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Draft statutory instruments

The following pages contain draft statutory instruments.

The volatility adjustment and supervisory powers

PART 1

Approvals

CHAPTER 1

Procedure

Meaning of “approval” and “protected item” in this Chapter

1. In regulations 2 to 5—

“approval” means an approval granted by the PRA under regulations *[this will be a cross-reference to all the regulations in Chapter 2 of this Part, which is concerned with specific approvals]*; and

“protected item” has the same meaning as in section 413 of FSMA⁽¹⁾.

Applications: process, information and documents

2.—(1) This regulation applies to an application to the PRA for—

- (a) the grant of an approval; or
- (b) a variation of an existing approval.

(2) An application must—

- (a) be made in such manner as the PRA may direct; and
- (b) contain, or be accompanied by, such other information or documents as the PRA may reasonably require.

(3) At any time after receiving the application and before determining it, the PRA may require the applicant to provide it with such further information or documents as it may reasonably require.

(4) The PRA may require any information provided under this regulation to be provided in such form and verified in such manner as it may reasonably require.

(5) The PRA may require any documents provided under this regulation to be produced at such place and authenticated in such manner as it may reasonably require.

(6) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(7) The powers conferred on the PRA by this regulation—

- (a) must be exercised in accordance with any directly application regulation made under the solvency 2 directive; and
- (b) may not be used to require the production of a protected item.

⁽¹⁾ the Financial Services and Markets Act 2000.

(8) Paragraphs (2)(b), (3), (4) and (5) do not apply to an application to the PRA under regulation 6.

Decisions: written notices

3.—(1) On determining an application for the grant of an approval, the PRA must give the applicant a written notice stating—

- (a) its decision; and
- (b) if the approval is granted, the date on which the approval takes effect.

(2) Where the PRA varies or revokes an approval, it must give the undertaking concerned a written notice stating—

- (a) that the approval is varied or revoked; and
- (b) the date on which the variation or revocation takes effect.

(3) Where the PRA gives a direction under regulation 7(2), it must give the undertaking concerned a written notice stating—

- (a) the direction; and
- (b) the date on which the direction takes effect.

(4) Where the PRA varies or revokes a direction under regulation 7(3), it must give the undertaking concerned a written notice stating—

- (a) that the direction is varied or revoked; and
- (b) the date on which the variation or revocation takes effect.

Appeals

4.—(1) Where an applicant is aggrieved at the determination of an application for the grant of an approval, it may refer the matter to the Tribunal⁽²⁾.

(2) Where an undertaking has been granted an approval and is aggrieved at the variation or revocation of the approval, it may refer the matter to the Tribunal⁽³⁾.

(3) Part 9 of FSMA⁽⁴⁾ (hearings and appeals) applies to a reference to the Tribunal⁽⁵⁾ under this regulation as it applies to a reference to the Tribunal under FSMA⁽⁶⁾.

Publication of written notices

5.—(1) Subject to paragraph (2), the PRA must publish a relevant notice in the way appearing to the PRA to be best calculated for bringing it to the attention of—

- (a) persons likely to be affected by it; and
- (b) persons who are, in the opinion of the PRA, likely to make an application for a similar approval.

(2) Paragraph (1) does not apply—

- (a) if the relevant notice relates to an application for an approval which has been refused;
- (b) if the PRA is satisfied that it is inappropriate or unnecessary to publish the relevant notice; or
- (c) to the extent that it is incompatible with an obligation imposed on the PRA by a directly applicable regulation made under the solvency 2 directive.

(3) In deciding whether it is satisfied of the matters mentioned in paragraph (2)(b), the PRA must consider whether—

- (a) publication would prejudice, to an unreasonable degree, the commercial interests of the undertaking concerned or any other member of the undertaking's immediate group;

⁽²⁾ the Upper Tribunal,

⁽³⁾ the Upper Tribunal.

⁽⁴⁾ the Financial Services and Markets Act 2000.

⁽⁵⁾ the Upper Tribunal.

⁽⁶⁾ the Financial Services and Markets Act 2000.

- (b) publication of the relevant notice without mentioning the identity of the undertaking concerned might avoid any adverse consequence of publication.
- (4) In this regulation, “relevant notice” means a written notice—
 - (a) given under regulation 3 in relation to a decision or direction of the PRA; or
 - (b) stating that an event referred to in paragraph (5) has occurred in relation to such a decision.
- (5) The events mentioned in paragraph (4)(b) are—
 - (a) the decision has been referred to the Tribunal;
 - (b) the decision has been suspended by the Tribunal;
 - (c) any suspension of the decision has been revoked by the Tribunal;
 - (d) the reference has been dismissed by the Tribunal.

