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STATUTORY INSTRUMENTS

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**2013 No. 440**

**The Financial Services Act 2012 (Transitional Provisions) (Permission and Approval) Order 2013**

**PART 5**

**CHAPTER 1**

**EEA Passport rights (Schedule 3)**

**Firms qualifying for authorisation**

**15.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) an EEA firm<sup>(1)</sup> satisfied the establishment conditions in paragraph 13<sup>(2)</sup> (establishment) of Schedule 3 (EEA passport rights) or the services conditions in paragraph 14<sup>(3)</sup> (services) of that Schedule;
- (b) the EEA firm had not ceased to qualify for authorisation; and
- (c) the Authority had not given a direction under section 34<sup>(4)</sup> (EEA firms) cancelling the EEA firm's authorisation.

(2) Subject to section 34(1), the EEA firm is to be treated as qualifying for authorisation under Schedule 3 for the purpose of section 31<sup>(5)</sup> (authorised persons).

**Ending of authorisation of an EEA firm**

**16.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) an EEA firm made a request to the Authority under section 34(2);
- (b) the Authority had not made a direction pursuant to that request; and
- (c) the request would have been made to the PRA as the appropriate regulator (within the meaning of section 34(2A)) had it been made on the commencement date.

(2) The request is to be treated as if it had been made to the PRA.

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(1) "EEA firm" is defined by section 425 of, and paragraph 5 of Schedule 3 to, FSMA 2000 an investment firm, a credit institution, a financial institution, certain types of insurance or reinsurance undertaking, an insurance intermediary, a UCITS management company or a person authorised under the emission allowance auctioning regulation. Section 425 was amended by [S.I. 2003/2066](#), [2004/3379](#), [2006/2975](#), [2007/126](#) and [3253](#), [2012/1906](#). Paragraph 5 is amended by [S.I. 2003/1473](#) and [2066](#), [2004/3379](#), [2006/3221](#), [2007/126](#) and [3253](#), [2011/1613](#) and [2012/1906](#)

(2) Paragraph 13 was amended by [S.I. 2003/1473](#) and [2066](#), [20007/126](#) and [2012/1906](#) and is further amended by the 2012 Act, Schedule 4, Part 1, paragraph 2.

(3) Paragraph 14 was amended by [S.I. 2003/1473](#) and [2066](#) and [20007/126](#) and is further amended by the 2012 Act, Schedule 4, Part 1, paragraph 3.

(4) Section 34 is amended by the 2012 Act, Schedule 4, Part 3, paragraph 27.

(5) Section 31 is amended by the 2012 Act, section 11.

### **EEA firms seeking to establish a branch**

17.—(1) Paragraph (2) applies in relation to an EEA firm which, before the commencement date—

- (a) was seeking to establish a branch as mentioned in paragraph 12(1) of Schedule 3 (firms qualifying for authorisation); and
- (b) had not satisfied the establishment conditions in paragraph 13 of that Schedule.

(2) Any notice within the meaning of paragraph (3) received by the Authority before the commencement date is to be treated as if it had been received by the PRA if the notice would have been sent to the PRA as the appropriate UK regulator (within the meaning of paragraph 13(4) of that Schedule) had the notice been sent on the commencement date.

(3) The notices are—

- (a) a consent notice within the meaning of paragraph 13(1)(a) of Schedule 3;
- (b) a regulator's notice within the meaning of paragraph 13(1A)(b) of that Schedule.

(4) Any notification within the meaning of paragraph (5) sent by the Authority before the commencement date is to be treated as if it had been sent by the PRA if the consent notice in response to which the notification was sent would have been received by the PRA as the appropriate UK regulator (within the meaning of paragraph 13(4) of Schedule 3) had the relevant notice been received on the commencement date.

(5) The notification is a notification by the Authority of the applicable provisions sent in accordance with paragraph 13(2) of Schedule 3.

### **EEA firms seeking to provide services**

18.—(1) Paragraph (2) applies in relation to an EEA firm which, before the commencement date—

- (a) was seeking to provide services as mentioned in paragraph 12(2) of Schedule 3; and
- (b) had not satisfied the service conditions in paragraph 14 of that Schedule.

(2) Any relevant notice within the meaning of paragraph 14(1) of Schedule 3 received by the Authority before the commencement date is to be treated as if it had been received by the PRA if it would have been sent to the PRA as the appropriate UK regulator (within the meaning of paragraph 14(4) of Schedule 3) had it been sent on the commencement date.

(3) Any notification within the meaning of paragraph (4) sent by the Authority before the commencement date is to be treated as if it had been sent by the PRA if the relevant notice in response to which the notification was sent would have been received by the PRA as the appropriate UK regulator (within the meaning of paragraph 14(4) of Schedule 3) had the relevant notice been received on the commencement date.

(4) The notification is a notification by the Authority of the applicable provisions sent in accordance with paragraph 14(2) of Schedule 3.

### **UK firm seeking to establish a branch**

19.—(1) Paragraphs (2) to (4) apply if—

- (a) before the commencement date, the Authority received a notice of intention within the meaning of paragraph 19(2)(6) of Schedule 3 (establishment); and

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(6) Paragraph 19 was amended by [S.I.s 2003/1473](#) and [2066](#), [2004/3379](#), [2006/3221](#), [2007/126](#) and [3253](#), [2011/1613](#) and [2012/1906](#) and is further amended by the 2012 Act, Schedule 4, Part 1, paragraph 10.

