
STATUTORY INSTRUMENTS

2014 No. 2080

The Financial Services and Markets Act 2000
(Excluded Activities and Prohibitions) Order 2014

PART 3

PROHIBITIONS AND EXCEPTIONS

Prohibitions: inter-bank payment systems

13.—(1) A ring-fenced body (“A”) is prohibited from entering into any transaction enabling it to use services provided through an inter-bank payment system unless—

- (a) A is a direct participant in the system, or
- (b) where A is not a direct participant in the system, at least one of the conditions set out in paragraph (2) is satisfied.

(2) The conditions set out in this paragraph are—

- (a) the intermediary through which A accesses the services provided by the inter-bank payment system is another ring-fenced body which—
 - (i) is a direct participant in that payment system, and
 - (ii) is a member of the same group as A;
- (b) A is not eligible to become a direct participant in the inter-bank payment system concerned under the rules governing that payment system;
- (c) should the intermediary through which A accesses the services of the inter-bank payment system concerned cease to be able to provide access to those services, A would be able to make the payments it proposes to make through that inter-bank payment system—
 - (i) through another intermediary, or
 - (ii) through another inter-bank payment system or by other means; or
- (d) the PRA has, following an application made by A in accordance with paragraph (3), granted permission in accordance with paragraph (4) for A to access the services provided by the inter-bank payment system in question through the intermediary proposed by A.

(3) An application by A for permission under paragraph (2)(d) must be made in such manner and accompanied by such information as the PRA may direct.

(4) The PRA may only grant permission under paragraph (2)(d)—

- (a) where it considers that the ring-fenced body needs to be able to access the services provided by the inter-bank payment system in question due to exceptional circumstances; and
- (b) after it has published a statement under paragraph (9).

(5) The PRA shall keep any permission granted under paragraph (2)(d) under review, and shall withdraw that permission if it considers that the exceptional circumstances in question no longer apply, after following the procedure set out in paragraphs (6) and (7).

(6) If the PRA proposes—

- (a) to refuse an application for permission under paragraph (2)(d), or
- (b) to withdraw a permission granted under paragraph (2)(d),

it must give the ring-fenced body a warning notice, stating why it considers that the exceptional circumstances do not apply (if sub-paragraph (a) applies), or no longer apply (if sub-paragraph (b) applies).

(7) If the PRA has decided, after consideration of any representations received in writing from the ring-fenced body in response to the warning notice—

- (a) to refuse an application for permission under paragraph (2)(d), or
- (b) to withdraw permission granted under paragraph (2)(d),

it must give the ring-fenced body a decision notice.

(8) If the PRA decides—

- (a) to refuse an application for permission under paragraph (2)(d), or
- (b) to withdraw permission granted under paragraph (2)(d),

the ring-fenced body may refer the matter to the Tribunal, and Part 9 of the Act applies to any proceedings before the Tribunal in relation to the matter.

(9) The PRA must, before 1st July 2019, publish a statement containing guidance on what is meant by “exceptional circumstances” for the purposes of granting a permission under paragraph (2)(d) in a way appearing to the PRA to be best calculated to bring it to the attention of the public.

(10) Part 26 of the Act applies to any notices given by the PRA under this article.

(11) In this article—

“direct participant” means an institution which is able to provide services for the purpose of enabling the transfer of funds using the inter-bank payment system as a result of an arrangement made between the institution and the operator of the payment system;

“inter-bank payment system” has the meaning given by section 182 of the Banking Act 2009⁽¹⁾, but does not include—

- (a) a payment system the operator of which is—
 - (i) a recognised clearing house within the meaning of section 285(1) of the Act⁽²⁾, or
 - (ii) the operator of a relevant system approved by the Bank of England under regulation 5 of the Uncertificated Securities Regulations 2001⁽³⁾;
- (b) arrangements made by A with another credit institution for correspondent banking;
- (c) arrangements made to facilitate the physical transfer of money between financial institutions, including the Note Circulation Scheme set up by the Bank of England.

Prohibitions: financial institution exposures

14.—(1) A ring-fenced body is prohibited from incurring a financial institution exposure unless at least one of the exemptions set out in paragraphs (2) to (6) or in articles 15 to 19 applies, and, for the avoidance of doubt, provided that one of these exemptions applies in relation to a particular exposure, it is irrelevant whether the conditions for any other exemption are satisfied by that exposure.

⁽¹⁾ 2009 c.1.

