



# Financial Services Act 2012

## 2012 CHAPTER 21

### PART 2

#### AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

##### *Permission to carry on regulated activities*

#### **11 Permission to carry on regulated activities**

- (1) In section 31 (authorised persons), in subsection (1)(a), for “Part IV permission” substitute “ Part 4A permission ”.
- (2) For sections 40 to 55 of FSMA 2000 substitute—

#### **“PART 4A**

#### PERMISSION TO CARRY ON REGULATED ACTIVITIES

##### *Application for permission*

#### **55A Application for permission**

- (1) An application for permission to carry on one or more regulated activities may be made to the appropriate regulator by—
  - (a) an individual,
  - (b) a body corporate,
  - (c) a partnership, or
  - (d) an unincorporated association.
- (2) “The appropriate regulator”, in relation to an application under this section, means—
  - (a) the PRA, in a case where—

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- (i) the regulated activities to which the application relates consist of or include a PRA-regulated activity, or
  - (ii) the applicant is a PRA-authorized person otherwise than by virtue of a Part 4A permission;
  - (b) the FCA, in any other case.
- (3) An authorised person who has a permission under this Part which is in force may not apply for permission under this section.
  - (4) An EEA firm may not apply for permission under this section to carry on a regulated activity which it is, or would be, entitled to carry on in exercise of an EEA right, whether through a United Kingdom branch or by providing services in the United Kingdom.
  - (5) A permission given by the appropriate regulator under this Part or having effect as if so given is referred to in this Act as “a Part 4A permission”.

#### **55B The threshold conditions**

- (1) “The threshold conditions”, in relation to a regulated activity, means the conditions set out in or specified under Schedule 6, as read with any threshold condition code made by either regulator under section 137O.
- (2) Any reference in this Part to the threshold conditions for which either regulator is responsible is to be read as a reference to the conditions set out in or specified under Schedule 6 that are expressed to be relevant to the discharge by that regulator of its functions, as read with any threshold condition code made by that regulator under section 137O.
- (3) In giving or varying permission, imposing or varying a requirement, or giving consent, under any provision of this Part, each regulator must ensure that the person concerned will satisfy, and continue to satisfy, in relation to all of the regulated activities for which the person has or will have permission, the threshold conditions for which that regulator is responsible.
- (4) But the duty imposed by subsection (3) does not prevent a regulator, having due regard to that duty, from taking such steps as it considers are necessary, in relation to a particular person, in order to advance—
  - (a) in the case of the FCA, any of its operational objectives;
  - (b) in the case of the PRA, any of its objectives.

#### **55C Power to amend Schedule 6**

- (1) The Treasury may by order amend Parts 1 and 2 of Schedule 6 by altering, adding or repealing provisions, or by substituting for those Parts as they have effect for the time being provisions specified in the order.
- (2) Different provision may be made under this section—
  - (a) in relation to the discharge of the functions of each regulator;
  - (b) in relation to different regulated activities;
  - (c) in relation to persons who carry on, or seek to carry on, activities that consist of or include a PRA-regulated activity and in relation to other persons.

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### **55D Firms based outside EEA**

- (1) This section applies in relation to a person (“the non-EEA firm”)—
  - (a) who is a body incorporated in, or formed under the law of, or is an individual who is a national of, any country or territory outside the EEA, and
  - (b) who is carrying on a regulated activity in any country or territory outside the United Kingdom in accordance with the law of that country or territory (“the overseas state”).
- (2) In determining whether the non-EEA firm is satisfying or will satisfy, and continue to satisfy, any one or more of the threshold conditions for which a UK regulator is responsible, the UK regulator may have regard to any opinion notified to it by a regulatory authority in the overseas state (“the overseas regulator”) which relates to the non-EEA firm and appears to the UK regulator to be relevant to compliance with those conditions.
- (3) In considering how much weight (if any) to attach to the opinion, the UK regulator must have regard to the nature and scope of the supervision exercised in relation to the non-EEA firm by the overseas regulator.
- (4) In this section “UK regulator” means the FCA or the PRA.

