



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### [<sup>F1</sup>PART 4A

#### PERMISSION TO CARRY ON REGULATED ACTIVITIES

#### *[<sup>F1</sup>Variation and cancellation of Part 4A permission*

##### Textual Amendments

- F1** Pt. 4A substituted for ss. 40-55 (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 11(2)**, 122(3) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

#### **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.

[ The FCA may also refuse an application under this section if it appears to the FCA that <sup>F2</sup>(4A) the authorised person would not comply with requirements in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers) that would apply to the authorised person.]

*Status: Point in time view as at 22/07/2013.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Variation and cancellation of Part 4A permission is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) 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.
- (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.

#### **Textual Amendments**

**F2** S. 55H(4A) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, [Sch. 1 para. 4](#)

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

- (1) On the application of a PRA-authorized 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;
  - (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 authorised 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 authorised 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)).

*Status: Point in time view as at 22/07/2013.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Variation and cancellation of Part 4A permission is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

- (1) Either regulator may exercise its power under this section in relation to an authorised 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,<sup>F3</sup>...
  - (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 [<sup>F4</sup>, or
  - (d) in the case of the FCA, A has failed to comply with a requirement in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement].
- (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 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-authorised 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-authorised 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-authorised person, or
    - (ii) a member of a group which includes a PRA-authorised person, and
  - (b) in the case of a PRA-authorised 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.

*Status: Point in time view as at 22/07/2013.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Variation and cancellation of Part 4A permission is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.
- [ Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation
- <sup>F5</sup>(6A) to an authorised person who is a full-scope UKAIFM, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the following conditions is met—
- (a) the person has failed, during a period of at least six months, to carry on the regulated activity of managing an AIF;
  - (b) the person obtained the Part 4A permission to carry on the regulated activity of managing an AIF by making a false statement or by any other irregular means;
  - (c) in a case where the Part 4A permission includes permission to provide the discretionary portfolio management service referred to in Article 6.4(a) of the alternative investment fund managers directive, the person no longer complies with [Directive 2006/49/EC](#) of the European Parliament and of the Council on the capital adequacy of investment firms and credit institutions;
  - (d) the person no longer meets the conditions that a person must meet in order to obtain a Part 4A permission to carry on the regulated activity of managing an AIF;
  - (e) the person has seriously or systematically infringed—
    - (i) any provision of the Alternative Investment Fund Managers Regulations 2013;
    - (ii) a provision of any directly applicable EU regulation made under the alternative investment fund managers directive; or
    - (iii) any provision made by or under this Act which implements that directive.]
- (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.
- (9) Before cancelling under subsection (8) a Part 4A permission which relates to a person who (before the variation) was a PRA-authorised 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.

*Status: Point in time view as at 22/07/2013.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Variation and cancellation of Part 4A permission is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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.

#### Textual Amendments

- F3** Word in s. 55J(1) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 5(a)(i)**
- F4** S. 55J(1)(d) and word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 5(a)(ii)**
- F5** S. 55J(6A) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 1 para. 5(b)**

#### Modifications etc. (not altering text)

- C1** S. 55J(1) modified by S.I. 1995/1442, reg. 49(2) (as substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#)), **Sch. 2 para. 12(c)(i)**
- C2** S. 55J(1)(b) modified (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Permission and Approval\) Order 2013 \(S.I. 2013/440\)](#), arts. 1(1), **8(1)**

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

- (1) The conditions referred to in section 55J(6) are as follows—
- 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;
  - that the firm obtained the Part 4A permission by making a false statement or by other irregular means;
  - 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;
  - 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).]

#### Modifications etc. (not altering text)

- C3** S. 55K(1)(a) modified (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Permission and Approval\) Order 2013 \(S.I. 2013/440\)](#), arts. 1(1), **8(2)**

**Status:**

Point in time view as at 22/07/2013.

**Changes to legislation:**

Financial Services and Markets Act 2000, Cross Heading: Variation and cancellation of Part 4A permission is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.