⁽²⁾ Section 285 has been amended by the Financial Services Act 2012 (c.21), section 28 and S.I. 2013/504.

⁽³⁾ S.I. 2001/3755. Regulation 5 was amended by S.I. 2013/632.

(2) A ring-fenced body may incur a financial institution exposure if the sole or main purpose of the transaction giving rise to the exposure (by itself or in combination with other transactions) is to limit the extent to which—

- (a) the ring-fenced body,
- (b) any subsidiary undertaking of the ring-fenced body,
- (c) any sponsored structured finance vehicle of the ring-fenced body,
- (d) any conduit vehicle of the ring-fenced body, or
- (e) any combination of the undertakings referred to in sub-paragraphs (a), (b), (c) and (d),

will be adversely affected by any of the factors specified in paragraph (3).

(3) The specified factors are—

- (a) changes in interest rates, exchange rates or commodity prices;
- (b) changes in any index of retail prices or of residential or commercial property prices;
- (c) changes in any index of the price of shares;
- (d) default risk.

(4) A ring-fenced body may incur a financial institution exposure where the relevant financial institution concerned is a member of the same group as the ring-fenced body, provided that—

- (a) the exposure concerned is not prohibited under rules made by the FCA or the PRA under the Act; and
- (b) the exposure arises as a result of—
 - (i) a commercial transaction conducted on arm's length terms, or
 - (ii) a holding of shares or other securities issued by a subsidiary undertaking of the ring-fenced body.

(5) A ring-fenced body may incur a financial institution exposure in the course of buying, selling or subscribing for investments for the purposes of a transaction falling within paragraph (2).

(6) A ring-fenced body may incur a financial institution exposure where—

- (a) the exposure concerned is a payment exposure, and
- (b) the ring-fenced body has complied with any rules made or requirements imposed by the FCA or the PRA under the Act in relation to payment exposures.

Financial institutions exposures: trade finance

15.—(1) A ring-fenced body may incur a financial institution exposure provided that both the following conditions are satisfied—

- (a) the purpose of the transaction giving rise to the exposure is—
 - (i) to provide finance or make a payment in connection with the supply of goods or services by or to a person or an undertaking which is not a relevant financial institution; or
 - (ii) to guarantee or otherwise provide an indemnity or security for the obligations of a customer of the ring-fenced body or a third party in connection with the supply of goods or services by or to a person or an undertaking which is not a relevant financial institution;
- (b) the ring-fenced body enters into an agreement to give effect to the transaction which specifies—
 - (i) the supplies of goods or services to which the transaction relates, and

- (ii) the maximum payments which the ring-fenced body may be required to make under the agreement.
- (2) For the purpose of paragraph (1)(b)(ii), the maximum payments payable under the agreement may be expressed—
- (a) as a defined sum, or
 - (b) as a multiple of an average price of a commodity, where the average price is determined by reference to prices quoted on a specified index of prices for that commodity over a specified period, and for these purposes “specified” means specified in the agreement.

Financial institutions exposure: securitisation and covered bonds

16. A ring-fenced body may incur a financial institution exposure to any sponsored structured finance vehicle of that ring-fenced body.

Financial institution exposures: conduit lending

17.—(1) A ring-fenced body may incur a financial institution exposure to a relevant financial institution (“A”) where—

- (a) the only business of A (apart from incidental activities) is to acquire, hold and manage assets from or for an undertaking which is not a relevant financial institution (“B”); and
- (b) all or part of A’s assets are being used to form the whole or part of the security for a loan or any other finance provided to A by the ring-fenced body or by a conduit vehicle of the ring-fenced body for the benefit of B.

(2) A ring-fenced body (“C”) may incur a financial institution exposure to a relevant financial institution (“D”) where—

- (a) D was established by, or is operated for the benefit of, C; and
- (b) the only business of D (apart from incidental activities) is—
 - (i) to acquire, hold and manage assets from or for C, or
 - (ii) to make loans or provide other finance at the direction or on the advice of C using resources provided by C or raised in the financial markets to entities which are not relevant financial institutions, or to relevant financial institutions which satisfy the conditions in paragraph (1)(a) and (b).