### **55E Giving permission: the FCA**

- (1) This section applies where the FCA is the appropriate regulator in relation to an application for permission under section 55A.
- (2) The FCA may give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.
- (3) If the applicant is a member of a group which includes a PRA-authorized person, the FCA must consult the PRA before determining the application.
- (4) If it gives permission, the FCA must specify the permitted regulated activity or activities, described in such manner as the FCA considers appropriate.
- (5) The FCA may—
  - (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
  - (b) specify a narrower or wider description of regulated activity than that to which the application relates;
  - (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates and is not a PRA-regulated activity.

### **55F Giving permission: the PRA**

- (1) This section applies where the PRA is the appropriate regulator in relation to an application for permission under section 55A.

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- (2) The PRA may with the consent of the FCA give permission for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the permission.
- (3) If it gives permission, the PRA must specify the permitted regulated activity or activities, described in such manner as the PRA considers appropriate.
- (4) The PRA may—
  - (a) incorporate in the description of a regulated activity such limitations (for example as to circumstances in which the activity may, or may not, be carried on) as it considers appropriate;
  - (b) specify a narrower or wider description of regulated activity than that to which the application relates;
  - (c) give permission for the carrying on of a regulated activity which is not included among those to which the application relates.
- (5) Consent given by the FCA for the purposes of this section may be conditional on the manner in which the PRA exercises its powers under subsections (3) and (4).
- (6) Subsections (3) and (4)(b) and (c) do not enable the PRA to give permission that relates only to activities that are not PRA-regulated activities, except where the applicant is a PRA-authorized person otherwise than by virtue of a Part 4A permission.

### **55G Giving permission: special cases**

- (1) “The applicant” means an applicant for permission under section 55A.
- (2) If the applicant—
  - (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 39(1) or an order made under section 38(1), but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating to all the regulated activities which, if permission is given, the applicant will carry on.
- (3) If the applicant—
  - (a) in relation to a particular regulated activity, is exempt from the general prohibition as a result of section 285(2) or (3), but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.
- (4) If the applicant—
  - (a) is a person to whom, in relation to a particular regulated activity, the general prohibition does not apply as a result of Part 19, but
  - (b) has applied for permission in relation to another regulated activity, the application is to be treated as relating only to that other regulated activity.
- (5) Subsection (6) applies where either regulator (“the responsible regulator”) receives an application for permission under section 55A which is in the

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regulator's opinion similar to an application which was previously made to the other regulator and was either—

- (a) treated by the other regulator as not being a valid application to that regulator because of the regulated activities to which it related, or
  - (b) refused by the other regulator after being considered.
- (6) The responsible regulator must have regard to the desirability of minimising—
- (a) the additional work for the applicant in dealing with the new application, and
  - (b) the time taken to deal with the new application.

#### *Variation and cancellation of Part 4A permission*

#### **55H Variation by FCA at request of authorised person**

- (1) This section applies in relation to an authorised person who has a Part 4A permission but is not a PRA-authorised person.
- (2) The FCA may, on the application of the authorised person, vary the permission by—
  - (a) adding a regulated activity, other than a PRA-regulated activity, to those to which the permission relates;
  - (b) removing a regulated activity from those to which the permission relates;
  - (c) varying the description of a regulated activity to which the permission relates.
- (3) The FCA may, on the application of the authorised person, cancel the permission.
- (4) The FCA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its operational objectives.
- (5) If the applicant is a member of a group which includes a PRA-authorised person, the FCA must consult the PRA before determining the application.
- (6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorised person concerned has permission, the FCA must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.
- (7) The FCA's power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section 55A.

#### **55I Variation by PRA at request of authorised person**

- (1) On the application of a PRA-authorised person with a Part 4A permission, the PRA may with the consent of the FCA vary the permission by—
  - (a) adding a regulated activity to those to which the permission relates;
  - (b) removing a regulated activity from those to which the permission relates;

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- (c) varying the description of a regulated activity to which the permission relates.
- (2) On the application of a PRA-authorized person with a Part 4A permission, the PRA may, after consulting the FCA, cancel the permission.
- (3) On the application of an authorized person other than a PRA-authorized person, the PRA may with the consent of the FCA vary the permission by adding to the regulated activities to which the permission relates one or more regulated activities which include a PRA-regulated activity.
- (4) The PRA may refuse an application under this section if it appears to it that it is desirable to do so in order to advance any of its objectives.
- (5) The FCA may withhold its consent to a proposed variation under this section if it appears to it that it is desirable to do so in order to advance one or more of its operational objectives.
- (6) If as a result of a variation of a Part 4A permission under this section there are no longer any regulated activities for which the authorized person concerned has permission, the PRA must, once it is satisfied after consulting the FCA that it is no longer necessary to keep the permission in force, cancel it.
- (7) The PRA's power to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given by it in response to an application under section 55A.
- (8) Consent given by the FCA for the purposes of subsection (1) may be conditional on the manner in which the PRA exercises its powers under section 55F(3) and (4) (as a result of subsection (7)).

