

SCHEDULE 2

Amendments of subordinate legislation

The Investment Bank Special Administration Regulations 2011

198. In the Investment Bank Special Administration Regulations 2011⁽¹⁾—

- (a) in regulation 2(1) (interpretation)—
 - (i) in the definition of “Authorities”, for “and the FSA” substitute “, the FCA and the PRA”;
 - (ii) for the definition of “FSA” substitute—
 - ““FCA” means the Financial Conduct Authority;”;
 - (iii) after the definition beginning “Objective 1”, insert—
 - ““PRA” means the Prudential Regulation Authority;
 - “PRA-authorised person” has the meaning given by FSMA;”;
 - (iv) in the definition of “recognised overseas clearing house”, for “the FSA has made a recognition order” substitute “a recognition order has been made”;
 - (v) in the definition of “recognised overseas investment exchange”, for “the FSA has made a recognition order” substitute “a recognition order has been made”;
 - (vi) after the definition of “recognised overseas investment exchange”, insert—
 - ““the regulators” means the FCA and the PRA, and references to a regulator are to be read accordingly;”;
 - (vii) in the definition of “statement of proposals”, for “FSA” substitute “FCA or, where relevant, the PRA”;
- (b) in regulation 3 (overview)—
 - (i) in paragraph (2)(c), for “FSA” substitute “FCA or, where relevant, the PRA”;
 - (ii) in paragraph (3)(b), for “or, as the case may be, the FSA” substitute “, the FCA or, in certain cases, the PRA”;
- (c) in regulation 5 (application)—
 - (i) in paragraph (1)—
 - (aa) at the end of sub-paragraph (g), omit “or”;
 - (bb) for sub-paragraph (h) substitute—
 - “(h) the FCA; or
 - (i) if the investment bank is a PRA-authorised person, the PRA.”;
 - (ii) in paragraph (2), for “FSA”, in each place it appears, substitute “FCA”;
 - (iii) after paragraph (2), insert—
 - “(2A) Where an application is made by a person other than the PRA in relation to an investment bank which is a PRA-authorised person, the PRA is entitled to be heard at—
 - (a) the hearing of the application for special administration; and
 - (b) any other hearing of the court in relation to the investment bank under these Regulations.”;

⁽¹⁾ S.I. 2011/245.

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- (iv) in paragraph (4), for “FSA” substitute “appropriate regulator”;
- (d) in regulation 6(2) (grounds for applying), for “FSA” substitute “FCA or, where relevant, the PRA”;
- (e) in regulation 7 (powers of the court)—
 - (i) in paragraph (1)—
 - (aa) in sub-paragraph (e), for “FSA”, in each place it appears, substitute “FCA”;
 - (bb) after sub-paragraph (e), insert—
 - “(ea) on the application of the PRA, treat the application as an administration application by the PRA under Schedule B1 in accordance with section 359(1A) of FSMA;”;
 - (ii) in paragraph (2)(a), for “or the FSA” substitute “, the FCA or PRA”;
 - (f) in regulation 8 (notice to FSA of preliminary steps to other insolvency proceedings)—
 - (i) for “FSA” in each place it appears (including the heading), substitute “appropriate regulator”;
 - (ii) in paragraph (8), before the definition of “investment bank” insert—
 - ““appropriate regulator” means—
 - (a) in relation to an investment bank which is a PRA-authorised person, the FCA and the PRA (and any references in this regulation to the “appropriate regulator” are to be read as references to each of the FCA and PRA);
 - (b) in any other case, the FCA;”;
 - (g) in regulation 11(8) (objective 1 – distribution of client assets), for “section 139(2) of FSMA (clients’ money)” substitute “section 137B of FSMA (FCA general rules: clients’ money, right to rescind etc.)”;
 - (h) in regulation 12(1)(c) (objective 1 – shortfall in client assets held in omnibus account) for “section 139 of FSMA (clients’ money)” substitute “section 137B of FSMA (FCA general rules: clients’ money, right to rescind etc.)”;
 - (i) in regulation 15 (general powers, duties and effect), in Table 1—
 - (i) in the modification relating to paragraph 46—
 - (aa) in paragraph (c), for “FSA” in each place it appears, substitute “FCA”;
 - (bb) after paragraph (c) insert—
 - “(ca) Where the special administration application relates to a PRA-authorised person and has not been made by the PRA, notice of the administrator’s appointment shall also be sent under sub-paragraph (5) to the PRA.”;
 - (ii) in the comment relating to the first entry for paragraph 49, for “FSA” substitute “FCA or, where relevant, the PRA”;
 - (iii) in the modifications or comments relating to paragraphs 49 (second entry), 50, 51, 54, 56, 57, 74 (but not the modifications in paragraphs (c) and (d)), 75, 84 and 91, for “FSA” substitute “FCA and, where the investment bank concerned is a PRA-authorised person, the PRA”;
 - (iv) in the modification relating to paragraph 53—
 - (aa) in paragraph (b), for “FSA” in each place it appears substitute “FCA”;

