

## SCHEDULES

### SCHEDULE 7

Section 22

#### UK-BASED PERSONS CARRYING ON ACTIVITIES IN GIBRALTAR

After Schedule 2A to the Financial Services and Markets Act 2000 (inserted by Schedule 6 to this Act) insert—

#### “SCHEDULE 2B

Section 36A

#### UK-BASED PERSONS CARRYING ON ACTIVITIES IN GIBRALTAR

### PART 1

#### INTERPRETATION ETC

#### **UK-based person**

- 1 (1) In this Schedule, “UK-based person” means a person listed in sub-paragraph (2) whose head office or registered office is in the United Kingdom (and see also Part 6 of this Schedule).
- (2) Those persons are—
  - (a) an individual,
  - (b) a body corporate,
  - (c) a partnership, or
  - (d) an unincorporated association.

#### **Regulators**

- 2 (1) In this Schedule—

“the Gibraltar regulator” has the same meaning as in Schedule 2A (see paragraph 2 of that Schedule);

“UK regulator” means the FCA or the PRA.
- (2) In this Schedule, “the appropriate UK regulator” means—
  - (a) the PRA, in a case where the UK-based person is a PRA-authorized person, and
  - (b) the FCA, in any other case.

#### **Restricted activity**

- 3 (1) In this Schedule, “restricted activity” means—
  - (a) an activity which, when carried on in the United Kingdom, is a regulated activity,

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- (b) marketing a UCITS, or
  - (c) marketing an AIF.
- (2) For the purposes of this Schedule, “marketing”, in relation to a UCITS, means, in the course of business, communicating an invitation or inducement to a person to participate in the UCITS (and related expressions are to be interpreted accordingly).
- (3) In sub-paragraph (2), “communicating” includes causing a communication to be made.
- (4) Regulations under section 21(4) (circumstances in which a person is to be regarded as carrying on a business) apply for the purposes of sub-paragraph (2) as they apply for the purposes of section 21(1).
- (5) For the purposes of this Schedule—
- (a) an AIFM markets an AIF when the AIFM makes a direct or indirect offering or placement of units or shares of an AIF managed by it to or with an investor or when another person makes such an offering or placement at the initiative of, or on behalf of, the AIFM, and
  - (b) an investment firm markets an AIF when it makes a direct or indirect offering or placement of units or shares of the AIF to or with an investor at the initiative of, or on behalf of, the AIFM of the AIF.
- (6) For the purposes of this Schedule, a person markets a UCITS or an AIF in Gibraltar only if the marketing is capable of having an effect in Gibraltar.

### **Other definitions**

- 4 In this Schedule—
- “AIFM” has the meaning given in regulation 4 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773);
  - “branch” has the same meaning as in Schedule 2A (see paragraph 3 of that Schedule);
  - “consent notice” has the meaning given in paragraph 7;
  - “consent to variation notice” has the meaning given in paragraph 13;
  - “Gibraltar notice” has the meaning given in paragraph 7;
  - “variation notice” has the meaning given in paragraph 13.

### **UK regulators’ objectives**

- 5 For the purposes of any provision of this Schedule which refers to the FCA’s operational objectives or the PRA’s objectives, in relation to the exercise of a power in relation to a particular person, it does not matter whether there is a relationship between that person and the persons whose interests will be protected by the exercise of the power.

## PART 2

### PERMISSION REQUIRED TO CARRY ON ACTIVITIES IN GIBRALTAR

#### Prohibition

- 6 (1) A UK-based person may not carry on a restricted activity in Gibraltar unless it has permission to do so under this Schedule.
- (2) A UK-based person who is not an authorised person and who contravenes the prohibition in sub-paragraph (1) commits an offence and is liable—
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to a fine.

