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## STATUTORY INSTRUMENTS

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### 2013 No. 440

## The Financial Services Act 2012 (Transitional Provisions) (Permission and Approval) Order 2013

### PART 2

#### Permission to carry on regulated activities

##### Permission

**2.—**(1) Where, immediately before the commencement date, a person had a Part 4 permission to carry on a specified regulated activity or specified regulated activities, the person is to be treated as having permission to carry on that regulated activity or those regulated activities given by—

- (a) the PRA**(1)** under section 55F**(2)** (giving permission: the PRA) if—
  - (i) the permitted regulated activity or regulated activities consist of or include an activity which is, on the commencement date, a PRA-regulated activity, or
  - (ii) the person is, on the commencement date, a PRA-authorised person by virtue of section 2B(5)(b)**(3)** (the PRA’s general objective); and
- (b) the FCA**(4)** under section 55E (giving permission: the FCA) in any other case.

(2) Where, immediately before the commencement date, the description of a permitted regulated activity incorporated a limitation, the limitation is to be treated as if incorporated by—

- (a) the PRA under section 55F(4) if paragraph (1)(a) applies; or
- (b) the FCA under section 55E(5) in any other case.

##### Requirements

**3.—**(1) Paragraph (2) applies if, immediately before the commencement date, a person was subject to a requirement imposed or varied under any of the following provisions—

- (a) section 43 (imposition of requirements);
  - (b) section 44**(5)** (variation etc. at request of authorised person);
  - (c) section 45**(6)** (variation etc. on the Authority’s own initiative), including the exercise of powers under section 45 by virtue of section 47 (exercise of power in support of overseas regulator).
- (2) The requirement is to be treated as if it had been imposed—

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(1) Section 2A(2) of FSMA 2000 defines “the PRA” as meaning the Prudential Regulation Authority.  
(2) Sections 55A to 55Z4 are substituted for sections 40 to 55 by the 2012 Act, section 11.  
(3) Section 2B is inserted by the 2012 Act, section 6.  
(4) Section 1A(2) of FSMA 2000 defines “the FCA” as meaning the Financial Conduct Authority.  
(5) Section 44 was amended by the Financial Services Act 2010 ([c.28](#)), section 3.  
(6) Section 45 was amended by the Financial Services Act 2010, section 3 and [S.I. 2007/126](#).

- (a) by the PRA under section 55M (imposition of requirements by PRA) if the person subject to the requirement is, on the commencement date, a PRA-authorised person; or
- (b) by the FCA under section 55L (imposition of requirements by FCA) in any other case.
- (3) Paragraph (4) applies if, immediately before the commencement date, a person was subject to a requirement imposed under section 46 (variation of permission on acquisition of control).
- (4) The requirement is to be treated as if it had been imposed under section 55O (imposition of requirements on acquisition of control)—
  - (a) by the PRA if the person subject to the requirement is, on the commencement date, a PRA-authorised person; or
  - (b) by the FCA in any other case.
- (5) Paragraph (6) applies if, immediately before the commencement date—
  - (a) a person was subject to a requirement imposed under section 196 (the power of intervention); and
  - (b) the period for which the requirement was imposed (if any) has not expired.
- (6) The requirement is to be treated as if it had been imposed by the PRA if the person subject to the requirement is, on the commencement date, a PRA-authorised person.

#### **Prohibitions, restrictions and assets requirements**

- 4.—(1) Where a requirement which had effect immediately before the commencement date was an assets requirement within the meaning of section 48(3) (prohibitions and restrictions)—
- (a) the requirement is to be treated as an assets requirement within the meaning of section 55P(4) (prohibitions and restrictions), imposed by the relevant regulator;
  - (b) a trustee approved by the Authority before the commencement date for the purposes of section 48(3)(b) is to be treated as if the trustee had been approved by the relevant regulator for the purposes of section 55P(4)(b);
  - (c) a notice given by the Authority to an institution before the commencement date for the purposes of section 48(4)(b) is to be treated as if it had been given by the relevant regulator for the purposes of section 55P(5)(b); and
  - (d) a liability to pay an amount to the Authority that arose before the commencement date under section 48(5)(b) is to be treated as a liability to pay that amount to the relevant regulator under section 55P(6)(b).
- (2) Paragraph (3) applies if, before the commencement date, the Authority—
- (a) received a request to give consent for the purposes of section 48(6); and
  - (b) had not consented or refused consent.
- (3) The request is to be treated as if it had been made to the relevant regulator to give consent for the purposes section 55P(7).
- (4) In this article, the “relevant regulator” means—
- (a) if the person on whom the requirement was imposed is, on the commencement date, a PRA-authorised person, the PRA; and
  - (b) in any other case, the FCA.

#### **Applications made before the commencement date to vary or cancel a requirement**

- 5.—(1) Paragraph (2) applies if before the commencement date—
- (a) an application was made to the Authority under section 44 to vary a permission by—

- (i) cancelling a requirement imposed under section 43, or
  - (ii) varying such a requirement; and
- (b) the Authority had not issued a written notice or a warning notice in respect of the application.
- (2) The application is to be treated as having been made—
  - (a) to the PRA under section 55M(5) if the person is, on the commencement date, a PRA-authorised person, and
  - (b) to the FCA under section 55L(5) in any other case.