(2) Section 139 is repealed, and section 137B is inserted, by the 2012 Act, section 24.

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- (bb) after paragraph (b) insert—
 - “(c) If the investment bank concerned is a PRA-authorised person, and if the PRA has not appointed a person to attend the meeting under sub-paragraph (2), the administrator must also report any decision taken to the PRA.”;
- (v) in the modification relating to paragraph 68, for “FSA” substitute “FCA or, where relevant, the PRA”;
- (vi) in the modifications or comments relating to paragraphs 74 (but not the modifications in paragraph (a)), 81, 87 and 89, for “FSA” substitute “FCA or the PRA”;
- (j) in regulation 16 (FSA direction)—
 - (i) in the heading, for “FSA” substitute “Appropriate regulator”;
 - (ii) in paragraphs (1), (4), (5) and (5), for “FSA” substitute “appropriate regulator”;
 - (iii) in paragraph (2), for “the FSA”, substitute “that regulator”;
 - (iv) after paragraph (4) insert—
 - “(4A) Where the investment bank concerned is a PRA-authorised person, the appropriate regulator must also consult the other regulator before giving such a direction.”;
 - (v) after paragraph (6) insert—
 - “(7) In this regulation, “appropriate regulator” means—
 - (a) in relation to an investment bank which is a PRA-authorised person, the FCA or the PRA;
 - (b) in any other case, the FCA.”;
- (k) in regulation 17 (administrator’s proposals in the event of FSA direction)—
 - (i) in the heading, for “FSA” substitute “Appropriate regulator”;
 - (ii) in paragraph (1)—
 - (aa) for “FSA” in the first place it appears, substitute “FCA or the PRA”;
 - (bb) omit “FSA’s”;
 - (iii) in paragraphs (3), (4) and (8) for “FSA” in each place it appears substitute “the regulator which has given the direction”;
 - (iv) in paragraph (6), omit “FSA’s”;
 - (v) in paragraph (9), for “FSA” substitute “FCA or the PRA”;
- (l) in regulation 18 (revision of proposals in the event of FSA direction)—
 - (i) in the heading, for “FSA” substitute “Appropriate regulator”;
 - (ii) for “the FSA”, in the first place it appears, substitute “the regulator which gave the direction under regulation 16”;
 - (iii) for “the FSA”, in each other place it appears, substitute “that regulator”;
- (m) in regulation 19 (FSA direction withdrawn)—
 - (i) in the heading, for “FSA” substitute “Appropriate regulator”;
 - (ii) in paragraph (1)—
 - (aa) for “FSA” substitute “regulator which gave the direction under regulation 16”;
 - (bb) omit “FSA’s”;

