SCHEDULES

SCHEDULE 5

Section 15

PERFORMANCE OF REGULATED ACTIVITIES

1 Part 5 of FSMA 2000 is amended as follows.

2 (1) Section 58 (applications relating to prohibition orders: procedure and right to refer to Tribunal) is amended as follows.

(2) In subsections (2) to (5), for "Authority" substitute "appropriate regulator".

(3) After subsection (5) insert—

"(6) The appropriate regulator" means the regulator to which the application is made."

3 In section 59 (approval for particular arrangements), omit subsection (9).

4 (1) Section 60 (applications for approval), for "Authority" or "Authority's", in each place, substitute "appropriate regulator" or "appropriate regulator's".

(2) For subsection (3) substitute—

"(3) 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."

(3) In subsection (6), for "Part IV" substitute "Part 4A".

(4) After subsection (6) insert—

"(7) The PRA must consult the FCA before—

(a) giving a direction under subsection (2)(a) in relation to a class of applicants, or

(b) imposing a requirement under subsection (2)(b) on a class of applicants.

(8) The PRA must as soon as practicable notify the FCA of the receipt or withdrawal of an application to the PRA, unless the case is one in which by virtue of arrangements under section 59B the consent of the FCA is not required.

(9) "The appropriate regulator"—

(a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA;

(b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA, and for the purposes of

subsection (3) also includes the FCA in cases where the consent of the FCA is required."

5 (1) Section 61 (determination of applications) is amended as follows.

(2) In subsection (1), for "The Authority may grant an application made under section 60" substitute "The regulator to which an application is made under section 60 may grant the application".

(3) In subsection (2)—

(a) for "the Authority" substitute "the regulator", and

(b) after "general rules" insert "made by that regulator".

(4) After subsection (2) insert—

"(2A) Subsections (1) and (2) apply in relation to the giving by the FCA of any required consent as they apply in relation to the grant of the application."

(5) In subsection (3), for the words from the beginning to "determine" substitute "The regulator to which an application is made under section 60 must, before the end of the period for consideration, determine".

(6) After subsection (3) insert—

"(3A) The period for consideration"—

(a) in any case where the application under section 60 is made by a person applying for permission under Part 4A (see section 60(6)), means whichever ends last of—

(i) the period within which the application for that permission must be determined under section 55V(1) or (2), and

(ii) the period of 3 months beginning with the date on which the regulator receives the application under section 60, and

(b) in any other case, means the period of 3 months beginning with the date on which the regulator receives the application under section 60."

(7) In subsection (4), for "the Authority", in each place, substitute "a regulator".

(8) In subsection (5)—

(a) for "Authority", in the first place, substitute "regulator to which the application was made", and

(b) for "Authority", in the second place, substitute "regulator".

6 (1) Section 62 (applications for approval: procedure and right to refer to Tribunal) is amended as follows.

(2) In subsection (1), for the words from "If" to ", it" substitute "If the regulator to which an application is made under section 60 ("an application") decides to grant the application, it".

(3) In subsections (2) to (4)—

(a) for "the Authority" substitute "the regulator to which an application is made", and

(b) for "an application" substitute "the application".

7 (1) Section 63 (withdrawal of approval) is amended as follows.

(2) In subsection (2)—

(a) for "its approval, the Authority may take into account any matter which it could take into account if it were" substitute "an approval, the FCA or the PRA may take into account any matter which could be taken into account in", and

(b) at the end insert "(on the assumption, if it is not the case, that the application was one falling to be considered by it)".

(3) In subsections (3) to (5)—

(a) for "the Authority" substitute "a regulator", and

(b) for "its approval" substitute "an approval".

8 In section 63A (performance of controlled functions without approval: power to impose penalties)—

(a) for "Authority", in each place, substitute "appropriate regulator",

(b) after subsection (5) insert—

"(5A) The appropriate regulator"—

(a) in relation to a controlled function which is of a description specified in rules made by the FCA, means the FCA, and

(b) in relation to a controlled function which is of a description specified in rules made by the PRA, means the PRA.", and

(c) in subsection (6), after "Any" insert "other".

9 In section 63B (procedure and right to refer to Tribunal), for "the Authority", in each place, substitute "a regulator".

