



Financial Services and Markets Act 2023

2023 CHAPTER 29

PART 1

REGULATORY FRAMEWORK

CHAPTER 2

NEW REGULATORY POWERS

Financial promotion

20 Financial promotion

- (1) FSMA 2000 is amended as follows.
- (2) In section 21 (restrictions on financial promotion), after subsection (2) insert—
 - “(2A) The content of a communication may be approved for the purposes of this section by an authorised person only if the giving of the approval—
 - (a) is permitted under section 55NA (which enables approval to be given with FCA permission), or
 - (b) falls within an exemption conferred by regulations under section 55NB.”
- (3) After section 55N insert—

“55NA General requirement relating to financial promotion approval

- (1) An authorised person must not approve the content of a communication for the purposes of section 21 unless the person has permission to do so given by the FCA under this section.

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- (2) An authorised person who approves the content of a communication for the purposes of section 21 otherwise than in accordance with permission granted under this section is to be taken to have contravened a requirement imposed on the person by the FCA under this Act.
- (3) Permission may be granted by the FCA under this section on the application of—
 - (a) an authorised person, or
 - (b) an applicant for Part 4A permission that has yet to be determined.
- (4) The FCA may grant a person permission under this section—
 - (a) on the terms sought in the application (which may include the grant of permission to give approvals generally for the purposes of section 21), or
 - (b) subject to any other terms the FCA considers appropriate (which may in particular provide for the giving of permission in a narrower description of case than that sought in the application).
- (5) Where the FCA grants permission to a person under this section, the FCA may vary or cancel the permission—
 - (a) on the application of the person to whom it was given, or
 - (b) of its own initiative,and subsection (4)(b) applies to the variation of permission as it applies to its grant.
- (6) If the FCA grants or varies permission under this section it must set out the terms on which the permission is given, described in such way as it considers appropriate.
- (7) The FCA may refuse to grant an application for permission under this section, or for its variation or cancellation under subsection (5)(a), if it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives.
- (8) The FCA may vary or cancel a person’s permission under subsection (5)(b) if it appears to the FCA that—
 - (a) the person has failed, during a period of at least 12 months, to give, or to refuse to give, any approvals for the purposes of section 21 in accordance with the permission, or
 - (b) it is desirable to vary or cancel the permission in order to advance one or more of its operational objectives.
- (9) The FCA must consult—
 - (a) the PRA before giving permission under this section to, or before varying or cancelling permission under this section given to—
 - (i) a person who is, or will on the granting of an application for Part 4A permission be, a PRA-authorised person, or
 - (ii) a person who is a member of a group which includes a PRA-authorised person;
 - (b) the Gibraltar regulator (within the meaning of Schedule 2A) before giving permission under this section to, or before varying or

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cancelling permission under this section given to, a Gibraltar-based person.

- (10) Subsection (9)(b) does not apply in a case where the FCA varies or cancels permission of a Gibraltar-based person in exercise of its power under subsection (5)(b), but the FCA must inform the Gibraltar regulator in writing of the variation or cancellation.
- (11) Subsections (1) and (2) do not apply if the giving of approval falls within an exemption conferred by regulations made under section 55NB.
- (12) Nothing in this section limits any other power under this Act to impose requirements in relation to approvals given for the purposes of section 21 so far as those requirements are additional to the requirement imposed by subsection (1) of this section (but any such other requirement that is inconsistent with the requirement imposed by that subsection is of no effect to the extent of that inconsistency).

55NB Section 55NA: power to provide for exemptions

- (1) The Treasury may by regulations provide for exemptions from the requirement imposed by section 55NA(1) not to give approvals for the purposes of section 21 without permission.
- (2) Regulations under subsection (1) may provide for an exemption to have effect—
 - (a) in respect of specified persons;
 - (b) in respect of persons falling within a specified class;
 - (c) in respect of approval given in relation to activities of a specified description;
 - (d) only in specified circumstances;
 - (e) subject to specified conditions.
- (3) In this section “specified” means specified in regulations under this section.”
- (4) Schedule 5 contains amendments related to this section.
- (5) The amendments made by this section and Schedule 5—
 - (a) apply to an authorised person whether the person became authorised before or after the coming into force of this section;
 - (b) do not affect the approval of a communication given before the coming into force of this section.

Commencement Information

- I1** S. 20(3) in force at Royal Assent for specified purposes, see [s. 86\(1\)\(c\)](#)
- I2** S. 20(1)-(4) in force at 6.9.2023 for specified purposes by [S.I. 2023/936](#), [reg. 2\(1\)\(a\)\(2\)\(a\)](#) (with [reg. 3](#))
- I3** S. 20(1)-(4) in force at 6.11.2023 for specified purposes by [S.I. 2023/936](#), [reg. 2\(1\)\(b\)\(2\)\(a\)\(4\)](#) (with [reg. 3](#))
- I4** S. 20(1)-(4) in force at 7.2.2024 in so far as not already in force by [S.I. 2023/936](#), [reg. 2\(3\)](#) (with [reg. 3](#))
- I5** S. 20(5) in force at 7.2.2024 by [S.I. 2023/936](#), [reg. 2\(3\)](#)

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