

2011 No. 1435

FINANCIAL SERVICES AND MARKETS

The Credit Rating Agencies (Amendment) Regulations 2011

Made - - - - *7th June 2011*

Laid before Parliament *8th June 2011*

Coming into force - - *1st July 2011*

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to—

- (a) credit ratings and credit rating agencies(b);
- (b) credit and financial institutions and the taking of deposits or other repayable funds from the public(c); and
- (c) measures relating to investment firms and to the provision of investment services(d).

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Credit Rating Agencies (Amendment) Regulations 2011 and shall come into force on 1st July 2011.

Amendment of the European Communities (Enforcement of Community Judgments) Order 1972

2. At the end of the definition of “Community judgment” in article 2(1) of the European Communities (Enforcement of Community Judgments) Order 1972(e), insert “or Article 36a or 36b of Regulation (EC) No. 1060/2009 of the Parliament and of the Council of 16 September 2009 on credit rating agencies(f)”.

(a) 1972 c.68; section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by the Schedule to the European Union (Amendment) Act 2008 (c.7).
(b) S.I. 2009/3214.
(c) S.I. 2001/3495.
(d) S.I. 1993/2661.
(e) S.I. 1972/1590; article 2(1) was amended by article 2 of S.I. 1998/1259 and article 2 of S.I. 2003/3204.
(f) OJ L 302, 17.11.2009, p. 1; articles 36a and 36b were inserted by article 1(18) of Regulation 513/2011 of 11 May 2011 of the European Parliament and the Council amending Regulation (EC) No. 1060/2009 on credit rating agencies, OJ L 145, 31.5.2011, p.30.

Amendment of the Capital Requirements Regulations 2006

3. In regulation 21 (interpretation) of the Capital Requirements Regulations 2006(a), at the end of the definition of “EC Regulation” insert “, as amended by Regulation (EU) No. 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No. 1060/2009 on credit rating agencies”.

Amendment of the Credit Rating Agencies Regulations 2010

4. The Credit Rating Agencies Regulations 2010(b) are amended as follows—

- (a) in regulation 2(1) (interpretation)—
 - (i) at the end of the definition of “the EC Regulation” insert “, as amended by Regulation (EU) No. 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No. 1060/2009 on credit rating agencies”;
 - (ii) after the definition of “the EC Regulation” insert—

““ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/77/EC(c).”;
 - (iii) omit the definitions of “overseas competent authority” and “protected item”;
- (b) omit regulation 4 (fees);
- (c) for paragraph (1) of regulation 6 (guidance) substitute—

“(1) The Authority may give guidance consisting of such information and advice as it considers appropriate with respect to any matter relating to the functions of the Authority under the EC Regulation.”;
- (d) omit Parts 3 (applications for certification and registration) to 8 (notices);
- (e) after regulation 31 (amendments to the Capital Requirements Regulations 2006) insert—

“PART 10

ESMA: investigatory powers

Records of telephone and data traffic: Article 23c(1)(e) of the EC Regulation

32.—(1) ESMA must obtain authorisation from the High Court before any official of, or person authorised by, ESMA requests any records of telephone or data traffic under Article 23c(1)(e) of the EC Regulation from a person domiciled or established in the United Kingdom.

(2) The Authority must obtain authorisation from the High Court before requesting on behalf of ESMA any records of telephone or data traffic under Article 23c(1)(e) of the EC Regulation.

(3) The High Court may grant authorisation under paragraph (1) or (2) if satisfied, on an application made to the High Court in accordance with rules of court by ESMA or the Authority, that—

- (a) ESMA has ordered an investigation under Article 23c(1) of the EC Regulation;
- and

(a) S.I. 2006/3221; regulation 21 was amended by regulation 31(1) and (2) of S.I. 2010/906.

(b) S.I. 2010/906.

(c) OJ L 331, 15.12.2010, p.84.

(b) requiring the records of telephone or data traffic would be neither arbitrary nor excessive having regard to the subject matter of the investigation.

(4) The High Court must conduct the assessment referred to in paragraph (3) in accordance with Article 23c(6) of the EC Regulation, and may exercise the powers conferred by that paragraph for the purposes of making its assessment.

(5) In the application of this regulation to Scotland, references to the High Court are to be read as references to the Court of Session.

Inspections: Article 23d of the EC Regulation

33.—(1) ESMA must obtain authorisation from the High Court before any official of, or person authorised by, ESMA carries out an Article 23d inspection.

(2) Where ESMA requires the Authority to carry out an Article 23d inspection on its behalf, the Authority must obtain authorisation from the High Court before carrying out that inspection.

(3) The High Court may grant authorisation for the purposes of paragraph (1) or (2) if satisfied, on an application made to the High Court in accordance with rules of court by ESMA or the Authority, that—

- (a) ESMA has ordered an Article 23d inspection; and
- (b) the Article 23d inspection is neither arbitrary nor excessive having regard to the subject matter of the inspection.

