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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Financial Services and Markets Act 2000  
(Regulated Activities) (Amendment) (No.2) Order 2013**

**PART 8**

Transitional provisions

CHAPTER 4

Permission etc.

**Interim permission**

**56.**—(1) Unless paragraph (12) applies, on and after 1st April 2014, any relevant person (“P”) who, immediately before that date, held a standard licence under the 1974 Act<sup>(1)</sup> is to be treated as having an interim permission to carry on—

(a) if P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity specified in article 36A of the Regulated Activities Order (credit broking) and article 64 of that Order in so far as relevant to that activity;

(b) if—

(i) P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),

(ii) immediately before 1st April 2014, P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and

(iii) immediately before 1st April 2014, P did not also carry on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activity specified in article 36H of the Regulated Activities Order and article 64 of that Order in so far as relevant to that activity;

(c) if—

(i) P’s licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),

(ii) immediately before 1st April 2014, P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and

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(1) “Standard licence” is defined in section 189 of the 1974 Act. By virtue of section 32A(5) of that Act, a licensee under a suspended licence is to be treated, in respect of the period of suspension, as if the licence had not been issued (see section 32A).

(iii) immediately before that date, P also carried on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activities specified in articles 36H and 39G of the Regulated Activities Order and article 64 of that Order in so far as relevant to those activities;

(d) to the extent that P's licence covers any other activities, those regulated activities which are activities which were described in the licence and article 64 of that Order in so far as relevant to those activities.

(2) On and after 1st April 2014, any relevant person ("P") who, immediately before that date—

(a) held a standard licence under the 1974 Act,

(b) was a credit intermediary (within the meaning given by section 160A of the 1974 Act<sup>(2)</sup>), but

(c) did not carry on an activity which, if carried on after 1st April 2014, would be an activity of the kind specified by article 36H of the Regulated Activities Order,

is to be treated as having an interim permission to carry on regulated activities of the kind specified by articles 36A(1)(d) to (f) of the Regulated Activities Order to the extent that P was carrying on such activities immediately before 1st April 2014 and article 64 of that Order in so far as relevant to that activity; and such interim permission may be in addition to any interim permission the person obtains by virtue of paragraph (1).

(3) On and after 1st April 2014, any relevant person ("P") who is a local authority is to be treated as having an interim permission to carry on regulated activities which are activities which P was carrying on at any point in the period of one year ending on that date.

(4) For the purposes of paragraphs (1), (2) and (3), P is a "relevant person" if P has, in the period beginning with 2nd September 2013 and ending on 31st March 2014 (including both days), notified the FCA of P's desire to obtain interim permission under this article and paid any fee which is provided for in rules made by the FCA for this purpose.

(5) On and after the notice date (see paragraph (7)), a relevant recent licensee ("P") is to be treated as having an interim permission to carry on—

(a) if P's licence covered the carrying on of an ancillary credit business in so far as it comprised or related to credit brokerage (within the meaning of the 1974 Act), the regulated activity specified in article 36A of the Regulated Activities Order (credit broking) and article 64 of that Order in so far as relevant to that activity;

(b) if—

(i) P's licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),

(ii) immediately before 1st April 2014 P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and

(iii) immediately before that date, P did not also carry on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activity specified in article 36H of the Regulated Activities Order and article 64 of that Order in so far as relevant to that activity;

(c) if—

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(2) Inserted by [S.I. 2010/1010](#).

- (i) P's licence covered the carrying on of an ancillary credit business in so far as it comprised or related to the activity of debt-administration (within the meaning of the 1974 Act),
- (ii) immediately before 1st April 2014, P carried on an activity which, if carried on after that date would be an activity of the kind specified by article 36H of the Regulated Activities Order (operating an electronic system in relation to lending), and
- (iii) immediately before that date, P also carries on an activity which, if carried on after that date, would be an activity of the kind specified by article 39G of that Order (debt administration),

the regulated activities specified in articles 36H and 39G of the Regulated Activities Order and article 64 of that Order in so far as relevant to those activities;

- (d) to the extent that P's licence covers any other activities, those regulated activities which are activities which were described in the licence and article 64 of that Order in so far as relevant to those activities.