### **55J Variation or cancellation on initiative of regulator**

- (1) Either regulator may exercise its power under this section in relation to an authorized person with a Part 4A permission (“A”) if it appears to the regulator that—
  - (a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the regulator is responsible,
  - (b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  - (c) it is desirable to exercise the power in order to advance—
    - (i) in the case of the FCA, one or more of its operational objectives,
    - (ii) in the case of the PRA, any of its objectives.
- (2) The FCA's power under this section is the power—
  - (a) to vary the Part 4A permission by—
    - (i) adding a regulated activity other than a PRA-regulated activity to those to which the permission relates,
    - (ii) removing a regulated activity from those to which the permission relates, or
    - (iii) varying the description of a regulated activity to which the permission relates in a way which, if it is a PRA-regulated

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- activity, does not, in the opinion of the FCA, widen the description, or
- (b) to cancel the Part 4A permission.
- (3) The PRA's power under this section is the power—
- (a) in the case of a PRA-authorized person, to vary the Part 4A permission in any of the ways mentioned in section 55I(1) or to cancel it;
- (b) in the case of an authorised person who is not a PRA-authorized person, to vary the Part 4A permission by adding a PRA-regulated activity to those to which the permission relates and, if the PRA does so, to vary the Part 4A permission in any of the other ways mentioned in section 55I(1).
- (4) The FCA—
- (a) must consult the PRA before exercising its power under this section in relation to—
- (i) a PRA-authorized person, or
- (ii) a member of a group which includes a PRA-authorized person, and
- (b) in the case of a PRA-authorized person, may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the PRA.
- (5) The PRA—
- (a) must consult the FCA before exercising its power under this section, and
- (b) may exercise the power so as to add a new activity to those to which the permission relates or to widen the description of a regulated activity to which the permission relates, only with the consent of the FCA.
- (6) Without prejudice to the generality of subsections (1) to (3), a regulator may, in relation to an authorised person who is an investment firm, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the conditions in section 55K is met.
- (7) Without prejudice to the generality of subsections (1) and (2), the FCA may, in relation to an authorised person who has permission to carry on the regulated activity specified in article 24A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (which relates to bids in emission allowance auctions), exercise its power under this section to vary the Part 4A permission of the person concerned by removing that activity from those to which the permission relates if it appears to the FCA that the person has seriously and systematically infringed the provisions of paragraph 2 or 3 of Article 59 of the emission allowance auctioning regulation.
- (8) If, as a result of a variation of a Part 4A permission under this section, there are no longer any regulated activities for which the authorised person concerned has permission, the regulator responsible for the variation must, once it is satisfied that it is no longer necessary to keep the permission in force, cancel it.

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- (9) Before cancelling under subsection (8) a Part 4A permission which relates to a person who (before the variation) was a PRA-authorized person, the regulator must consult the other regulator.
- (10) The power of either regulator to vary a Part 4A permission under this section extends to including in the permission as varied any provision that could be included if a fresh permission were being given in response to an application to that regulator under section 55A.
- (11) Consent given by one regulator for the purpose of subsection (4)(b) or (5) (b) may be conditional on the manner in which the other regulator exercises its powers under section 55E(4) and (5) or 55F(3) and (4) (as a result of subsection (10)).
- (12) The power of the FCA or the PRA under this section is referred to in this Part as its own-initiative variation power.

#### **55K Investment firms: particular conditions that enable cancellation**

- (1) The conditions referred to in section 55J(6) are as follows—
  - (a) that the firm has failed, during a period of at least 6 months, to carry on a regulated activity which is an investment service or activity for which it has a Part 4A permission;
  - (b) that the firm obtained the Part 4A permission by making a false statement or by other irregular means;
  - (c) that the firm no longer satisfies the requirements for authorisation pursuant to Chapter I of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission;
  - (d) that the firm has seriously and systematically infringed the operating conditions pursuant to Chapter II of Title II of the markets in financial instruments directive, or pursuant to or contained in any EU legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part 4A permission.
- (2) For the purposes of this section a regulated activity is an investment service or activity if it falls within the definition of “investment services and activities” in section 417(1).