(4) The High Court must conduct the assessment referred to in paragraph (3) in accordance with Article 23d(9) of the EC Regulation, and may exercise the powers conferred by that paragraph for the purposes of making its assessment.

(5) The High Court may issue a warrant if satisfied on information on oath given by or on behalf of ESMA or the Authority that there are reasonable grounds for believing that—

- (a) the premises specified in the warrant are the business premises of any legal person referred to in Article 23b(1) of the EC Regulation; and
- (b) the person referred to in sub-paragraph (a) has failed to comply with an Article 23d inspection, or would fail to comply with such an inspection if a warrant were not issued under this paragraph.

(6) A warrant issued under paragraph (5) shall authorise a constable, together with a named official of ESMA or the Authority and any other official or person authorised by ESMA or the Authority to accompany that official—

- (a) to enter any premises specified in the warrant using such force as is reasonably necessary for the purpose;
- (b) to search for such records, data, procedures and other material as may be examined under Article 23c(1) of the EC Regulation, or such records of telephone or data traffic as ESMA or the Authority has been authorised to request under regulation 32(3), using such force as is reasonably necessary for the purpose;
- (c) to take or obtain certified copies of or extracts from such records, data, procedures and other material; and
- (d) to seal any business premises and books or records in accordance with Article 23d(2) of the EC Regulation.

(7) In England and Wales, sections 15(5) to (8) and 16 of the Police and Criminal Evidence Act 1984^(a) (execution of search warrants and safeguards) apply to warrants issued under paragraph (5).

(a) 1984 c. 60; subsections (5) to (8) of section 15 were amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c. 15) and article 7 of S.I. 2005/3496; section 16 was amended by section 109(1) of, and paragraph 281 of Schedule 8 to, the Courts Act 2003 (c. 39), section 2 of the Criminal Justice Act 2003 (c. 44), sections 113 and 114 of the Serious Organised Crime and Police Act 2005 and article 8 of S.I. 2005/3496.

(8) In Northern Ireland, Articles 17(5) to (8) and 18 of the Police and Criminal Evidence (Northern Ireland) Order 1989^(a) apply to warrants issued under paragraph (5).

(9) In the application of this regulation to Scotland—

(a) references to the High Court are to be read as references to the Court of Session;

(b) references to information on oath are to be read as references to evidence on oath.

(10) In this regulation, an “Article 23d inspection” means an inspection ordered by decision of ESMA under Article 23d of the EC Regulation.

Offences: Article 23d inspections

34. Any person who intentionally obstructs the exercise of any rights conferred by a warrant under regulation 33(5) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.”.

Savings and transitional provisions

5.—(1) Despite its revocation by regulation 4(b) of these Regulations, regulation 4 of the Credit Rating Agencies Regulations 2010 has effect in relation to any registration or supervisory fee charged by the Authority before 1st July 2011.

(2) Despite their revocation by regulation 4(d) of these Regulations, regulations 8 to 13, 24 to 28, and 29(1)(c) and (2) of the Credit Rating Agencies Regulations 2010 have effect in relation to any application for registration received by the Authority on or before 7th September 2010.

Angela Watkinson

Brooks Newmark

7th June 2011

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) S.I. 1989 No. 1341 (N.I. 12); article 17 was amended by article 9 of S.I. 2007 No. 288 (N.I. 2).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Regulation (EU) No. 513/2011 of the European Parliament and of the Council (OJ L 145, 31.5.2011, p. 30) amending Regulation (EC) No. 1060/2009 on credit rating agencies. Regulation No. 513/2011 transfers responsibility for regulating credit rating agencies under Regulation 1060/2009 (OJ L 302, 17.11.2009, p. 1) from national authorities to the European Securities and Markets Authority (“ESMA”).

Regulation 2 amends the European Communities (Enforcement of Community Judgments) Order 1972 (S.I. 1972/1590) to enable sanctions and periodic penalties imposed by ESMA to be enforced in the UK.

Regulation 4(d) revokes Parts 3 to 8 to the Credit Rating Agencies Regulations 2010 (S.I. 2010/906), to reflect the fact that ESMA will assume responsibility for regulating credit rating agencies.

Regulation 4(e) inserts a new Part 10 into the Credit Rating Agencies Regulations 2010. New regulations 32 and 33 require ESMA to obtain authorisation from the High Court (in Scotland, the Court of Session) before requesting records of telephone or data traffic, or carrying out an on-site inspection. Regulation 33 also enables ESMA to obtain a warrant if a person does not comply with such an inspection.

An Explanatory Memorandum is available alongside these Regulations on the National Archive website www.legislation.gov.uk.

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STATUTORY INSTRUMENTS

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