be published by the PRA in the way appearing to it to be best calculated to bring it to the attention of the public.
- (7) The PRA may charge a reasonable fee for providing a person with a copy of a statement published under this article.
- (8) The PRA must, without delay, give the Treasury a copy of any statement which the PRA publishes under this article.

### **Statement of policy: procedure**

- 9.**—(1) Before issuing a statement of policy under article 8, the PRA—
- (a) must consult the FCA;
  - (b) must consult the Bank of England;
  - (c) may consult the FPC; and
  - (d) must publish a draft of the proposed statement in the way appearing to the PRA to be best calculated to bring it to the attention of the public.
- (2) The draft published under paragraph (1)(d) must be accompanied by notice that representations about the proposal may be made to the PRA within a specified time.
- (3) Before issuing the proposed statement, the PRA must have regard to any representations made to it in accordance with paragraph (2).
- (4) If the PRA issues the proposed statement it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with paragraph (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under paragraph (1)(d) in a way which is, in the opinion of the PRA, significant, the PRA must—
- (a) before issuing it, consult the FCA and Bank of England again; and
  - (b) publish details of the difference (in addition to complying with paragraph (4)).
- (6) The PRA may charge a reasonable fee for providing a person with a draft published under paragraph (1)(d).
- (7) This article also applies to a proposal to alter or replace a statement.

*Name*

Date

**EXPLANATORY NOTE**

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

This Order specifies, for the purposes of the Financial Services and Markets Act 2000, which regulated activities are “PRA-regulated activities” and so are the regulated activities which are subject to prudential regulation by the Prudential Regulation Authority (“PRA”), rather than the Financial Conduct Authority.

Article 2 provides that the activities of accepting deposits and effecting or carrying out contracts of insurance are specified as PRA-regulated activities. Acting as a managing agent at Lloyd’s and the arranging by the Society of Lloyd’s of contracts of insurance written at Lloyd’s are also PRA-regulated activities.

The activity of dealing in investments as principal is a PRA-regulated activity only to the extent designated by the PRA under article 3. Designations relate to particular persons (rather than a class of person). Article 3 sets out the criteria which must be applied by the PRA in designating persons.

Article 4 sets out the procedure the PRA must follow when designating a person under article 3.

Article 5 requires the PRA to keep under review designations under article 3.

Article 6 enables the PRA to withdraw a designation and sets out the procedure for withdrawal.

Article 7 provides that a designation ceases to have effect if the person concerned ceases to have permission to carry on the activity of dealing in investment as principle.

Article 8 requires the PRA to prepare and issue a statement of its policy in relation to designation under article 3, the review of designations under article 5 and the withdrawal of designations under article 6. Article 9 sets out the procedure that the PRA must follow in preparing a statement of policy.