#### *Imposition and variation of requirements*

#### **55L Imposition of requirements by FCA**

- (1) Where a person has applied (whether to the FCA or the PRA) for a Part 4A permission or the variation of a Part 4A permission, the FCA may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the FCA considers appropriate.



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- (2) The FCA may exercise its power under subsection (3) in relation to an authorised person with a Part 4A permission (whether given by it or by the PRA) (“A”) if it appears to the FCA that—
  - (a) A is failing, or is likely to fail, to satisfy the threshold conditions for which the FCA is responsible,
  - (b) A has failed, during a period of at least 12 months, to carry on a regulated activity to which the Part 4A permission relates, or
  - (c) it is desirable to exercise the power in order to advance one or more of the FCA's operational objectives.
- (3) The FCA's power under this subsection is a power—
  - (a) to impose a new requirement,
  - (b) to vary a requirement imposed by the FCA under this section, or
  - (c) to cancel such a requirement.
- (4) The FCA's power under subsection (3) is referred to in this Part as its own-initiative requirement power.
- (5) The FCA may, on the application of an authorised person with a Part 4A permission—
  - (a) impose a new requirement,
  - (b) vary a requirement imposed by the FCA under this section, or
  - (c) cancel such a requirement.
- (6) The FCA may refuse an application under subsection (5) if it appears to it that it is desirable to do so in order to advance any of its operational objectives.
- (7) The FCA must consult the PRA before imposing or varying a requirement which relates to—
  - (a) a person who is, or will on the granting of an application for Part 4A permission be, a PRA-authorised person, or
  - (b) a person who is a member of a group which includes a PRA-authorised person.

### **55M Imposition of requirements by PRA**

- (1) Where—
  - (a) a person has applied for a Part 4A permission in relation to activities which consist of or include a PRA-regulated activity,
  - (b) a PRA-authorised person has applied for a Part 4A permission or the variation of a Part 4A permission, or
  - (c) an authorised person other than a PRA-authorised person has applied for a Part 4A permission to be varied by adding to the regulated activities to which it relates one or more regulated activities which include a PRA-regulated activity,the PRA may impose on that person such requirements, taking effect on or after the giving or variation of the permission, as the PRA considers appropriate.

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- (2) The PRA may exercise its power under subsection (3) in relation to a PRA-  
authorised person with a Part 4A permission (“P”) if it appears to the PRA  
that—
  - (a) P is failing, or is likely to fail, to satisfy the threshold conditions for  
which the PRA is responsible,
  - (b) P has failed, during a period of at least 12 months, to carry on a  
regulated activity to which the Part 4A permission relates, or
  - (c) it is desirable to exercise the power in order to advance any of the  
PRA's objectives.
- (3) The PRA's power under this subsection is a power—
  - (a) to impose a new requirement,
  - (b) to vary a requirement imposed by the PRA under this section, or
  - (c) to cancel such a requirement.
- (4) The PRA's power under subsection (3) is referred to in this Part as its own-  
initiative requirement power.
- (5) The PRA may, on the application of a PRA-  
authorised person with a Part 4A  
permission—
  - (a) impose a new requirement,
  - (b) vary a requirement imposed by the PRA under this section, or
  - (c) cancel such a requirement.
- (6) The PRA may refuse an application under subsection (5) if it appears to it that  
it is desirable to do so in order to advance any of its objectives.
- (7) The PRA must consult the FCA before imposing or varying a requirement.

#### **55N Requirements under section 55L or 55M: further provisions**

- (1) A requirement may, in particular, be imposed—
  - (a) so as to require the person concerned to take specified action, or
  - (b) so as to require the person concerned to refrain from taking specified  
action.
- (2) A requirement may extend to activities which are not regulated activities.
- (3) A requirement may be imposed by reference to the person's relationship  
with—
  - (a) the person's group, or
  - (b) other members of the person's group.
- (4) A requirement may be expressed to expire at the end of such period as the  
regulator imposing it may specify, but the imposition of a requirement that  
expires at the end of a specified period does not affect the regulator's power  
to impose a new requirement.
- (5) A requirement may refer to the past conduct of the person concerned (for  
example, by requiring the person concerned to review or take remedial action  
in respect of past conduct).