#### Obtaining permission to carry on a restricted activity in Gibraltar

- 7 (1) A UK-based person obtains permission to carry on a restricted activity in Gibraltar when the following three conditions are satisfied.
- (2) The first condition is that the UK-based person has given the appropriate UK regulator notice that it wants to carry on the restricted activity in Gibraltar (a “Gibraltar notice”) (see paragraph 9).
- (3) The second condition is that the appropriate UK regulator has given notice to the Gibraltar regulator consenting to the UK-based person carrying on the restricted activity in Gibraltar (a “consent notice”) (see paragraph 10).
- (4) The third condition is that the waiting period has ended.
- (5) In sub-paragraph (4), “the waiting period” means—
- (a) in relation to an activity that is to be carried on through a branch in Gibraltar, the period of two months beginning with the day on which the appropriate UK regulator gave the Gibraltar regulator the consent notice, and
  - (b) in relation to any other activity, the period of one month beginning with that day,
- unless the appropriate UK regulator specifies a shorter waiting period in the consent notice.
- (6) A permission under this paragraph is referred to in this Act as “a Schedule 2B permission”.

#### Schedule 2B permission

- 8 (1) A Schedule 2B permission for a person to carry on a restricted activity is a permission to do so only while the person has a relevant Part 4A permission.
- (2) In this paragraph, “relevant Part 4A permission” means—
- (a) if the restricted activity is an activity which, when carried on in the United Kingdom, is a regulated activity, a Part 4A permission in respect of that regulated activity, and
  - (b) if the restricted activity is marketing a UCITS or an AIF, a Part 4A permission in respect of any regulated activity.

### **Gibraltar notice**

- 9 (1) A Gibraltar notice must—
- (a) name the UK-based person giving the notice,
  - (b) state the address of the person's head office or registered office in the United Kingdom,
  - (c) identify the activity that the UK-based person wants to carry on,
  - (d) state whether the UK-based person wants to carry on the activity through a branch in Gibraltar,
  - (e) contain, or be accompanied by, such other information as the appropriate UK regulator may direct, and
  - (f) be given in such form and manner as the appropriate UK regulator may direct.
- (2) A Gibraltar notice may relate to more than one activity.
- (3) A Gibraltar notice may ask the appropriate UK regulator to specify a shorter waiting period for the purpose of paragraph 7(4).
- (4) A UK regulator that gives a direction under sub-paragraph (1)(e) or (f) may, by a further direction, vary or revoke the direction.
- (5) A direction under this paragraph may make different provision for different purposes, including different provision in relation to different persons.
- (6) After giving a direction under this paragraph, a UK regulator must—
- (a) publish the direction in the way appearing to the UK regulator to be best calculated to bring it to the attention of persons likely to be affected by it, and
  - (b) give a copy of the direction to the Treasury and the other UK regulator without delay.

### **Consent and confirmation**

- 10 (1) After receiving a Gibraltar notice, the appropriate UK regulator must without delay—
- (a) give a consent notice, and
  - (b) give a written notice to the UK-based person confirming that it has given the consent notice,
- unless it intends to refuse to give a consent notice in accordance with paragraph 11.
- (2) A consent notice—
- (a) may specify a shorter waiting period for the purpose of paragraph 7(4), and
  - (b) must contain, or be accompanied by, the Gibraltar notice.
- (3) A notice under sub-paragraph (1)(b) must—
- (a) state the date on which the consent notice was given to the Gibraltar regulator, and
  - (b) if the consent notice specified a shorter waiting period for the purpose of paragraph 7(4), specify that period.

- (4) Where a Gibraltar notice relates to more than one activity, the appropriate UK regulator may give a consent notice in relation to one activity and refuse to do so in relation to another.

### **Refusing consent**

- 11 (1) The appropriate UK regulator may refuse to give a consent notice in relation to a regulated activity only if—
- (a) it is satisfied that the Gibraltar notice does not satisfy one or more of the requirements in paragraph 9, or
  - (b) it appears to the regulator that it is desirable to refuse to do so in order to advance one or more of its objectives.
- (2) In the case of the FCA, the reference in sub-paragraph (1)(b) to its objectives is a reference only to its operational objectives.
- (3) If the appropriate UK regulator proposes to refuse to give a consent notice, it must give the UK-based person a warning notice.
- (4) If the appropriate UK regulator decides to refuse to give a consent notice, it must give the UK-based person a decision notice.
- (5) If the appropriate UK regulator gives the UK-based person a decision notice under sub-paragraph (4), the UK-based person may refer the matter to the Tribunal.