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- (n) in regulation 20(3) (successful rescue), for “FSA” substitute “FCA and, where the investment bank concerned is a PRA-authorized person, the PRA”;
- (o) in regulation 22(3) (special administration order as an alternative order), for “FSA” substitute “FCA or, where the investment bank concerned is a PRA-authorized person, the PRA”;
- (p) in paragraphs 3(b) and 4(3) of Schedule 1, for “FSA” substitute “FCA or the PRA”;
- (q) in Schedule 2 (special administration (bank administration))—
 - (i) in paragraph 3(4) for “FSA” substitute “FCA or the PRA”;
 - (ii) in paragraph 6, in the Table, in the modifications relating to section 145—
 - (aa) for “FSA”, in each place it appears, except in paragraph (l)(iii) (the modification relating to paragraph 74), substitute “FCA and, where the investment bank concerned is a PRA-authorized person, the PRA”;
 - (bb) in the modification in paragraph (l)(iii), for “FSA” in each place it appears substitute “FCA or the PRA”;
 - (iii) in paragraph 8—
 - (aa) in sub-paragraph (1), for “the FSA”—
 - (bb) in the first place it appears, substitute “a regulator”;
 - (cc) in the second place it appears, substitute “that regulator”;
 - (dd) in sub-paragraph (2), for “the FSA have not” substitute “neither regulator has”;
 - (ee) in sub-paragraph (3)—
 - (ff) for “the FSA have” substitute “a regulator has”;
 - (gg) for “or the FSA” substitute “or that regulator”;
 - (hh) in sub-paragraph (5), omit “FSA’s” and “FSA”;
 - (iv) in paragraph 9—
 - (aa) in sub-paragraph (1)(a), for “FSA” substitute “FCA and, where the investment bank concerned is a PRA-authorized person, the PRA”;
 - (bb) in sub-paragraph (2)(a), for “the FSA”—
 - (cc) in the first place it appears, substitute “a regulator”;
 - (dd) in the second place it appears, substitute “that regulator”;
 - (v) in paragraph 10—
 - (aa) in sub-paragraph (1), for “the FSA” substitute “a regulator”;
 - (bb) in sub-paragraph (2)(b), for “FSA” substitute “FCA and, where the investment bank concerned is a PRA-authorized person, the PRA”;
 - (cc) in sub-paragraph (3)(b), for “the FSA” substitute “a regulator”;
 - (dd) in sub-paragraph (4), for “the FSA”—
 - (ee) in the first place it appears, substitute “FCA or, where the investment bank concerned is a PRA-authorized person, the PRA”;
 - (ff) in the second place it appears, substitute “that regulator”;
 - (gg) in sub-paragraph (4), for “the FSA”—
 - (hh) in the first place it appears, substitute “a regulator”;
 - (ii) in the second place it appears, substitute “that regulator”;

- (vi) in paragraph 11—
 - (aa) in sub-paragraph (2), for “the FSA”—
 - (bb) in the first place it appears, substitute “a regulator”;
 - (cc) in the second place it appears, substitute “that regulator”;
 - (dd) in sub-paragraphs (3) and (4), for “the FSA” substitute “FCA or, where relevant, the PRA”;
 - (ee) in sub-paragraph (5), for “the FSA”—
 - (ff) for “the FSA have not” substitute “neither regulator has”;
 - (gg) for “FSA shall” substitute “FCA and, where the investment bank concerned is a PRA-authorized person, the PRA shall”;
- (vii) in the heading before paragraph 12, for “FSA” substitute “regulation 16”;
- (viii) in paragraph 12—
 - (aa) in sub-paragraph (1)(c), for “the FSA has not given a direction” substitute “no direction has been given”;
 - (bb) in sub-paragraph (3), for “FSA” substitute “FCA and, where the investment bank concerned is a PRA-authorized person, the PRA”;
- (ix) in the heading before paragraph 13, for “FSA” substitute “regulation 16”;
- (x) in paragraph 13—
 - (aa) in sub-paragraph (1)(c), for “the FSA” substitute “a regulator”;
 - (bb) in sub-paragraphs (2), (3) and (4) for “the FSA” substitute “that regulator”;
- (xi) in paragraph 15(3), for “FSA” substitute “FCA and, where the investment bank concerned is a PRA-authorized person, the PRA”;
- (r) in Schedule 4 (application of these regulations to partnerships), in paragraph 4, in Table 1, for “FSA”, in each place where it appears, substitute “FCA and, where the investment bank concerned is a PRA-authorized person, the PRA” except as provided in the following—
 - (i) in the modifications relating to paragraph 26 of Schedule 2 to the 1994 Order (paragraph 74 of Schedule B1), in paragraphs (c) and (d)(iii), for “FSA” substitute “FCA or the PRA”;
 - (ii) in the modifications relating to paragraph 29 of Schedule 2 to the 1994 Order (paragraph 87 of Schedule B1) and paragraph 30 of Schedule 2 (paragraph 89 of Schedule B1), for “or the FSA” substitute “, the FCA or the PRA”;
- (s) in Schedule 6 (modifications and consequential amendments), in paragraph 3—
 - (i) in sub-paragraph (2)(b), in the modified section 215(4), for “Authority” substitute “regulators”;
 - (ii) in sub-paragraph (5), in the heading for section 375, for “Authority’s right” substitute “right of FCA and PRA”.