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- (6) In this section “requirement” means a requirement imposed under section 55L or 55M.

### **55O Imposition of requirements on acquisition of control**

- (1) This section applies if it appears to the appropriate regulator that—
- (a) a person has acquired control over a UK authorised person who has a Part 4A permission, but
  - (b) there are no grounds for exercising its own-initiative requirement power.
- (2) If it appears to the appropriate regulator that the likely effect of the acquisition of control on the UK authorised person, or on any of its activities, is uncertain, the appropriate regulator may—
- (a) impose on the UK authorised person a requirement that could be imposed by that regulator under section 55L or 55M (as the case may be) on the giving of permission, or
  - (b) vary a requirement imposed by that regulator under that section on the UK authorised person.
- (3) “The appropriate regulator” means—
- (a) in a case where the UK authorised person is a PRA-authorised person, the FCA or the PRA;
  - (b) in any other case, the FCA.
- (4) This section does not affect any duty of the appropriate regulator to consult or obtain the consent of the other regulator in connection with the imposition of the requirement.
- (5) Any reference to a person having acquired control is to be read in accordance with Part 12.

### **55P Prohibitions and restrictions**

- (1) This section applies if—
- (a) on a person being given a Part 4A permission, either regulator imposes an assets requirement on that person,
  - (b) an assets requirement is imposed on an authorised person, or
  - (c) an assets requirement previously imposed on such a person is varied.
- (2) A person on whom an assets requirement is imposed is referred to in this section as “A”.
- (3) The “appropriate regulator” is the regulator which imposed the requirement.
- (4) “Assets requirement” means a requirement under section 55L or 55M—
- (a) prohibiting the disposal of, or other dealing with, any of A's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings, or
  - (b) that all or any of A's assets, or all or any assets belonging to consumers but held by A or to A's order, must be transferred to and held by a trustee approved by the appropriate regulator.

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- (5) If the appropriate regulator—
- (a) imposes a requirement of the kind mentioned in subsection (4)(a), and
  - (b) gives notice of the requirement to any institution with whom A keeps an account,
- the notice has the effects mentioned in subsection (6).
- (6) Those effects are that—
- (a) the institution does not act in breach of any contract with A if, having been instructed by A (or on A's behalf) to transfer any sum or otherwise make any payment out of A's account, it refuses to do so in the reasonably held belief that complying with the instruction would be incompatible with the requirement, and
  - (b) if the institution complies with such an instruction, it is liable to pay to the appropriate regulator an amount equal to the amount transferred from, or otherwise paid out of, A's account in contravention of the requirement.
- (7) If the appropriate regulator imposes a requirement of the kind mentioned in subsection (4)(b), no assets held by a person as trustee in accordance with the requirement may, while the requirement is in force, be released or dealt with except with the consent of the appropriate regulator.
- (8) If, while a requirement of the kind mentioned in subsection (4)(b) is in force, A creates a charge over any assets of A held in accordance with the requirement, the charge is (to the extent that it confers security over the assets) void against the liquidator and any of A's creditors.
- (9) Assets held by a person as trustee (“T”) are to be taken to be held by T in accordance with any requirement mentioned in subsection (4)(b) only if—
- (a) A has given T written notice that those assets are to be held by T in accordance with the requirement, or
  - (b) they are assets into which assets to which paragraph (a) applies have been transposed by T on the instructions of A.
- (10) A person who contravenes subsection (7) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (11) “Charge” includes a mortgage (or in Scotland a security over property).
- (12) Subsections (7) and (9) do not affect any equitable interest or remedy in favour of a person who is a beneficiary of a trust as a result of a requirement of the kind mentioned in subsection (4)(b).

*Exercise of power in support of overseas regulator*

**55Q Exercise of power in support of overseas regulator**

- (1) Either UK regulator's own-initiative powers may be exercised in respect of an authorised person at the request of, or for the purpose of assisting, an overseas regulator of a prescribed kind.