10 (1) Section 63C (statement of policy) is amended as follows.

(2) In subsection (1), for "The Authority" substitute "Each regulator".

(3) In subsections (2) and (3), for "The Authority's" substitute "Each regulator's".

(4) In subsection (4), for "the Authority" substitute "the regulator that has issued the statement".

(5) In subsection (5)—

(a) for "The Authority" substitute "A regulator", and

(b) after "issued" insert "by it".

(6) In subsection (6), for "replaced, the Authority" substitute "replaced by a regulator, the regulator".

(7) In subsection (7), for "The Authority" substitute "A regulator".

(8) In subsection (8)—

(a) after "section" insert "by a regulator", and

(b) for "Authority", in both places, substitute "regulator".

(9) In subsection (9), for "Authority" substitute "regulator".

(10) In subsection (10)—

(a) for "the Authority" substitute "a regulator", and

(b) after "published" insert "by it".

11 (1) Section 63D (statement of policy: procedure) is amended as follows.

(2) In subsection (1)—

(a) for "issuing" substitute "a regulator issues", and

(b) for "Authority", in both places, substitute "regulator".

(3) In subsections (2), (3), (4) and (5) (in both places), for "Authority" substitute "regulator".

(4) In subsection (6)—

(a) for "The Authority" substitute "A regulator", and

(b) after "published" insert "by it".

12 (1) Section 64 (conduct of approved persons: statement and codes) is amended as follows.

(2) In subsection (2)—

(a) for "the Authority" substitute "a regulator", and

(b) after "subsection (1)" insert "or (1A)".

(3) In subsection (3)(a) to (c), for "Authority" substitute "regulator issuing the code".

(4) In subsection (4)—

(a) for "The Authority" substitute "A regulator", and

(b) after "issued" insert "by it".

(5) In subsection (5)—

(a) after "replaced" insert "by a regulator", and

(b) for "Authority" substitute "regulator".

(6) In subsection (6)—

(a) for "the Authority", in the first place, substitute "the regulator that issued it", and

(b) for "the Authority", in the second place, substitute "that regulator".

(7) In subsection (10), for "The Authority" substitute "A regulator".

(8) In subsection (11), for paragraph (b) substitute—

"(b) is to be treated for the purposes of section 1B(6)(a) as part of the FCA's rule-making functions (where the power is exercisable by the FCA) and is to be treated for the purposes of section 2J(1)(a) as part of the PRA's rule-making functions (where the power is exercisable by the PRA)."

(9) In subsection (12)—

(a) for "The Authority" substitute "A regulator", and

(b) after "published" insert "by it".

(10) For subsection (13) substitute—

"(13) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section."

13 (1) Section 65 (statements and codes: procedure) is amended as follows.

(2) For subsection (1) substitute—

"(1) Before a regulator issues a statement or code under section 64, it must—

(a) consult the other regulator; and

(b) after doing so, publish a draft of the statement or code in the way appearing to it to be best calculated to bring the statement or code to the attention of the public.

(1A) The duty of the FCA to consult the PRA under subsection (1)(a) applies only in so far as the statement or code applies to persons in relation to whom approval is given under section 59 in respect of the performance by them of significant-influence functions (within the meaning of that section) in relation to the carrying on by PRA-authorised persons of regulated activities."

(3) In subsection (2)(b), for "the Authority" substitute "the regulator publishing the draft".

(4) In subsection (3)—

(a) for "issuing" substitute "a regulator issues", and

(b) for "the Authority" substitute "it".

(5) In subsection (4), for "the Authority" substitute "a regulator".

(6) In subsection (5)—

(a) for "the Authority", in the first place, substitute "the regulator issuing the statement or code", and

(b) for "the Authority", in the second place, substitute "the regulator".

(7) In subsection (6), for "the Authority" substitute "the regulator concerned".

(8) For subsection (7) substitute—

"(7) Subsections (1)(b) and (2) to (6) do not apply in relation to—

(a) a statement or code issued by the FCA if it considers that the delay involved in complying with them would be prejudicial to the interests of consumers, as defined in section 425A; or

(b) a statement or code issued by the PRA if it considers that the delay involved in complying with them would—

(i) be prejudicial to the safety and soundness of PRA-authorised persons, or

(ii) in a case where section 2C applies, be prejudicial to securing the appropriate degree of protection for policyholders."