(6) Unless paragraph (12) applies, on and after the notice date, any relevant recent licensee ("P") who, immediately before 1st April 2014—

- (a) held a standard licence under the 1974 Act,
- (b) was a credit intermediary (within the meaning given by section 160A of the 1974 Act<sup>(3)</sup>), but
- (c) did not carry on an activity which, if carried on after 1st April 2014, would be an activity of the kind specified by article 36H of the Regulated Activities Order,

is to be treated as having an interim permission to carry on regulated activities of the kind specified by articles 36A(1)(d) to (f) of the Regulated Activities Order and article 64 of that Order in so far as relevant to that activity, to the extent that P was carrying on such activities immediately before 1st April 2014; and such interim permission may be in addition to any interim permission the person obtains by virtue of paragraph (5).

(7) For the purposes of paragraphs (5) and (6), P is a "relevant recent licensee" if—

- (a) P had been given a standard licence under the 1974 Act in the period beginning 18th March 2014 and ending on 31st March 2014 (including both days), and
- (b) on a date in the period beginning on 1st April 2014 and ending on 14th April 2014 (including both days) ("the notice date") P notified the FCA of P's desire to obtain interim permission under this article and has in that period paid any fee which is provided for in rules made by the FCA for this purpose.

(8) Interim permission which a person ("A") is treated as having under this article does not permit A to canvass off trade premises borrower-lender-supplier agreements (within the meaning given by article 60L of the Regulated Activities Order) or regulated consumer hire agreements (within the meaning of article 60N of that Order) except to the extent that A's licence under the 1974 Act, immediately before 1st April 2014, specifically provided that A's licence covered that activity; and the reference to canvassing off trade premises is to be read with article 36B of that Order.

(9) Subject to article 61 (application of Act), an interim permission is to be treated as—

- (a) if P was an authorised person immediately before commencement, a variation of permission,
- (b) in any other case, a Part 4A permission.

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(3) Inserted by [S.I. 2010/1010](#).

(10) If P was, immediately before 1st April 2014, subject to a requirement imposed by the OFT under section 33A of the 1974 Act (power of OFT to impose requirements on licensees)<sup>(4)</sup> and P obtains interim permission under this article, that requirement is to be treated as a requirement imposed by the FCA under section 55L of the Act (subject to any necessary modifications).

(11) For the purpose of paragraphs (1) and (5), it is the effect of the licence that matters, not how the activities for which a licence is given are described.

(12) This paragraph applies if—

- (a) P has, before 1st April 2014, notified the FCA that P does not wish to obtain interim permission under this article, or
- (b) the FCA has, before 1st April 2014, notified P in writing, that in the FCA's opinion, P is not carrying on the activities which are described in P's licence.

### **Procedure for notifying FCA**

**57.**—(1) Notices under article 56 must—

- (a) be made in such manner as the FCA may direct; and
- (b) contain or be accompanied by such other information as the FCA may reasonably require.

(2) Different directions may be given and different requirements imposed, in relation to different applications or categories of application.

(3) At any time after receiving the notification, the FCA may require the person giving the notification to provide the FCA with such further information as it reasonably considers necessary to enable the FCA to discharge its functions.

(4) The FCA may require information to be provided in such form, or for it to be verified in such a way, as the FCA may direct.

### **Duration of interim permission**

**58.**—(1) P's interim permission, in so far as it relates to a particular regulated activity or class of activity ceases to have effect—

- (a) if P applies to the appropriate regulator for Part 4A permission to carry on that activity or (as the case may be) to vary P's permission to add that activity to those to which the permission relates, before a date specified in a direction given by the FCA ("the application date"), the date on which that application is determined;
- (b) if P does not make such an application before the application date, the application date;
- (c) in any other case, 1st April 2016.

(2) Paragraph (1) does not affect the ability of the FCA or the PRA to vary or to cancel an interim permission under the Act.

(3) For the purposes of paragraph (1)(a) the date on which an application is determined is—

- (a) if the applicant by notice withdraws the application under section 55V(4) of the Act, the date on which the notice of withdrawal takes effect;
- (b) if the application is granted by the appropriate regulator, the date on which the written notice given under section 55V(5) of the Act takes effect;
- (c) if the appropriate regulator gives a decision notice under section 388 of the Act in relation to the application, the date on which that notice takes effect.

(4) Directions under this article may—

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(4) Inserted by section 38 of the Consumer Credit Act 2006.

