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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014**

**PART 2**

Circumstances in which accepting a deposit is not a core activity

**Circumstances in which accepting a deposit is not a core activity**

**2.—(1)** In relation to a UK deposit-taker, accepting a deposit is not a core activity unless the deposit is a core deposit.

(2) A deposit is a core deposit if it is held with the UK deposit-taker in an EEA account except where one or more of the account holders is—

- (a) a relevant financial institution;
- (b) a qualifying organisation;
- (c) a qualifying group member; or
- (d) an eligible individual.

(3) In this article—

- (a) a reference to an account held with a UK deposit-taker is to an account provided by the institution as part of its activity of accepting deposits;
- (b) an account is an EEA account if it was opened at a branch of the UK deposit-taker located in an EEA state;
- (c) “branch” means a place of business that forms a legally dependent part of the UK deposit-taker and conducts directly all or some of the operations inherent in its business;
- (d) “relevant financial institution” has the meaning given in the excluded activities and prohibitions order.

**Meaning of qualifying organisation**

**3.—(1)** An organisation is a qualifying organisation in relation to a UK deposit-taker if it has given to that UK deposit-taker a declaration in accordance with paragraph (2) (a “qualifying organisation declaration”).

(2) A qualifying organisation declaration must—

- (a) contain a statement signed and dated by or on behalf of the organisation giving the declaration (the “declaring organisation”) confirming that the organisation met the relevant qualifying condition in the relevant financial year; and
- (b) be accompanied by either—
  - (i) a copy of the annual accounts prepared by that organisation for the relevant financial year, or

- (ii) a statement signed and dated by a recognised accountant (a “confirming statement”) in accordance with article 6.
- (3) The relevant qualifying condition is set out—
  - (a) in the case of a body corporate<sup>(1)</sup> or a partnership, in article 4;
  - (b) in the case of an organisation which is not a body corporate or a partnership, in article 5.
- (4) For the purpose of this article, in relation to an organisation giving a qualifying organisation declaration to a UK deposit-taker, the relevant financial year is—
  - (a) the last complete financial year of that organisation that ended before the beginning of the financial year of that organisation in which the qualifying organisation declaration is being given; or
  - (b) if the declaration is being given by that organisation during its first financial year, the period—
    - (i) beginning at midnight at the end of the day before the day on which the organisation was first established, and
    - (ii) ending at midnight on a day which is not more than three months before the date of the qualifying organisation declaration.
- (5) The date of a qualifying organisation declaration is the date given by the organisation making the declaration when that organisation dates the statement referred to in paragraph (2)(a).

#### **Qualifying condition for a body corporate or a partnership**

4.—(1) The qualifying condition for a body corporate or a partnership is that during the relevant financial year that body or partnership met one or more of the criteria in table 1—

**Table 1**

Turnover	Not less than £6.5 million
Balance sheet total	Not less than £3.26 million
Number of employees	Not less than 50

- (2) If the organisation has existed for less than one financial year, the maximum figure for turnover must be proportionately adjusted.
- (3) The balance sheet total means—
  - (a) the aggregate of the amounts shown as assets in the organisation’s balance sheet for the relevant financial year; or
  - (b) where the organisation is giving a qualifying organisation declaration during its first financial year and has not yet prepared a balance sheet, the aggregate of the amounts which would be shown as assets in a balance sheet prepared not more than six weeks before the date of that qualifying organisation declaration.
- (4) The number of employees means the average number of persons employed (whether full-time or part-time) by the organisation in the relevant financial year, determined as follows—
  - (a) find for each month in the relevant financial year the number of persons employed under contracts of service by the organisation (whether throughout the month or not);

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(1) “Body corporate” is defined in section 417(1) of the 2000 Act. There are amendments to that section, but none are relevant to this Order.

- (b) add together the monthly totals; and
- (c) divide by the number of months in the relevant financial year.

(5) In this article “turnover”, in relation to a body corporate or a partnership, means the amounts derived from the provision of goods and services falling within the ordinary activities of the body corporate or partnership (“the gross receipts”), after deduction of—

- (a) trade discounts;
- (b) value added tax; and
- (c) any other taxes based on the gross receipts.