Financial institution exposures: repo transactions

18. A ring-fenced body (“A”) may incur a financial institution exposure to a relevant financial institution (“B”) pursuant to an agreement with B—

- (a) for the transfer of its own assets to B on terms—
 - (i) imposing an obligation on A to buy those assets, or assets of the same description, from B at one or more subsequent times; or
 - (ii) imposing an obligation on B to transfer those assets, or assets of the same description, to A at one or more subsequent times;
- (b) for the transfer of liquid assets from B to A for the purpose of managing A’s liquidity risk on terms—
 - (i) imposing an obligation on B to buy those assets, or assets of the same description from A at one or more subsequent times; or
 - (ii) imposing an obligation on A to transfer those assets, or assets of the same description, to B at one or more subsequent times.

Financial institution exposures: ancillary exposures

19.—(1) Subject to any rules made by the FCA or the PRA under the Act, a ring-fenced body may incur a financial institution exposure where the exposure concerned—

- (a) arises in any of the circumstances set out in paragraphs (2) to (5), or
- (b) is permitted under paragraph (6).

(2) The exposure arises in consequence of the provision—

- (a) by the ring-fenced body of payment services to its customers in the United Kingdom or any other country;
- (b) by the ring-fenced body to the relevant financial institution of—
 - (i) operational services, including in particular information technology, human resources or payment services, or
 - (ii) services as a trustee or agent in connection with a syndicated loan to an undertaking which is not a relevant financial institution; or

(c) to the ring-fenced body of services from a relevant financial institution which are ancillary to or facilitate—

- (i) the divestment or acquisition by the ring-fenced body of one or more of its subsidiaries or other assets,
- (ii) the continuing operation of a business, entity or assets which have been acquired by the ring-fenced body,
- (iii) an issue of securities by the ring-fenced body, by a subsidiary undertaking of the ring-fenced body or by a sponsored structured finance vehicle,
- (iv) the participation by the ring-fenced body in a syndicated loan to an undertaking which is not a relevant financial institution.

(3) The exposure arises where—

- (a) the ring-fenced body is acting as distributor for a relevant financial institution in connection with the distribution of trade finance or other financial products or investments issued by or services provided by the relevant financial institution, or in respect of which that relevant financial institution is acting as distributor,
- (b) the relevant financial institution is acting as a distributor for the ring-fenced body in connection with the provision by the ring-fenced body of trade finance or other financial products or investments issued by or services provided by the ring-fenced body to or for the benefit of an entity which is not a relevant financial institution.

(4) The exposure arises in consequence of guarantees, warranties, indemnities or covenants given to the ring-fenced body by a relevant financial institution as part of a permitted acquisition or disposal—

- (a) by the ring-fenced body, or
- (b) by a subsidiary undertaking of the ring-fenced body,

and for the purposes of this paragraph “permitted” means that the acquisition or disposal is not prohibited under the Act, this Order, or any rules made by the FCA or the PRA under the Act.

(5) The exposure arises in consequence—

- (a) of a breach of a duty owed by the relevant financial institution to the ring-fenced body, or
- (b) of the appointment of the ring-fenced body as executor of the estate of any person or of services provided by the ring-fenced body in that capacity.

(6) A ring-fenced body may incur a financial institution exposure to a global systemically important insurer where the exposure concerned results from the purchase of insurance by the ring-

fenced body for the benefit of the business, directors, officers, employees or other staff of the ring-fenced body or of any subsidiary undertaking of the ring-fenced body.

Prohibitions: Non-EEA branches and subsidiaries

20.—(1) A ring-fenced body must not—

- (a) maintain or establish a branch in any country or territory which is not an EEA member state, or
- (b) subject to paragraph (2), have a participating interest in any undertaking which is incorporated in or formed under the law of a country or territory which is not an EEA member state (a “non-EEA undertaking”).

(2) A ring-fenced body may, subject to rules made by the PRA under the Act, have a participating interest in a non-EEA undertaking which is an ancillary services undertaking within the meaning of article 4.18 of the prudential requirements regulation, if that undertaking does not carry on any activities that would be regulated activities under the Act if carried on in the United Kingdom.

(3) For the purposes of this article—

- (a) “branch” means a place of business that forms a legally dependent part of the ring-fenced body and conducts directly all or some of the operations inherent in its business;
- (b) “participating interest” has the meaning given in section 421A of the Act⁽⁴⁾.

Transitional provision

21. A ring-fenced body does not carry on an excluded activity or contravene a prohibition imposed by this Order by holding or selling any investments on or after 1st January 2019 provided that—

- (a) the investment in question was created or acquired by the ring-fenced body before 1st January 2019, and
- (b) the period remaining until the investment matures is less than two years at 1st January 2019.

(4) Section 421A was inserted into the Financial Services and Markets Act 2000 by [S.I. 2008/948](#).