

## SCHEDULE 5

### Credit agreements

## PART 2

### Procedure and appeals

#### **Interpretation**

**3.** In this Part—

“prohibition” means a credit prohibition imposed under paragraph 1(1) or (2) of Part 1 of this Schedule; and

“restriction” means a restriction imposed under paragraph 2(2) or (3) of Part 1 of this Schedule.

#### **Notice of prohibition or restriction**

**4.—(1)** A prohibition or restriction takes effect—

- (a) immediately, if the relevant notice states that 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) An institution which is aggrieved by the imposition of a prohibition or a restriction by a notice given under this paragraph may refer the matter to the Upper Tribunal.

(3) A prohibition or restriction may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is imposing the prohibition or restriction, reasonably considers that it is necessary for the prohibition or restriction to take effect immediately (or on that date).

(4) The notice must—

- (a) give details of the prohibition or restriction,
- (b) state the FCA’s reasons for the prohibition or restriction,
- (c) inform the institution that it may make representations to the FCA within such period as is specified in the notice (whether or not the institution has referred the matter to the Upper Tribunal),
- (d) inform the institution of when the prohibition or restriction takes effect, and
- (e) inform the institution of its right to refer the matter to the Upper Tribunal.

(5) The FCA may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by the institution, the FCA decides--

- (a) to impose the proposed prohibition or restriction, or
- (b) if the prohibition or restriction has already taken effect, not to withdraw the prohibition or restriction,

it must give the institution a notice.

(7) If, having considered any representations made by the institution, the FCA decides—

- (a) not to impose the proposed prohibition or restriction,
- (b) to impose a different prohibition or restriction, or

*Status: This is the original version (as it was originally made).*

- (c) if the prohibition or restriction has already taken effect, to withdraw the prohibition or restriction,  
it must give the institution a notice.
- (8) A notice under sub-paragraph (6) must inform the institution of its right to refer the matter to the Upper Tribunal.
- (9) A notice under sub-paragraph (7)(b) must comply with sub-paragraph (4).
- (10) If a notice under this paragraph informs an institution of its right to refer a matter to the Upper Tribunal, it must give an indication of the procedure on such a reference.
- (11) For the purposes of sub-paragraph (1)(c)—
  - (a) whether a matter is open to review is to be determined in accordance with section 391(8) of the 2000 Act (publication);
  - (b) the notice to which the matter relates is to be treated as a supervisory notice for the purposes of that section.
- (12) References in this paragraph to the imposition of a restriction include references to the variation of a restriction on the initiative of the FCA.

**Application to withdraw or vary prohibition or restriction**

- 5.—(1) An application under Part 1 of this Schedule 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) At any time after the application is received and before it is determined, the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.
- (4) The FCA may require an applicant to provide information required under this paragraph in such form, or to verify it in such a way, as the FCA may direct.
- (5) If the FCA decides to grant an application, it must give the applicant a notice.
- (6) If the FCA proposes to refuse an application, or to take an action different from or in addition to the one applied for (including a proposal to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a warning notice.
- (7) If the FCA decides to refuse an application, or to take an action different from or in addition to the one applied for (including a decision to impose a restriction when withdrawing a prohibition on an application under paragraph 1(8)(b)), it must give the applicant a decision notice.
- (8) An applicant who is aggrieved by a decision notice given under this paragraph may refer the matter to the Upper Tribunal.

**Notice to the home state competent authority**

- 6. If the FCA sends a notice to an institution under this Schedule which imposes, varies or withdraws a prohibition or restriction, it must send a copy of the notice to the institution's home state competent authority.