- (b) the notice would have been sent to the PRA as the appropriate UK regulator (within the meaning of paragraph 18A(7) of that Schedule) had the notice been sent on the commencement date.
- (2) The notice of intention is to be treated as if it had been received by the PRA.
- (3) Any consent notice given by the Authority before the commencement date to a host state regulator for the purposes of paragraph 19(4)(a) of Schedule 3 is to be treated as if it had been given by the PRA.
- (4) Any notification of the applicable provisions (as mentioned in paragraph 19(5)(b)(i) of Schedule 3) sent by a home state regulator to the Authority before the commencement date is to be treated as if it had been sent to the PRA.

### **UK firm seeking to provide services**

- 20.**—(1) Paragraphs (2) and (3) apply if—
- (a) before the commencement date, the Authority received a notice of intention within the meaning of paragraph 20(1)(8) of Schedule 3 (services); and
  - (b) the notice would have been sent to the PRA as the appropriate UK regulator (within the meaning of paragraph 18A of that Schedule) had the notice been sent on the commencement date.
- (2) The notice of intention to be treated as if it had been received by the PRA.
- (3) The following are to be treated as if sent, provided or given by the PRA—
- (a) a copy of a notice of intention and any specified information sent by the Authority before the commencement date to a host state regulator for the purposes of paragraph 20(3) of Schedule 3;
  - (b) information about the compensation scheme provided by the Authority before the commencement date to a host state regulator for the purposes of paragraph 20(3ZA) of that Schedule;
  - (c) a consent notice given by the Authority before the commencement date to a host state regulator for the purposes of paragraph 20(3A)(a) of that Schedule;
  - (d) written notice given by the Authority before the commencement date to a firm for the purposes of paragraph 20(3A)(b) of that Schedule;
  - (e) a copy of a notice of intention sent by the Authority before the commencement date to a host state regulator for the purposes of paragraph 20(3B)(a) of that Schedule;
  - (f) written notice given by the Authority before the commencement date to a firm for the purposes of paragraph 20(3B)(b) of that Schedule;
  - (g) any confirmation, description or details sent by the Authority before the commencement date to a host state regulator for the purposes of paragraph 20(3C) of that Schedule;
  - (h) any written notice given by the Authority before the commencement date to a firm for the purposes of paragraph 20(4) of that Schedule.

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(7) Paragraph 18A is inserted by the 2012 Act, Schedule 4, Part 1, paragraph 9.

(8) Paragraph 20 was amended by S.Is. 2001/1376, 2003/2066, 2007/126 and 2011/1613 and 2012/1906 and is further amended by the 2012 Act, Schedule 4, Part 1, paragraph 11.

## CHAPTER 2

### Treaty rights (Schedule 4)

#### Treaty firms qualifying for authorisation

**21.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) a Treaty firm<sup>(9)</sup> satisfied the Treaty conditions set out in paragraph 3(1)<sup>(10)</sup> of that Schedule (exercise of Treaty rights);
- (b) the Treaty firm had not ceased to qualify for authorisation; and
- (c) the Authority had not given a direction under section 35<sup>(11)</sup>(treaty firms) cancelling the Treaty firm’s authorisation.

(2) Subject to section 35(1), the Treaty firm is to be treated as qualifying for authorisation under Schedule 4 for the purpose of section 31.

#### Ending of authorisation of a Treaty firm

**22.**—(1) Paragraph (2) applies if, before the commencement date—

- (a) a Treaty firm made a request to the Authority under section 35(2);
- (b) the Authority had not made a direction pursuant to that request; and
- (c) the request would have been made to the PRA as the appropriate regulator (within the meaning of section 35(2A)) had it been made on the commencement date.

(2) The request is to be treated as if it had been made to the PRA.

#### Exercise of Treaty rights

**23.**—(1) Paragraph (2) applies if—

- (a) a home state regulator had informed the Authority before the commencement date that a firm had home state authorisation for the regulated activity in question, for the purposes of paragraph 3 of Schedule 4; and
- (b) the information would have been sent to the PRA as the appropriate UK regulator within the meaning of paragraph 3(2A) of Schedule 4 had the information been sent on the commencement date.

(2) The information regarding home state authorisation is to be treated as if it had been received by the PRA.

(3) Paragraph (4) applies if—

- (a) notice was given to the Authority, before the commencement date, in accordance with paragraph 5(2)<sup>(12)</sup> of Schedule 4 (notice), and
- (b) the notice would have been given to the PRA as the appropriate UK regulator within the meaning of paragraph 5(2A) of Schedule 4 had the notice been given on the commencement date.

(4) The notice is to be treated as if it had been given to the PRA.

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<sup>(9)</sup> “Treaty firm” is defined by section 425 of, and paragraph 1 of Schedule 4 to, FSMA 2000. Paragraph 1 was amended by the Financial Services Act 2010, section 24 and Schedule 2, Part 1, paragraph 35.

<sup>(10)</sup> Paragraph 3 was amended by [S.I. 2011/1043](#) and is further amended by the 2012 Act, Schedule 4, Part 2, paragraph 23.

<sup>(11)</sup> Section 35 is amended by the 2012 Act, Schedule 4, Part 3, paragraph 28.

<sup>(12)</sup> Paragraph 5 is amended by the 2012 Act, Schedule 4, Part 2, paragraph 26.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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