#### **Variation of permission at request of authorised person**

- 6.—(1) Paragraph (2) applies if before the commencement date—
- (a) an application was made to the Authority under section 44 to cancel a permission or to vary a permission by—
    - (i) adding a regulated activity to those for which it had given permission;
    - (ii) removing a regulated activity from those for which it had given permission; or
    - (iii) varying the description of a regulated activity for which it had given permission;
  - (b) the applicant had not withdrawn the application; and
  - (c) the Authority had not issued a written notice or a warning notice in respect of the application.
- (2) The application is to be treated as having been made—
- (a) to the PRA under section 55I (variation by PRA at request of authorised person) if, on the commencement date, the person is a PRA-authorised person; and
  - (b) to the FCA under section 55H (variation by FCA at request of authorised person) in any other case.
- (3) For the purposes of paragraph (1)(a), an application to vary or remove a limitation is to be treated as an application to vary a permission by varying the description of a regulated activity.

#### **Variation or cancellation of requirement in force before the commencement date**

- 7.—(1) This article applies in respect of a requirement which is to be treated as if it had been imposed by the PRA by virtue of article 3 or 4.
- (2) Part 4A (permission to carry on regulated activities) applies with the following modifications—
- (a) the FCA may vary or cancel the requirement with the consent of the PRA; and
  - (b) the PRA may vary or cancel the requirement with the consent of the FCA.
- (3) But no consent is required for the purposes of paragraph (2) where—
- (a) a regulator<sup>(7)</sup> is exercising its own-initiative requirement power under section 55L or 55M; and
  - (b) the variation is expressed to take effect immediately.
- (4) The PRA may, with the consent of the FCA, make a transfer election (see paragraphs (5) and (6)) in relation to a requirement or part of a requirement.
- (5) If the PRA makes a transfer election in relation to a requirement or part of a requirement—

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(7) Section 3A(2) of FSMA 2000 defines the regulators as the FCA and the PRA.

- (a) the requirement or part is to be treated as if it had been imposed by the FCA under section 55L; and
- (b) paragraph (2) ceases to have effect in relation to the requirement or part.
- (6) A transfer election must—
  - (a) be in writing; and
  - (b) specify the requirement or the part of the requirement to which the transfer election relates.
- (7) The PRA must send the transfer election, or a copy of it, to—
  - (a) the person subject to the requirement; and
  - (b) the FCA.
- (8) Consent may be given for the purposes of this article in relation to a class or description of requirements.

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

**8.—**(1) For the purposes of section 55J(1)(b) (variation or cancellation on initiative of regulator), the period of 12 months may include any period prior to the commencement date which at that time would have been counted as part of the period referred to in section 45(1)(b).

(2) For the purposes of section 55K(1)(a) (investment firms: particular conditions that enable cancellation), the period of 6 months may include any period prior to the commencement date which at that time would have been counted as part of the period referred to in section 45(2A)(a).

#### **Exercise of power in support of overseas regulator**

- 9.—**(1) Paragraph (2) applies if, before the commencement date, the Authority—
- (a) received a request from an overseas regulator within the meaning of section 47; and
  - (b) had not exercised its own-initiative power further to that request.
- (2) For the purposes of section 55Q (exercise of power in support of overseas regulator), the request is to be treated as if it had been made to—
- (a) the PRA if the person in relation to whom the own-initiative powers would be exercised is, on the commencement date, a PRA-authorized person; and
  - (b) to the FCA in any other case.

#### **Determination of applications**

- 10.—**(1) Paragraph (2) to (4) apply if, before the commencement date—
- (a) the Authority received an application under section 40 (application for permission) for permission to carry on one or more regulated activities;
  - (b) the applicant had not withdrawn the application; and
  - (c) the Authority had not issued a written notice or a warning notice in respect of the application.
- (2) The application is to be treated as if it had been made under section 55A (application for permission) to the appropriate regulator within the meaning of that section.
- (3) For the purposes of section 55V(1) (determination of applications), if the Authority received a completed application before the commencement date, the appropriate regulator is to be treated as if it had received the completed application on the date on which the Authority received it.

(4) For the purposes of section 55V(2), if the Authority received an incomplete application before the commencement date, the appropriate regulator is to be treated as if it had received the incomplete application on the date on which the Authority received it.

(5) Paragraph (6) applies if—

- (a) before the commencement date the Authority gave a written notice under section 52(4) (notice granting an application for, or for variation of, a Part 4 permission); and
- (b) the date from which the permission, or the variation, has effect is, or is after, the commencement date.

(6) The notice is to be treated as if it had been given under section 55V(5) by—

- (a) the PRA if, on the date on which the permission or the variation has effect, the person to whom the notice was given is a PRA-authorised person; and
- (b) the FCA in any other case.

### Notification of ESMA

**11.**—(1) Paragraph (2) applies if, before the commencement date, the Authority—

- (a) was required under section 54A(8) (notification of ESMA) to notify the European Securities and Markets Authority that it had given or cancelled a permission; and
- (b) had not so notified the European Securities and Markets Authority.

(2) Section 55Z1(9) (notification of ESMA) applies as if it required the FCA to notify the European Securities and Markets Authority of the giving or cancellation of the permission (as the case may be).

### Notification of EBA

**12.**—(1) Paragraph (2) applies if, before the commencement date, the Authority—

- (a) was required under section 54B(10) (notification of EBA) to notify the European Banking Authority that it had given or cancelled a permission; and
- (b) had not so notified the European Banking Authority.

(2) Section 55Z2(11) (notification of EBA) applies as if it required the PRA to notify the European Banking Authority of the giving or cancellation of the permission (as the case may be).

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(8) Section 54A was inserted by [S.I. 2012/916](#) and is substituted by the 2012 Act, section 11.

(9) Section 55Z1 is substituted by section 11.

(10) Section 54B was inserted by [S.I. 2012/916](#) and is substituted by the 2012 Act, section 11.

(11) Section 55Z2 is substituted by section 11.