(9) In subsection (9)—

(a) for "The Authority" substitute "A regulator", and

(b) after "published" insert "by it".

(10) For subsection (11) substitute—

"(11) Cost benefit analysis" means—

(a) an analysis of the costs together with an analysis of the benefits that will arise—

(i) if the proposed statement or code is issued, or

(ii) if subsection (5)(b) applies, from the statement or code that has been issued, and

(b) subject to subsection (11A), an estimate of those costs and of those benefits.

(11A) If, in the opinion of the regulator concerned—

(a) the costs or benefits referred to in subsection (11) cannot reasonably be estimated, or

(b) it is not reasonably practicable to produce an estimate,

the cost benefit analysis need not estimate them, but must include a statement of the opinion of the regulator concerned and an explanation of it."

14 (1) Section 66 (disciplinary powers) is amended as follows.

(2) In subsection (1)—

(a) in the opening words—

(i) for "The Authority" substitute "A regulator", and

(ii) after "this section" insert "(whether or not it has given its approval in relation to the person)", and

(b) in paragraphs (a) and (b), for "Authority" substitute "regulator".

(3) For subsection (2) substitute—

"(2) For the purposes of action by the FCA, a person is guilty of misconduct if, while an approved person—

(a) the person has failed to comply with a statement of principle issued by the FCA under section 64, or

(b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person—

(i) by or under this Act, or

(ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order.

(2A) For the purposes of action by the PRA, a person is guilty of misconduct if, while an approved person in respect of the performance of a significant-influence function in relation to the carrying on by a PRA-authorised person of a regulated activity—

(a) the person has failed to comply with a statement of principle issued by the PRA under section 64, or

(b) the person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person—

(i) by or under this Act, or

(ii) by any qualifying EU provision specified, or of a description specified, for the purposes of this subsection by the Treasury by order."

(4) In subsection (3), for "Authority" substitute "regulator".

(5) In subsection (3D), for "The Authority" substitute "The regulator taking action under this section".

(6) In subsection (4)—

(a) for "The Authority", in the first place, substitute "A regulator", and

(b) for "the Authority", in the second place, substitute "the regulator".

(7) In subsection (5)(a), for "the Authority" substitute "a regulator".

(8) For subsection (6) substitute—

"(6) Approved person" means a person in relation to whom an approval is given under that section."

15 (1) Section 67 (disciplinary measures: procedure and right to refer to Tribunal) is amended as follows.

(2) In subsections (1) and (4), for "the Authority" substitute "a regulator".

(3) In subsection (7)—

(a) for "the Authority", in the first place, substitute "a regulator", and

(b) for "the Authority", in the second place, substitute "the regulator".

(4) In subsection (9)—

(a) for "an approved person ("A")," substitute "a person ("A") in relation to whom approval has been given,", and

(b) omit the second sentence.

16 In section 68 (publication), for "the Authority" substitute "the regulator publishing it".

17 (1) Section 69 (statement of policy) is amended as follows.

(2) In subsection (1), for "The Authority must" substitute "Each regulator must".

(3) In subsection (2), for "The Authority's" substitute "A regulator's".

(4) In subsection (3)—

(a) for "The Authority" substitute "A regulator", and

(b) after "issued" insert "by it".

(5) In subsection (4), for "replaced, the Authority" substitute "replaced by a regulator, the regulator".

(6) In subsection (5), for "The Authority" substitute "A regulator".

(7) In subsection (6)—

(a) after "section" insert "by a regulator", and

(b) for "the Authority", in both places, substitute "the regulator".

(8) In subsection (7), for "Authority" substitute "regulator".

(9) In subsection (8)—

(a) for "the Authority" substitute "a regulator", and

(b) after "published" insert "by it".

18 (1) Section 70 (statements of policy: procedure) is amended as follows.

(2) In subsection (1)—

(a) for "issuing" substitute "a regulator issues", and

(b) for “Authority”, in both places, substitute “regulator”.

(3) In subsections (2), (3), (4) and (5) (in both places), for “Authority” substitute “regulator”.

(4) In subsection (6)—

(a) for “The Authority” substitute “A regulator”, and

(b) after “published” insert “by it”.