



Financial Services Act 2012

2012 CHAPTER 21

PART 2

AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

Control over authorised persons

26 Control over authorised persons

- (1) FSMA 2000 is amended as follows.
- (2) In every provision of Part 12 (control over authorised persons), for “Authority” or “Authority's”, in each place (where not expressly amended by the following provisions), substitute “appropriate regulator” or “appropriate regulator's”.
- (3) In section 178 (obligation to notify an acquisition of control), after subsection (2) insert—
 - “(2A) In this Part, “the appropriate regulator” means—
 - (a) where the UK authorised person is a PRA-authorised person, the PRA;
 - (b) in any other case, the FCA.”
- (4) In section 179 (requirements for section 178 notices) in subsection (2), for “The Authority” substitute “Each regulator”.
- (5) In section 187 (approval with conditions), for subsection (2) substitute—
 - “(2) The appropriate regulator may only impose conditions where—
 - (a) if it did not impose those conditions, it would propose to object to the acquisition, or
 - (b) it is required to do so by a direction under section 187A(3)(b) or section 187B(3).”
- (6) After section 187 insert—

Status: This is the original version (as it was originally enacted).

“187A Assessment: consultation by PRA with FCA

- (1) The PRA must consult the FCA before acting under section 185.
- (2) The FCA may make representations to the PRA in relation to any of the matters set out in sections 185(2) and 186.
- (3) If the FCA considers that on the basis of the matters set out in section 186(f) there are reasonable grounds to object to the acquisition, the FCA may—
 - (a) direct the PRA to object to the acquisition, or
 - (b) direct the PRA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).
- (4) Before giving a direction under subsection (3), the FCA must notify the PRA of its proposal to do so.
- (5) In order to comply with the obligation under subsection (1), the PRA must provide the FCA with—
 - (a) copies of—
 - (i) the section 178 notice, and
 - (ii) any document included with that notice,
 - (b) any further information provided pursuant to section 190, and
 - (c) any other information in the possession of the PRA which—
 - (i) in the opinion of the PRA, is relevant to the application, or
 - (ii) is reasonably requested by the FCA.
- (6) If the PRA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the FCA.
- (7) Directions given by the FCA under this section are subject to any directions given to the FCA under section 3I or 3J.

187B Assessment: consultation by FCA with PRA

- (1) The FCA must consult the PRA before acting under section 185 if—
 - (a) the UK authorised person to which the section 178 notice relates has as a member of its immediate group a PRA-authorised person, or
 - (b) the section 178 notice-giver is a PRA-authorised person.
- (2) The PRA may make representations to the FCA in relation to any of the matters set out in sections 185(2) and 186.
- (3) If the PRA considers that on the basis of relevant matters there are reasonable grounds to object to the acquisition, the PRA may direct the FCA not to approve the acquisition unless it does so subject to conditions specified in the direction (with or without other conditions).
- (4) In subsection (3) “relevant matters”—
 - (a) means the matters in paragraphs (d) and (e)(i) of section 186, and
 - (b) in a case falling within subsection (1)(b) of this section, also includes the matter in paragraph (c) of section 186.

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- (5) In order to comply with the obligation under subsection (1), the FCA must provide the PRA with—
- (a) copies of—
 - (i) the section 178 notice, and
 - (ii) any document included with that notice,
 - (b) any further information provided pursuant to section 190, and
 - (c) any other information in the possession of the FCA which—
 - (i) in the opinion of the FCA, is relevant to the application, or
 - (ii) is reasonably requested by the PRA.
- (6) If the FCA acts under section 185(1)(b), it must indicate to the section 178 notice-giver any representations or directions received from the PRA.

187C Variation etc of conditions

- (1) Where the PRA has imposed conditions required by a direction given by the FCA under section 187A(3)—
- (a) the FCA may direct the PRA to exercise its power under section 187(4) to vary or cancel any of those conditions;
 - (b) the PRA must consult the FCA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).
- (2) Where the FCA has imposed conditions required by a direction given by the PRA under section 187B(3)—
- (a) the PRA may direct the FCA to exercise its power under section 187(4) to vary or cancel any of those conditions;
 - (b) the FCA must consult the PRA before it exercises that power in relation to those conditions otherwise than in accordance with a direction under paragraph (a).”
- (7) In section 191A (objection to control), after subsection (4) insert—
- “(4A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a warning notice under this section.
- (4B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a warning notice under this section if—
- (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or
 - (b) the person to whom the warning notice is to be given is a PRA-authorised person.”
- (8) In section 191B (restriction notices), after subsection (2) insert—
- “(2A) Where the appropriate regulator is the PRA, it must consult the FCA before giving a restriction notice under this section.
- (2B) Where the appropriate regulator is the FCA, it must consult the PRA before giving a restriction notice under this section if—
- (a) the UK authorised person has as a member of its immediate group a PRA-authorised person, or

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- (b) the person to whom the restriction notice is to be given is a PRA-
authorised person.”
- (9) In section 191C (orders for the sale of shares), after subsection (2) insert—
 - “(2A) Where the appropriate regulator is the PRA, it must consult the FCA before
making an application to the court under this section.
 - (2B) Where the appropriate regulator is the FCA, it must consult the PRA before
making an application to the court under this section if—
 - (a) the UK authorised person has as a member of its immediate group a
PRA-*authorised person*, or
 - (b) the person holding the shares or voting power is a PRA-*authorised person*.”
- (10) In section 191D (obligation to notify of disposition of control), after subsection (1)
insert—
 - “(1A) The PRA must give the FCA a copy of any notice it receives under this section.
 - (1B) The FCA must give the PRA a copy of any notice it receives under this section
which—
 - (a) relates to a UK authorised person who has as a member of its
immediate group a PRA-*authorised person*, or
 - (b) is given by a PRA-*authorised person*.”
- (11) In section 191E (requirements for notices under section 191D), in subsection (2), for
“The Authority” substitute “Each regulator”.
- (12) In section 191G (interpretation), in subsection (1), after the definition of “acquisition”
insert—
 - ““the appropriate regulator” is to be read in accordance with
section 178(2A);”.