EXPLANATORY MEMORANDUM TO

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (MISCONDUCT AND APPROPRIATE REGULATOR) ORDER 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends section 66A of the Financial Services and Markets Act 2000 ("FSMA 2000") to confer disciplinary powers on the Financial Conduct Authority ("FCA") over individuals working in financial services firms in cases where there is a breach by a firm of the Alternative Investment Fund Managers Regulations 2013.

2.2 This instrument also makes changes to section 204A of FSMA 2000 to ensure that existing disciplinary powers can be used by the appropriate regulator (either the FCA or the Prudential Regulation Authority – the "PRA") in relation to new requirements inserted in Part 5 of FSMA 2000 by the Financial Services (Banking Reform) Act 2013. The changes will enable the PRA to enforce certain requirements against a financial services firm where approval for an individual to perform functions in that firm was given by the PRA; where an individual is performing in that firm functions of a description specified by the PRA, or where the requirement arises in connection with rules of conduct made by the PRA. The changes will also enable either the PRA or the FCA to enforce against financial services firms certain requirements arising under Part 5 FSMA.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Financial Services (Banking Reform) Act 2013 makes changes to Part 5 of FSMA 2000, including introducing new requirements applicable to firms authorised under FSMA 2000. This Order makes further changes to FSMA 2000 to ensure that the appropriate regulator (either the FCA or the PRA) can enforce such new requirements.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Financial Services and Markets Act 2000 (Misconduct and Appropriate Regulator) Order 2015 are compatible with the Convention rights.

7. Policy background

7.1 Part 4 of the Financial Services (Banking Reform) Act 2013 amends Part 5 of the Financial Services and Markets Act 2000 to put in place the legal framework for reforms to strengthen the regulation of individuals working in the UK banking sector. These reforms implement recommendations of the Parliamentary Commission on Banking Standards.

7.2 This instrument makes amendments to FSMA 2000 in connection with the reforms. Article 3 makes essentially consequential changes to FSMA 2000 to ensure that new requirements arising under the reforms can be enforced by the PRA where that regulator is more directly interested in a contravention of the requirements. If these amendments to section 204A were not made, the requirements could only be enforced by the FCA even though it had no interest in the particular contravention.

7.3 Article 2 makes consequential changes to the amended Part 5 in order to complete the implementation of the EU Alternative Investment Fund Managers Directive.[1]

8. Consultation outcome

8.1 As a technical measure, this instrument has not been subject to consultation.

9. Guidance

9.1 Not applicable

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[1]Directive 2011/61/EU of the European Parliament and of the Council of 8th June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p.1).

10. Impact

10.1 There will be no impact on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to individuals employed by small businesses, but adds no regulatory burdens on these firms themselves.

12. Monitoring & review

12.1 Pursuant to section 28 of the Small Business, Enterprise and Employment Act 2015, Article 5 of the Order makes provision for the Order to be reviewed within 5 years of its coming into force. This review is expected to be completed in July 2020. The policy will also be kept under review as part of the general process of keeping the provisions of the Financial Services and Markets Act 2000 under review.

13. Contact

David Sly at HM Treasury email: david.sly@hmtreasury.gsi.gov.uk can answer any policy queries regarding the instrument. Adam Goodyer at Treasury Legal Advisers email: adam.goodyer@hmtreasury.gsi.gov.uk can answer any legal queries regarding the instrument.