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- (2) Subsection (1) applies whether or not the UK regulator has powers which are exercisable in relation to the authorised person by virtue of any provision of Part 13.
- (3) Subsection (1) does not affect any duty of one UK regulator to consult or obtain the consent of the other UK regulator in relation to the exercise of its own-initiative powers.
- (4) If a request to a UK regulator for the exercise of its own-initiative powers has been made by an overseas regulator who is—
  - (a) of a prescribed kind, and
  - (b) acting in pursuance of provisions of a prescribed kind,the UK regulator must, in deciding whether or not to exercise those powers in response to the request, consider whether it is necessary to do so in order to comply with an EU obligation.
- (5) In deciding whether or not to do so, in any case in which the UK regulator does not consider that the exercise of its own-initiative powers is necessary in order to comply with an EU obligation, it may take into account in particular—
  - (a) whether in the country or territory of the overseas regulator concerned, corresponding assistance would be given to a United Kingdom regulatory authority;
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
  - (c) the seriousness of the case and its importance to persons in the United Kingdom;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (6) The UK regulator may decide not to exercise its own-initiative powers, in response to a request, unless the overseas regulator concerned undertakes to make such contribution towards the cost of their exercise as the UK regulator considers appropriate.
- (7) Subsection (6) does not apply if the UK regulator decides that it is necessary for it to exercise its own-initiative powers in order to comply with an EU obligation.
- (8) In subsection (6) “request” means a request of a kind mentioned in subsection (1).
- (9) In this section—
  - (a) “UK regulator” means the FCA or the PRA;
  - (b) “overseas regulator” means a regulator outside the United Kingdom;
  - (c) “own-initiative powers”, in relation to the FCA or the PRA, means its own-initiative variation power and its own-initiative requirement power.

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### *Connected persons*

#### **55R Persons connected with an applicant**

- (1) In considering—
  - (a) an application for a Part 4A permission,
  - (b) whether to vary or cancel a Part 4A permission,
  - (c) whether to impose or vary a requirement under this Part, or
  - (d) whether to give any consent required by any provision of this Part,
 the regulator concerned may have regard to any person appearing to it to be, or likely to be, in a relationship with the applicant or a person given permission which is relevant.
- (2) Before—
  - (a) giving permission in response to an application under section 55A made by a person who is connected with an EEA firm (other than an EEA firm falling within paragraph 5(e) of Schedule 3 (insurance and reinsurance intermediaries)), or
  - (b) cancelling or varying a Part 4A permission given to such a person,
 the regulator concerned must in prescribed circumstances consult the firm's home state regulator.
- (3) A person (“A”) is connected with an EEA firm if—
  - (a) A is a subsidiary undertaking of the firm, or
  - (b) A is a subsidiary undertaking of a parent undertaking of the firm.

### *Additional permissions*

#### **55S Duty of FCA or PRA to consider other permissions**

- (1) “Additional Part 4A permission” —
  - (a) in relation to either regulator, means a Part 4A permission which is in force in relation to an EEA firm or a Treaty firm, and
  - (b) in relation to the FCA, also includes a Part 4A permission which is in force in relation to a person authorised as a result of paragraph 1(1) of Schedule 5.
- (2) If either regulator is considering whether, and if so how, to exercise its own-initiative variation power or its own-initiative requirement power in relation to an additional Part 4A permission, it must take into account—
  - (a) the home state authorisation of the authorised person concerned,
  - (b) any relevant directive, and
  - (c) relevant provisions of the Treaty.

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### *Persons whose interests are protected*

#### **55T Persons whose interests are protected**

For the purpose of any provision of this Part which refers to the FCA's operational objectives, or the PRA's objectives in relation to the exercise of a power in relation to a particular person, it does not matter whether there is a relationship between that person and the persons whose interests will be protected by the exercise of the power.