## **PART 3**

### **VARIATION OF PERMISSION**

#### **Variation of permission**

- 12 (1) A UK-based person's Schedule 2B permission may be varied in accordance with this Part of this Schedule—
- (a) on the initiative of the UK-based person (see paragraphs 13 to 16), or
  - (b) on the initiative of a UK regulator (see paragraphs 17 to 19).
- (2) In this Part of this Schedule, references to the variation of a Schedule 2B permission (however expressed) are to its variation by—
- (a) adding an activity,
  - (b) removing an activity, or
  - (c) varying the description of an activity.

#### **UK-based person's initiative**

- 13 (1) A Schedule 2B permission is varied in accordance with this paragraph when the following four conditions are satisfied in connection with the variation.
- (2) The first condition is that the UK-based person has given the appropriate UK regulator notice of the proposed variation (a "variation notice") (see paragraph 14).

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- (3) The second condition is that the appropriate UK regulator has given notice to the Gibraltar regulator consenting to the variation (a “consent to variation notice”) (see paragraph 15).
- (4) The third condition is that the waiting period has ended.
- (5) In sub-paragraph (4), “the waiting period” means—
  - (a) in relation to a variation in respect of an activity carried on through a branch in Gibraltar, the period of two months beginning with the day on which the appropriate UK regulator gave the Gibraltar regulator the consent to variation notice, and
  - (b) in relation to any other variation, the period of one month beginning with that day,
 unless the appropriate UK regulator specifies a shorter waiting period in the consent to variation notice.
- (6) The fourth condition is that the appropriate UK regulator has not cancelled the permission (see Part 4 of this Schedule).

**UK-based person’s initiative: variation notice**

- 14
- (1) A variation notice must—
    - (a) name the UK-based person giving the notice,
    - (b) state the address of the person’s head office or registered office in the United Kingdom,
    - (c) specify the proposed variation,
    - (d) where relevant, state whether the UK-based person wants to carry on an activity through a branch in Gibraltar,
    - (e) contain, or be accompanied by, such other information as the appropriate UK regulator may direct, and
    - (f) be given in such form and manner as the appropriate UK regulator may direct.
  - (2) A variation notice may ask the appropriate UK regulator to specify a shorter waiting period for the purpose of paragraph 13(4).
  - (3) A UK regulator that gives a direction under sub-paragraph (1)(e) or (f) may, by a further direction, vary or revoke the direction.
  - (4) A direction under this paragraph may make different provision for different purposes, including different provision in relation to different persons.
  - (5) After giving a direction under this paragraph, a UK regulator must—
    - (a) publish the direction in the way appearing to the UK regulator to be best calculated to bring it to the attention of persons likely to be affected by it, and
    - (b) give a copy of the direction to the Treasury and the other UK regulator without delay.

**UK-based person’s initiative: consent and confirmation**

- 15
- (1) After receiving a variation notice, the appropriate UK regulator must without delay—

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- (a) give a consent to variation notice, and
  - (b) give a written notice to the UK-based person confirming that it has given the consent to variation notice,
- unless it intends to refuse to give a consent to variation notice in accordance with paragraph 16.
- (2) A consent to variation notice—
    - (a) may specify a shorter waiting period for the purpose of paragraph 13(4), and
    - (b) must contain, or be accompanied by, the variation notice.
  - (3) A notice under sub-paragraph (1)(b) must—
    - (a) state the date on which the consent to variation notice was given to the Gibraltar regulator, and
    - (b) if the consent notice specified a shorter waiting period for the purpose of paragraph 13(4), specify that period.
  - (4) Where a variation notice relates to more than one variation, the appropriate UK regulator may give a consent notice in relation to one variation and refuse to do so in relation to another.

#### **UK-based person's initiative: refusing consent to variation**

- 16
- (1) The appropriate UK regulator may refuse to give a consent to variation notice in relation to a proposed variation only if—
    - (a) it is satisfied that the variation notice does not satisfy one or more of the requirements in paragraph 14, or
    - (b) it appears to the regulator that it is desirable to refuse to do so in order to advance one or more of its objectives.
  - (2) In the case of the FCA, the reference in sub-paragraph (1)(b) to its objectives is a reference only to its operational objectives.
  - (3) If the appropriate UK regulator proposes to refuse to give a consent to variation notice, it must give the UK-based person a warning notice.
  - (4) If the appropriate UK regulator decides to refuse to give a consent to variation notice, it must give the UK-based person a decision notice.
  - (5) If the appropriate UK regulator gives the UK-based person a decision notice under sub-paragraph (4), the UK-based person may refer the matter to the Tribunal.