### **Qualifying condition for an organisation which is not a body corporate or a partnership**

5.—(1) The qualifying condition for an organisation which is not a body corporate or a partnership is that the organisation’s gross income for the relevant financial year was more than £6.5 million.

(2) In this article “gross income” means an organisation’s gross income from all sources.

(3) For the purpose of paragraph (2)—

- (a) the gross income of a charity or a CIO which—
  - (i) is not entered in the register of charities kept under section 3 of the Charities and Trustee Investment (Scotland) Act 2005<sup>(2)</sup> (“the Scottish Charity Register”), and
  - (ii) is a member of a group as defined in section 141 of the Charities Act 2011 or paragraph 1(5) of Schedule 6 to the Charities (Northern Ireland) Act 2008<sup>(3)</sup>includes the gross income of any charity or CIO which is a member of the same group, and
- (b) the gross income of a charity or a CIO which—
  - (i) is entered in the Scottish Charity Register, and
  - (ii) has one or more subsidiary undertakings (as defined by regulation 1(2) of the Charities Accounts (Scotland) Regulations 2006)<sup>(4)</sup>,includes the gross income of any of those subsidiary undertakings which are charities or CIOs.

### **Qualifying organisation declaration accompanied by a confirming statement: requirements for confirming statement**

6.—(1) A confirming statement provided in accordance with article 3(2)(b)(ii) to accompany a qualifying organisation declaration (the “qualifying organisation declaration concerned”) must state that the recognised accountant signing the statement has reviewed—

- (a) the annual accounts for the organisation giving the qualifying organisation declaration concerned for the relevant financial year; or,
- (b) such other relevant information as the recognised accountant—
  - (i) is aware of at the time at which that recognised accountant is asked to give the confirming statement, or
  - (ii) requests from the organisation giving the qualifying organisation declaration concerned;

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(2) 2005 (asp 10).

(3) 2008 c. 12 (N.I.).

(4) S.S.I. 2006/218. There are amendments to regulation 1, but they are not relevant to this Order.

and that nothing has come to the recognised accountant's attention which suggests that the qualifying organisation declaration concerned is false.

- (2) For the purpose of paragraph (1)(b) relevant information is information which—
- (a) in the case of a company or a partnership, concerns its turnover, balance sheet total or number of employees for the relevant financial year for the purposes of article 4; and
  - (b) in the case of any other organisation, concerns its gross income for the relevant financial year for the purposes of article 5.

### **Requirements concerning currency when qualifying organisation declaration accompanied by annual accounts**

7.—(1) If an organisation gives to a UK deposit-taker a qualifying organisation declaration which is accompanied by annual accounts in accordance with article 3(2)(b)(i), those annual accounts must be—

- (a) in sterling; or
- (b) accompanied by a set of those annual accounts with figures converted into sterling.

(2) The conversion must be made by reference to an appropriate spot rate of exchange as at the last day of the period in respect of which the annual accounts are made up.

### **Meaning of qualifying group member**

8.—(1) An organisation is a qualifying group member in relation to a UK deposit-taker if that organisation has provided to that UK deposit-taker a declaration in accordance with paragraph (2) (a “qualifying group member declaration”).

- (2) A qualifying group member declaration must—
- (a) contain a statement that the organisation giving the declaration is a member of the same group<sup>(5)</sup> as a qualifying organisation (the “relevant qualifying organisation”); and
  - (b) be either—
    - (i) accompanied by a declaration (a “supporting declaration”) which complies with paragraph (3), or
    - (ii) accepted by the UK deposit-taker to which the declaration is given without being accompanied by a supporting declaration, in accordance with paragraph (4).

(3) In relation to a qualifying group member declaration, a supporting declaration must consist of a qualifying organisation declaration for the relevant qualifying organisation which—

- (a) has previously been provided to a UK deposit-taker (other than the UK deposit-taker to which the qualifying group member declaration is being given); or
- (b) will accompany the qualifying group member declaration when that qualifying group member declaration is provided to the UK deposit-taker concerned.

(4) A UK deposit-taker may accept a qualifying group member declaration without a supporting declaration if, at the date on which it receives that qualifying group member declaration, it has previously received a qualifying organisation declaration for the relevant qualifying organisation.

### **Meaning of eligible individual**

- 9.—(1) An individual is an eligible individual in relation to a UK deposit-taker if—

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(5) “Group” is defined in section 421 of the 2000 Act.