#### *Procedure*

#### **55U Applications under this Part**

- (1) An application for a Part 4A permission must—
  - (a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which the applicant wishes to have permission, and
  - (b) give the address of a place in the United Kingdom for service on the applicant of any notice or other document which is required or authorised to be served on the applicant under this Act.
- (2) An application for the variation of a Part 4A permission must contain a statement—
  - (a) of the desired variation, and
  - (b) of the regulated activity or regulated activities which the applicant proposes to carry on if the permission is varied.
- (3) An application for the variation of a requirement imposed under section 55L or 55M or for the imposition of a new requirement must contain a statement of the desired variation or requirement.
- (4) An application under this Part must—
  - (a) be made in such manner as the regulator to which it is to be made may direct, and
  - (b) contain, or be accompanied by, such other information as that regulator may reasonably require.
- (5) At any time after the application is received and before it is determined, the appropriate regulator may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application or, as the case requires, to decide whether to give consent.
- (6) In subsection (5), the “appropriate regulator” means—
  - (a) in a case where the application is made to the FCA, the FCA;
  - (b) in a case where the application is made to the PRA, the FCA or the PRA.
- (7) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

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- (8) Each regulator may require an applicant to provide information which the applicant is required to provide to it under this section in such form, or to verify it in such a way, as the regulator may direct.
- (9) The PRA must consult the FCA before—
  - (a) giving a direction under this section in relation to a class of applications, or
  - (b) imposing a requirement under this section in relation to a class of applications.

### **55V Determination of applications**

- (1) An application under this Part must be determined by the regulator to which it is required to be made (“the appropriate regulator”) before the end of the period of 6 months beginning with the date on which it received the completed application.
- (2) The appropriate regulator may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within 12 months beginning with the date on which it received the application.
- (3) Where the application cannot be determined by the appropriate regulator without the consent of the other regulator, the other regulator's decision must also be made within the period required by subsection (1) or (2).
- (4) The applicant may withdraw the application, by giving the appropriate regulator written notice, at any time before the appropriate regulator determines it.
- (5) If the appropriate regulator grants an application—
  - (a) for Part 4A permission,
  - (b) for the variation or cancellation of a Part 4A permission,
  - (c) for the variation or cancellation of a requirement imposed under section 55L or 55M, or
  - (d) for the imposition of a new requirement under either of those sections, it must give the applicant written notice.
- (6) The notice must state the date from which the permission, variation, cancellation or requirement has effect.
- (7) A notice under this section which is given by the PRA and relates to the grant of an application for Part 4A permission or for the variation of a Part 4A permission must state that the FCA has given its consent to the grant of the application.

### **55W Applications under this Part: communications between regulators**

The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of—

- (a) an application for permission under section 55A,
- (b) an application under section 55I, or



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- (c) an application under section 55M(5).

### **55X Determination of applications: warning notices and decision notices**

- (1) If a regulator proposes—
- (a) to give a Part 4A permission but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
  - (b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for permission,
  - (c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
  - (d) to vary a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the application for variation, or
  - (e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission,
- it must give the applicant a warning notice.
- (2) If a regulator proposes to refuse an application made under this Part, it must (unless subsection (3) applies) give the applicant a warning notice.
- (3) This subsection applies if it appears to the regulator that—
- (a) the applicant is an EEA firm, and
  - (b) the application is made with a view to carrying on a regulated activity in a manner in which the applicant is, or would be, entitled to carry on that activity in the exercise of an EEA right whether through a United Kingdom branch or by providing services in the United Kingdom.
- (4) If a regulator decides—
- (a) to give a Part 4A permission but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
  - (b) to give a Part 4A permission but to exercise its power under section 55L(1) or 55M(1) in connection with the giving of the permission,
  - (c) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55E(5)(a) or (b) or 55F(4)(a) or (b),
  - (d) to vary a Part 4A permission on the application of an authorised person but to exercise its power under section 55L(1) or 55M(1) in connection with the variation,
  - (e) in the case of the FCA, to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission, or
  - (f) to refuse an application under this Part,
- it must give the applicant a decision notice.

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### **55Y Exercise of own-initiative power: procedure**