#### **UK regulator's initiative**

- 17
- (1) The FCA may exercise a power under sub-paragraph (2) in relation to a Schedule 2B permission if it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives.
  - (2) The FCA may vary a Schedule 2B permission by—
    - (a) adding to the activities to which the permission relates a restricted activity which, when carried on in the United Kingdom, is not a PRA-regulated activity,
    - (b) removing a restricted activity from those to which the permission relates,

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- (c) varying the description of a restricted activity which, when carried on in the United Kingdom, is not a PRA-regulated activity, or
  - (d) varying the description of a restricted activity which, when carried on in the United Kingdom, is a PRA-regulated activity in a way which does not, in the opinion of the FCA, widen the description.
- (3) The PRA may exercise a power under sub-paragraph (4), (5) or (6) in relation to a Schedule 2B permission if it appears to the PRA that it is desirable to do so in order to advance one or more of its objectives.
- (4) In the case of a PRA-authorized person, the PRA may vary the person's Schedule 2B permission.
- (5) In the case of a person who is not a PRA-authorized person, the PRA may vary the person's Schedule 2B permission by adding to the activities to which the permission relates a restricted activity which, when carried on in the United Kingdom, is a PRA-regulated activity.
- (6) Where it adds an activity under sub-paragraph (5), the PRA may vary the person's Schedule 2B permission in any of the other ways described in paragraph 12(2).

#### **UK regulator's initiative: procedure**

- 18 (1) The variation of a Schedule 2B permission under paragraph 17 takes effect—
- (a) immediately, if the notice given under sub-paragraph (3) states that is the case,
  - (b) on such date as may be specified in the notice, or
  - (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (2) The variation of a Schedule 2B permission under paragraph 17 may be expressed to take effect immediately, or on a specified date, only if the UK regulator reasonably considers that it is necessary for the variation to take effect immediately or on that date, having regard to the ground on which the UK regulator is exercising its power to vary.
- (3) If a UK regulator—
- (a) proposes to vary a Schedule 2B permission under paragraph 17, or
  - (b) varies a Schedule 2B permission under that paragraph with immediate effect,
- it must give the UK-based person a written notice.
- (4) The notice must—
- (a) give details of the variation,
  - (b) state the UK regulator's reasons for varying the permission,
  - (c) inform the UK-based person that the person may make representations to the UK regulator within the period specified in the notice (whether or not the UK-based person has referred the matter to the Tribunal),
  - (d) inform the UK-based person of when the variation of the permission takes effect, and
  - (e) inform the UK-based person of the person's right to refer the matter to the Tribunal.

- (5) The UK regulator may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by the UK-based person, the UK regulator decides—
  - (a) to vary the permission in the way proposed, or
  - (b) if the permission has been varied, not to rescind its variation,it must give the UK-based person a written notice.
- (7) A notice under sub-paragraph (6) must inform the UK-based person of the person's right to refer the matter to the Tribunal.
- (8) If, having considered any representations made by the UK-based person, the UK regulator decides—
  - (a) not to vary the permission in the way proposed,
  - (b) to vary the permission in a different way, or
  - (c) to rescind the variation,it must give the UK-based person a written notice.
- (9) A notice under sub-paragraph (8)(b) must comply with sub-paragraph (4).
- (10) If a notice under this paragraph informs a person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure for such a reference.
- (11) For the purposes of sub-paragraph (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

### **Right to refer matters to the Tribunal**

- 19 A UK-based person who is aggrieved by the exercise by a UK regulator of a power under paragraph 17 in relation to the person may refer the matter to the Tribunal.