- (a) that individual has provided to that UK deposit-taker a statement complying with paragraph (2) (a “declaration of eligibility”); and
  - (b) that declaration of eligibility is—
    - (i) accompanied by a statement signed and dated by a recognised accountant in accordance with paragraph (5) (a “confirming statement”), or
    - (ii) accepted by the UK deposit-taker to which that declaration is given without a confirming statement, in accordance with paragraph (6).
  - (2) A declaration of eligibility must—
    - (a) confirm that the individual giving the declaration meets the condition in paragraph (3);
    - (b) specify the period in respect of which the individual giving the declaration has calculated that they meet the condition in paragraph (3) (the “eligibility calculation period”); and
    - (c) be signed and dated by the individual giving the declaration.
  - (3) The condition mentioned in paragraph (2)(a) is that on average during the eligibility calculation period the individual giving the declaration of eligibility held assets to the value of not less than £250,000, as calculated in accordance with article 10.
  - (4) An eligibility calculation period specified in a declaration of eligibility in accordance with paragraph (2)(b) must be a period of twelve months ending on a day which falls not more than three months before the date of the declaration of eligibility in which it is specified.
  - (5) A confirming statement given in accordance with paragraph (1)(b)(i) must state that the recognised accountant signing the statement has reviewed—
    - (a) the declaration of eligibility; and
    - (b) any information relating to the assets on which the declaration of eligibility is based—
      - (i) of which the recognised accountant was aware at the time at which the recognised accountant was asked to make the confirming statement, or
      - (ii) which the recognised accountant has subsequently requested from the individual giving the declaration of eligibility,
- and that nothing has come to the recognised accountant’s attention which suggests that the declaration of eligibility is false.
- (6) A UK deposit-taker may accept a declaration of eligibility without a confirming statement if it is satisfied that the declaration of eligibility is true.
  - (7) The date of a declaration of eligibility is the date given by the individual making the declaration when that individual dates the declaration.

### **Declaration of eligibility: determining assets held by an individual**

- 10.**—(1) For the purpose of preparing a declaration of eligibility the assets of an individual (“A”) must be calculated as follows—
- (a) at the end of each quarter in the eligibility calculation period calculate the value of such assets held by A as are necessary to demonstrate that A meets the condition specified in article 9(3) to give quarterly totals; and
  - (b) add the quarterly totals together and divide by four.
- (2) For the purpose of calculating quarterly totals—
- (a) any money on deposit in a joint bank account for which A is one of the account holders shall be treated as held by A alone;
  - (b) if A holds any other asset jointly with one or more other persons, A shall be treated as holding —

- (i) a share of the asset determined in accordance with any agreement between the owners of the asset concerning the shares in which they hold the asset, or
- (ii) if there is no such agreement, a share of the value of the asset which is equal to the total value of the asset concerned divided by the number of joint owners.

(3) In this article “assets”, in relation to an individual, means assets of one of the kinds mentioned in paragraph (5) which are held—

- (a) by that individual as legal and beneficial owner, solely or jointly with others; or
- (b) by another person for the benefit of that individual (solely or jointly with others) under a trust.

(4) For the purpose of paragraph (3)(b) assets which are held in a part of the United Kingdom other than England or Wales or in a country or territory outside the United Kingdom are to be regarded as held under a trust if they are held under an arrangement under the law of that part, country or territory which corresponds to a trust.

(5) The kinds of asset referred to in paragraph (3) are—

- (a) money, including money held on deposit; or
- (b) transferable securities as defined in Article 4.1(18) of the markets in financial instruments directive<sup>(6)</sup>.

(6) In this article “joint bank account” means an account—

- (a) opened in the name of two or more persons; or
- (b) over which two or more persons have rights that are exercised by means of the signature of one or more of those persons.

(7) In this article, a reference to a quarter is a reference to any complete quarter falling within a core deposit calculation period for a UK deposit-taker.

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<sup>(6)</sup> The “markets in financial instruments directive” is defined in section 425(1)(a) of and paragraph 4C of Schedule 3 to the 2000 Act. Paragraph 4C of Schedule 3 was inserted by, and section 425(1)(a) was amended, by [S.I 2006/2975](#).