CHAPTER 2

Specific Approvals

[This chapter will contain all the specific approval powers. For example, the matching adjustment (Article 77b), the volatility adjustment (Article 77d), the classification of funds (Article 95) and full and partial internal models (Articles 112-127). However, only the volatility adjustment is included for the purposes of this consultation.]

Volatility adjustment

6.—(1) An insurance or reinsurance undertaking may apply to the PRA for permission to apply the volatility adjustment to a relevant risk-free interest rate term structure in order to calculate the best estimate referred to in Article 77(2) of the solvency 2 directive.

(2) The PRA must approve an application made under paragraph (1) if the proposed application of the volatility adjustment would satisfy all the conditions specified in paragraph (4).

(3) The PRA must revoke an approval granted under paragraph (2) where the application of the volatility adjustment no longer satisfies a condition specified in paragraph (4).

(4) The conditions referred to in paragraphs (2) and (3) are—

- (a) the volatility adjustment is applied correctly to the relevant risk-free interest rate term structure in order to calculate the best estimate;
- (b) the undertaking does not breach a relevant requirement as a result or consequence of applying the volatility adjustment;
- (c) the application of the volatility adjustment does not create an incentive for the undertaking to engage in pro-cyclical investment behaviour.

(5) In paragraph (4)(b), a “relevant requirement” is—

- (a) a requirement imposed by or under FSMA⁽⁷⁾ in pursuance of the solvency 2 directive; or
- (b) a requirement of a directly applicable regulation made under the solvency 2 directive.

CHAPTER 3

Rule waivers

Modification or waiver of rules

7.—(1) In this regulation, “rule” means a rule made by the PRA under Part 9A of FSMA⁽⁸⁾.

⁽⁷⁾ the Financial Services and Markets Act 2000.

⁽⁸⁾ the Financial Services and Markets Act 2000.

(2) Where the PRA grants an approval to an insurance or reinsurance undertaking under regulation 6⁽⁹⁾, the PRA must direct that any rule to which the undertaking is subject—

- (a) is not to apply to that undertaking; or
- (b) is to apply to that undertaking with such modifications as are specified in the direction;

to the extent necessary to give effect to that approval.

(3) Where the approval referred to in paragraph (2) is varied or revoked, the PRA must vary or revoke the direction referred to in paragraph (2) to the extent necessary to give effect to the variation or revocation of the approval.

(4) This regulation does not restrict what may otherwise be done under section 138A of FSMA⁽¹⁰⁾.

De-authorisation of insurance firms

8. FSMA ⁽¹¹⁾ is amended as follows.

9. In section 55J, after subsection (7), insert—

“(7A) Without prejudice to the generality of subsections (1) and (3), if it appears to the PRA that there has been a serious failure by an authorised person who is an insurance or reinsurance undertaking to comply with requirements imposed by or under this Act in pursuance of the solvency 2 directive, the PRA may exercise its powers under this section to cancel the undertaking’s Part 4A permission.

(7B) Without prejudice to the generality of subsections (1) and (3), if it appears to the PRA that the conditions in section 55KA are met in relation to an authorised person who is an insurance or reinsurance undertaking, the PRA must exercise its powers under this section to cancel the undertaking’s Part 4A permission for effecting and carrying out contracts of insurance as principal, except that it may defer the cancellation of the Part 4A permission for carrying out contracts of insurance as principal for so long as is necessary to protect the interests of the undertaking’s policyholders.”.

10. After section 55K, insert—

“Insurance and reinsurance undertakings: particular conditions that require cancellation

55KA. The conditions referred to in section 55J(7B) are—

- (a) that the insurance or reinsurance undertaking has failed to comply with the minimum capital requirement; and
- (b) that any of the following applies—
 - (i) the insurance or reinsurance undertaking has failed to submit a finance scheme in accordance with requirements imposed by or under this Act in pursuance of Article 139(2) of the solvency 2 directive;
 - (ii) the undertaking has submitted to the PRA a finance scheme that is manifestly inadequate; or
 - (ii) after the PRA has approved a finance scheme submitted to it, the undertaking has failed to comply with the finance scheme within a period of three months beginning with the date when the undertaking first became aware that it had failed to comply with the minimum capital requirement.”.

⁽⁹⁾ there will also be a cross-reference to other specific approval powers, such as the matching adjustment.

⁽¹⁰⁾ the Financial Services and Markets Act 2000.

⁽¹¹⁾ the Financial Services and Markets Act 2000.