- (1) This section applies to an exercise of either regulator's own-initiative variation power or own-initiative requirement power in relation to an authorised person ("A").
- (2) A variation of a permission or the imposition or variation of a requirement takes effect—
  - (a) immediately, if the notice given under subsection (4) states that that is the case,
  - (b) on such date as may be specified in the notice, or
  - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (3) A variation of a permission, or the imposition or variation of a requirement, may be expressed to take effect immediately (or on a specified date) only if the regulator concerned, having regard to the ground on which it is exercising its own-initiative variation power or own-initiative requirement power, reasonably considers that it is necessary for the variation, or the imposition or variation of the requirement, to take effect immediately (or on that date).
- (4) If either regulator proposes to vary a Part 4A permission or to impose or vary a requirement, or varies a Part 4A permission or imposes or varies a requirement, with immediate effect, it must give A written notice.
- (5) The notice must—
  - (a) give details of the variation of the permission or the requirement or its variation,
  - (b) state the regulator's reasons for the variation of the permission or the imposition or variation of the requirement,
  - (c) inform A that A may make representations to the regulator within such period as may be specified in the notice (whether or not A has referred the matter to the Tribunal),
  - (d) inform A of when the variation of the permission or the imposition or variation of the requirement takes effect, and
  - (e) inform A of A's right to refer the matter to the Tribunal.
- (6) The regulator may extend the period allowed under the notice for making representations.
- (7) If, having considered any representations made by A, the regulator decides—
  - (a) to vary the permission, or impose or vary the requirement, in the way proposed, or
  - (b) if the permission has been varied or the requirement imposed or varied, not to rescind the variation of the permission or the imposition or variation of the requirement,it must give A written notice.
- (8) If, having considered any representations made by A, the regulator decides—
  - (a) not to vary the permission, or impose or vary the requirement, in the way proposed,

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- (b) to vary the permission or requirement in a different way, or impose a different requirement, or
  - (c) to rescind a variation or requirement which has effect,
- it must give A written notice.
- (9) A notice under subsection (7) must inform A of A's right to refer the matter to the Tribunal.
  - (10) A notice under subsection (8)(b) must comply with subsection (5).
  - (11) If a notice informs A of A's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
  - (12) For the purposes of subsection (2)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

#### **55Z Cancellation of Part 4A permission: procedure**

- (1) If a regulator proposes to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a warning notice.
- (2) If a regulator decides to cancel an authorised person's Part 4A permission otherwise than at the person's request, it must give the person a decision notice.

#### *Notification*

#### **55Z1 Notification of ESMA**

A regulator must notify ESMA of—

- (a) the giving by it of a Part 4A permission to an investment firm, where the regulated activities to which the permission relates are investment services and activities,
- (b) the giving by it of a Part 4A permission to a management company (as defined in section 237(2)), where the regulated activities to which the permission relates fall within paragraph 8 of Schedule 2,
- (c) the cancellation by it of a Part 4A permission of a description falling within paragraph (b), or
- (d) the cancellation by it of a Part 4A permission under section 55J(6), in reliance on any one or more of the conditions in section 55K(1) (b) to (d).

#### **55Z2 Notification of EBA**

(1) A regulator must notify EBA of—

- (a) the giving by it of a Part 4A permission to a credit institution, where the regulated activity to which the permission relates falls within paragraph 4 of Schedule 2, or
- (b) the cancellation by it of a Part 4A permission of a description falling within paragraph (a).

(2) “Credit institution” has the meaning given in section 1H(8).

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### *References to the Tribunal*

#### **55Z3 Right to refer matters to the Tribunal**

- (1) An applicant who is aggrieved by the determination of an application made under this Part may refer the matter to the Tribunal.
- (2) An authorised person who is aggrieved by the exercise by either regulator of its own-initiative variation power or its own-initiative requirement power may refer the matter to the Tribunal.

### *Interpretation*

#### **55Z4 Interpretation of Part 4A**

In this Part—

“own-initiative requirement power”, in relation to the FCA or the PRA, is to be read in accordance with section 55L(4) or 55M(4);

“own-initiative variation power”, in relation to the FCA or the PRA, is to be read in accordance with section 55J(12).”

- (3) In Schedule 6 to FSMA 2000 (the threshold conditions), omit paragraph 9.

#### **Commencement Information**

- |           |   |
|-----------|---|
| <b>I1</b> | S. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(c), <b>Sch. Pt. 3</b>  |
| <b>I2</b> | S. 11 in force at 24.1.2013 for specified purposes by S.I. 2013/113, art. 2(1)(b), <b>Sch. Pt. 2</b>  |
| <b>I3</b> | S. 11(1)(3) in force at 1.4.2013 by S.I. 2013/423, art. 3, <b>Sch.</b>                                |
| <b>I4</b> | S. 11(2) in force at 1.4.2013 in so far as not already in force by S.I. 2013/423, art. 3, <b>Sch.</b> |

**Status:**

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