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STATUTORY INSTRUMENTS

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**2013 No. 441**

**The Financial Services Act 2012 (Transitional Provisions) (Enforcement) Order 2013**

**PART 4**

**Incoming firms: intervention**

**General grounds on which power of intervention is exercisable**

**5.** Information given to the Authority before the commencement date by a person who is, on the commencement date, a PRA-authorized person, is to be treated for the purposes of section 194(1)(b)(1) (general grounds on which power of intervention is exercisable) as if it had been given to the PRA (as well as to the FCA).

**Contravention by relevant EEA firm**

**6.—(1)** Paragraph (2) applies if—

(a) before the commencement date, the Authority—

(i) gave a notice under section 194A(4)(2) (contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive) or section 195A(4)(3) (contravention by relevant EEA firm or EEA UCITS of directive requirements: home state regulator primarily responsible for securing compliance), and

(ii) had not exercised its power of intervention further to that notice in respect of the firm to whom the notice was given; and

(b) the notice under section 194A(4) or section 195A(4) could have been given by the PRA as the appropriate regulator (within the meaning of section 194A(10) or section 195A(12), as the case may be) had the notice had been given on the commencement date.

(2) The following are to be treated as if given by the PRA (as well as by the FCA, in a case in which either the FCA or the PRA could be the appropriate regulator)—

(a) the notice given under section 194A(4) or section 195A(4);

(b) information given before the commencement date by the Authority to the firm's home state regulator, for the purposes of section 194A(5)(c) or section 195A(9), of an intention to exercise a power of intervention.

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(1) Section 194 is amended by the 2012 Act, Schedule 4, Part 4, paragraph 32. There are other amending instruments but none is relevant.

(2) Section 194A was inserted by [S.I. 2007/126](#) and was amended by [S.I. 2012/916](#); it is further amended by the 2012 Act, Schedule 4, Part 4, paragraph 33.

(3) Section 195A was substituted by [2011/1613](#) and amended by [S.I. 2012/916](#); it is further amended by the 2012 Act, Schedule 4, Part 4, paragraph 35.

### **Exercise of power in support of overseas regulator**

7.—(1) Paragraph (2) applies if—

- (a) before the commencement date, the Authority—
  - (i) received a request or a notification within the meaning of section 195(1) or (5)(4) (exercise of power in support of overseas regulator) from an overseas regulator (within the meaning of section 195(3)), and
  - (ii) had not exercised its power of intervention further to that request or notification; and
- (b) the request or notification could have been made to the PRA as the appropriate regulator (within the meaning of section 195(2A)) had the request or notification been made on the commencement date.

(2) The request or notification is to be treated as having been made to the PRA (as well as to the FCA).

### **Power to apply to court for injunction in respect of certain overseas insurance companies**

8.—(1) Paragraph (2) applies if before the commencement date, the Authority—

- (a) had received a request within the meaning of section 198(1)(5) (request in respect of an overseas insurance company); and
- (b) had not made an application to the court within the meaning of section 198(2) pursuant to that request.

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

### **Additional procedure for EEA firms in certain cases**

9.—(1) Paragraphs (2) and (3) apply if—

- (a) before the commencement date—
  - (i) an incoming EEA firm (within the meaning of section 199(1)(6) (additional procedure for EEA firms in certain cases)) had contravened a relevant requirement (within the meaning of section 199(2) as it applied at the time of the contravention), and
  - (ii) the firm had not remedied the contravention; and
- (b) the firm is, on the commencement date, a PRA-authorised person.

(2) The matters specified in paragraph (3) are to be treated—

- (a) subject to paragraph (b), as if they had been made, imposed or given by the PRA as well as by the FCA;
- (b) as if they had not been made, imposed or given by the FCA, if they could not have been made or given on the commencement date by the FCA.

(3) The matters are—

- (a) any requirement imposed under section 199(3);
- (b) any reference made by the Authority under section 199(3A);
- (c) any notice given by the Authority under section 199(4);

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(4) Section 195 was amended by [S.I. 2005/1433](#), [2007/2194](#) and [2011/1043](#) and is further amended by the 2012 Act, Schedule 4, Part 4, paragraph 34.

(5) Section 198 was amended by [S.I. 2004/3379](#) and [2007/3253](#) and is further amended by the 2012 Act, Schedule 4, Part 4, paragraph 38.

(6) Section 199 was amended by [S.I. 2007/126](#) and [3253](#), [2011/1613](#), and [2012/916](#) and [2015](#) and is further amended by the 2012 Act, Schedule 4, Part 4, paragraph 39.

- (d) any information given by the Authority under section 199(7); and
- (e) any information given by the Authority under section 199(9).
- (4) Paragraph (5) applies if, before the commencement date, the Authority—
  - (a) became subject to an obligation under section 199(7) to give information to a firm's home state regulator, ESMA and the Commission but had not discharged that obligation in full;
  - (b) became subject to an obligation under section 199(8) to rescind or vary a requirement but had not rescinded or varied the requirement.
- (5) The obligation is to be discharged by the PRA unless—
  - (a) the firm is not a PRA-authorised person; or
  - (b) the PRA—
    - (i) is satisfied that the power of intervention could have been exercised on the commencement date by the FCA; and
    - (ii) notifies the FCA that the FCA is to discharge the obligation.
- (6) A notice given for the purposes of paragraph (5) must—
  - (a) be in writing;
  - (b) set out details of the obligation to be discharged; and
  - (c) be made within the period of 45 days which begins on the commencement date.

#### **Rescission and variation of requirements**

- 10.**—(1) Paragraph (2) applies if, before the commencement date, the Authority—
- (a) had received an application under section 200(1)(7) (rescission and variation of requirements); and
  - (b) had not—
    - (i) rescinded or varied the requirement, or
    - (ii) given a warning notice that it proposed to refuse the application.
- (2) The application is to be treated as if it had been received by the PRA if the applicant is, on the commencement date, a PRA-authorised person.