

SCHEDULE 3

Regulation 9(7).

PROHIBITIONS AND RESTRICTIONS BY THE BANK

Preliminary

1. In this Schedule—

“prohibition” means a prohibition under regulation 9 of these Regulations;

“restriction” means a restriction under regulation 10 of these Regulations.

Notice of prohibition or restriction in non-urgent cases

2.—(1) Subject to paragraph 3 below, where the Bank proposes, in relation to a European institution—

(a) to impose a prohibition;

(b) to impose a restriction; or

(c) to vary a restriction otherwise than with the agreement of the institution,

the Bank shall give notice of its proposal to the institution and to every other authority which it knows is a connected UK authority.

(2) If the proposed action is within paragraph (b) or (c) of sub-paragraph (1) above, the notice under that sub-paragraph shall specify the proposed restriction or, as the case may be, the proposed variation.

(3) A notice under sub-paragraph (1) above shall state the grounds on which the Bank proposes to act and give particulars of the institution’s rights under sub-paragraph (5) below.

(4) Where a proposed restriction consists of or includes a condition requiring the removal of any person as director, controller or manager, the Bank shall give that person a copy of the notice mentioned in sub-paragraph (1) above, together with a statement of his rights under sub-paragraph (5) below.

(5) An institution which is given a notice under sub-paragraph (1) above and a person who is given a copy under sub-paragraph (4) above may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Bank.

(6) After giving a notice under sub-paragraph (1) above and taking into account any representations made under sub-paragraph (5) above, the Bank shall decide whether—

(a) to proceed with the action proposed in the notice;

(b) to take no further action;

(c) if the proposed action was the imposition of a prohibition, to impose a restriction instead of or in addition to the prohibition; or

(d) if the proposed action was the imposition or variation of a restriction, to impose a different restriction or make a different variation.

(7) The Bank shall give—

(a) the institution;

(b) any such person as is mentioned in sub-paragraph (4) above; and

(c) the relevant supervisory authority in the institution’s home State,

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written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give particulars of the rights conferred by sub-paragraph (11) below and section 27 of the Banking Act⁽¹⁾.

- (8) A notice under sub-paragraph (7) above shall be given—
- (a) within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) above was given; or
 - (b) where a reply of the relevant supervisory authority to a notice under regulation 11(3) of these Regulations was received during the second half of that period, within the period of 14 days beginning with the day on which that reply was so received;

and where such a reply was so received, the Bank shall give notice of that fact to the institution and to any such person as is mentioned in sub-paragraph (4) above.

(9) If no notice under sub-paragraph (7) above is given within the period mentioned in sub-paragraph (8) above, the Bank shall be treated as having at the end of that period given a notice under that sub-paragraph to the effect that no further action is to be taken.

(10) A notice under sub-paragraph (7) above imposing a prohibition or a restriction on an institution or varying a restriction shall, subject to section 27(4) of the Banking Act, have the effect of prohibiting the institution from accepting deposits in the United Kingdom or restricting its activities or varying the restriction in the manner specified in the notice.

(11) Where the decision notified under sub-paragraph (7) above is to impose or vary a restriction otherwise than as stated in the notice given under sub-paragraph (1) above—

- (a) the institution concerned; and
- (b) in the case of a European institution, the relevant supervisory authority,

may, within the period of seven days beginning with the day on which the notice was given under sub-paragraph (7) above, make written representations to the Bank with respect to the restriction or variation and the Bank may, after taking those representations into account, alter the restriction.

(12) The Bank may omit from the copy given to a person under sub-paragraph (4) above and from a notice given to him under sub-paragraph (7) above any matter which does not relate to him.

Notice of prohibition or restriction in urgent cases

3.—(1) No notice need be given in accordance with paragraph 2 above in respect of—

- (a) the imposition of a prohibition;
- (b) the imposition of a restriction; or
- (c) the variation of a restriction otherwise than with the agreement of the institution concerned,

in any case in which the Bank considers that the prohibition or restriction should be imposed, or the variation should be made, as a matter of urgency.

(2) In any such case the Bank may by written notice to the institution impose the prohibition or restriction or make the variation.

(3) Any such notice shall state the reasons for which the Bank has acted and particulars of the rights conferred by sub-paragraph (5) below and by section 27 of the Banking Act.

(4) Where a restriction consists of or includes a condition requiring the removal of any person as director, controller or manager, the Bank shall give that person a copy of the notice mentioned in sub-paragraph (2) above, together with a statement of his rights under sub-paragraph (5) below.

(1) 1987 c. 22.

(5) An institution to which a notice is given under this paragraph and a person who is given a copy of it by virtue of sub-paragraph (4) above may within the period of 14 days beginning with the day on which the notice was given make representations to the Bank.

(6) After giving a notice under sub-paragraph (2) above and taking into account any representations made in accordance with sub-paragraph (5) above, the Bank shall decide whether—

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Bank shall, within the period of 28 days beginning with the day on which the notice was given under sub-paragraph (2) above, give—

- (a) the institution; and
- (b) the relevant supervisory authority in the institution's home State,

written notice of its decision under sub-paragraph (6) above and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(8) Where the notice under sub-paragraph (7) above is of a decision to take the action specified in sub-paragraph (6)(b) above, the notice under sub-paragraph (7) shall have the effect of imposing the prohibition or restriction, or making the variation specified in the notice, with effect from the date on which it is given.

Appeals

4.—(1) Section 27 of the Banking Act (rights of appeal) shall have effect as if—

- (a) the decisions mentioned in subsection (1) included a decision of the Bank to impose a prohibition or impose or vary a restriction; and
- (b) the reference in subsection (4) to the revocation of an institution's authorisation included a reference to the imposition of a prohibition on the institution.

(2) Section 29 of that Act (determination of appeals) shall have effect as if in subsection (2)(a)—

- (a) the reference to revoking an authorisation included a reference to imposing a prohibition; and
- (b) the reference to restricting an authorisation instead included a reference to imposing instead a restriction.

(3) That section shall also have effect as if it included provision that, in the case of any appeal by a European institution, notice of the tribunal's determination, together with a statement of its reasons, shall be given to the relevant supervisory authority in the institution's home State.

Statement of principles

5.—(1) The Bank shall, as soon as practicable after the coming into force of these Regulations, publish in such manner as it thinks appropriate a statement of the principles in accordance with which it is acting or proposing to act in exercising its power to impose a prohibition on or to restrict the listed activities of a European institution.

(2) Subsection (2) of section 16 of the Banking Act (statement of principles) shall apply for the purposes of sub-paragraph (1) above as it applies for the purpose of subsection (1) of that section.