## **PART 4**

### CANCELLATION OF PERMISSION

#### **Cancellation of permission**

- 20 (1) The FCA may cancel a Schedule 2B permission if—
  - (a) it receives a written request from the UK-based person to do so, or
  - (b) it appears to the FCA that it is desirable to do so in order to advance one or more of its operational objectives.
- (2) The PRA may cancel a PRA-authorized person's Schedule 2B permission if—
  - (a) it receives a written request from the UK-based person to do so, or
  - (b) it appears to the PRA that it is desirable to do so in order to advance one or more of its objectives.
- (3) If a UK regulator proposes to cancel a UK-based person's Schedule 2B permission under sub-paragraph (1)(b) or (2)(b), it must give the UK-based person a warning notice.

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- (4) If a UK regulator decides to cancel a UK-based person's Schedule 2B permission under sub-paragraph (1)(b) or (2)(b), it must give the UK-based person a decision notice.
- (5) If a UK regulator gives the UK-based person a decision notice under sub-paragraph (4), the UK-based person may refer the matter to the Tribunal.
- (6) If a UK regulator cancels a Schedule 2B permission under this paragraph, it must notify the Gibraltar regulator in writing without delay.

## PART 5

### PUBLIC RECORD, CONSULTATION AND CONSENT

#### **Information to be included in public record**

- 21 The FCA must include in the record that it maintains under section 347 in relation to a UK-based person information about the restricted activities that the person has a Schedule 2B permission to carry on in Gibraltar, including whether the person has a branch in Gibraltar.

#### **FCA's duties to consult or obtain consent from the PRA**

- 22 (1) The FCA must consult the PRA—
  - (a) before deciding to refuse to give a consent notice in relation to a UK-based person who is a PRA-authorised person or whose immediate group includes a PRA-authorised person;
  - (b) before deciding to refuse to give a consent to variation notice in relation to a UK-based person who is a PRA-authorised person or whose immediate group includes a PRA-authorised person;
  - (c) before varying a permission under paragraph 17 in the case of a UK-based person who is a PRA-authorised person or whose immediate group includes a PRA-authorised person;
  - (d) before cancelling a permission under paragraph 20(1)(b) in the case of a UK-based person who is a PRA-authorised person or whose immediate group includes a PRA-authorised person.
- (2) The FCA must obtain the PRA's consent before exercising its power under paragraph 17 in relation to a PRA-authorised person so as to—
  - (a) add an activity to those to which the person's Schedule 2B permission relates, or
  - (b) widen the description of an activity to which the person's Schedule 2B permission relates.
- (3) Sub-paragraph (2) does not apply in relation to an activity which, when carried on in the United Kingdom, is the regulated activity specified in article 63S of the Financial Services and Markets 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#)) (administering a benchmark).
- (4) Consent given by the PRA for the purposes of sub-paragraph (2) may be conditional on the way in which the FCA exercises its power.

### **PRA's duties to consult or obtain consent from the FCA**

- 23 (1) The PRA must consult the FCA—
- (a) before giving a direction under paragraph 9;
  - (b) before deciding to refuse to give a consent notice;
  - (c) before giving a direction under paragraph 14;
  - (d) before deciding to refuse to give a consent to variation notice;
  - (e) before varying a permission under paragraph 17;
  - (f) before cancelling a permission under paragraph 20(2)(b).
- (2) The PRA must obtain the FCA's consent before exercising its power under paragraph 17 so as to—
- (a) add an activity to those to which the Schedule 2B permission relates, or
  - (b) widen the description of an activity to which the Schedule 2B permission relates.
- (3) Consent given by the FCA for the purposes of sub-paragraph (2) may be conditional on the way in which the PRA exercises its power.

## **PART 6**

### **SPECIAL CASES**

#### **UK-based individuals carrying on insurance distribution activities**

- 24 (1) For the purposes of paragraph 1, an individual without a head office in the United Kingdom is to be treated as having a head office there if the individual has a Part 4A permission to carry on an insurance distribution activity in the United Kingdom.
- (2) A Gibraltar notice in respect of an individual who is a UK-based person by virtue of this paragraph satisfies paragraph 9(1)(b) if it states the main address where the individual carries on an insurance distribution activity in the United Kingdom.
- (3) A variation notice in respect of an individual who is a UK-based person by virtue of this paragraph satisfies paragraph 14(1)(b) if it states the main address where the person carries on business in the United Kingdom.
- (4) In this paragraph, “insurance distribution activity” has the meaning given in paragraph 2B(5) and (6) of Schedule 6.”