- (a) relate to classes of person (including classes of person identified by reference to whether they have, or have not, provided the FCA with a notification in a form specified in the direction by the FCA);
- (b) contain different dates;
- (c) relate to different descriptions of activities;
- (d) be amended by the FCA by further direction.

### **Application of the Act to persons with an interim permission**

**59.**—(1) This article applies to each person (“A”) who has an interim permission by virtue of this Order.

(2) A’s interim permission is to be disregarded for the purposes of—

- (a) section 38(2) of the Act (exemption orders)<sup>(5)</sup>;
- (b) section 55A(3)<sup>(6)</sup> of the Act (application for permission);
- (c) sections 55E and 55F of the Act (giving permission).

(3) For the purposes of section 21(2) of the Act (restrictions on financial promotions), if A does not have permission other than an interim permission, A may only approve the content of a communication if the communication invites or induces a person to—

- (a) enter into (or offer to enter into) an agreement the making or performance of which constitutes a controlled activity which corresponds to a regulated activity for which A has interim permission; or
- (b) exercise any rights conferred by a credit agreement (within the meaning of the Regulated Activities Order) to acquire, dispose of, underwrite or convert a controlled investment which is relevant to the regulated activity for which A has interim permission to carry on.

(4) For the purposes of section 39 of the Act (appointed representatives)<sup>(7)</sup>, A—

- (a) may not be a principal in relation to an activity for which A has interim permission;
- (b) may be an appointed representative in relation to an activity which A does not have interim permission to carry on.

(5) If A applies to the appropriate regulator—

- (a) under section 55A of the Act for Part 4A permission to carry on a regulated activity, or
- (b) under section 55H or 55I of the Act to vary a Part 4A permission that A has otherwise than by virtue of this Order by adding a regulated activity to those which the permission relates,

the application may be treated by the appropriate regulator as relating also to some or all of the regulated activities for which A has interim permission.

(6) When the FCA or PRA—

- (a) exercises its power under section 55J of the Act (variation or cancellation on initiative of regulator) in relation to A,
- (b) exercises its power under section 55H (in the case of the FCA) or section 55I of the Act (in the case of the PRA) (variation at request of authorised person) to remove a regulated activity from those for which A has interim permission, or
- (c) exercises its power under section 55L of the Act (in the case of the FCA) or section 55M of the Act (in the case of the PRA) (imposition of requirements by the regulator) in relation to A,

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<sup>(5)</sup> Amended by Schedule 18 to the Financial Services Act 2012.

<sup>(6)</sup> Sections 55A to 55Z4 were inserted by section 9 of the Financial Services Act 2012.

<sup>(7)</sup> Amended by section 10 of and Schedule 18 to the Financial Services Act 2012 and [S.I. 2007/126](#).

section 55B(3) of the Act (satisfaction of threshold conditions) does not require the regulator to ensure that A will satisfy, and continue to satisfy, in relation to the regulated activities for which A has an interim permission, the threshold conditions for which that regulator is responsible.

(7) A is not to be regarded as an authorised person for the purposes of Part 12 of the Act (control over authorised person) unless A has permission otherwise than by virtue of an interim permission.

(8) Subsection (3)(a) of section 213 (compensation scheme)(8) does not apply to a person who is a relevant person (within the meaning of that section) only by virtue of having an interim permission.

### **Grandfathered permission for certain debt-counsellors**

**60.**—(1) On and after 1st April 2014, a not-for-profit body which, immediately before 1st April 2014, was covered by a group licence under the 1974 Act to carry on the activity of debt-counselling (within the meaning of the 1974 Act) is to be treated for all purposes as having Part 4A permission to carry on regulated activities of the kind specified by 39D (debt adjusting), articles 39E (debt-counselling) and 89A (providing credit information services) of the Regulated Activities Order and article 64 of that Order in so far as relevant to those activities, to the extent that those regulated activities are activities which are described in the licence.

(2) In this article, a “not-for-profit body” means a body which, by virtue of its constitution or any enactment—

- (a) is required (after payment of outgoings) to apply the whole of its income and any capital it expends for charitable or public purposes, and
- (b) is prohibited from directly or indirectly distributing amongst its members any part of its assets (otherwise than for charitable or public purposes).

(3) For the purposes of this article, it is the effect of the group licence that matters, not how the activities for which a licence is given are described.