Chapter 2

Status of exempt professional firm

2.1 Designated professional bodies and exempt regulated activities

Designated professional bodies

2.1.1 G The Treasury designates professional bodies. Section 326 of the *Act* (Designation of professional bodies) sets out the conditions a body must satisfy before it can be designated.

2.1.2 G The professional bodies that have been designated by the Treasury are listed in ■ PROF 2 Annex 1 G.

Exempt regulated activities

2.1.3 G Section 327 of the *Act* (Exemption from the general prohibition) sets out the conditions which must be met for a *person* to be treated as an *exempt professional firm*, and for the *person's regulated activities* to be treated as *exempt regulated activities*. If the exemption in section 327 does not apply to a *person* and the *person* carries on a *regulated activity*, the *person* may contravene the *general prohibition* and be committing a criminal offence. The *FCA's* approach to the use of its powers in respect of alleged contraventions of the *general prohibition* is explained in ■ EG 12.

2.1.4 G If the *FCA* has made a direction under section 328 of the *Act* (Directions in relation to the general prohibition) (see ■ PROF 3.2) in relation to classes of *person* (or *regulated activity*), then a *person* within the class (or carrying on the *regulated activity*) specified will not be an *exempt professional firm*. In addition, section 329 of the *Act* (Orders in relation to the general prohibition) gives the *FCA* power to make an order disapplying the Part XX exemption from a *person* named in the Order. The *FCA's* general approach to the use of this power is explained in ■ EG 16.

2.1.5 G Section 327(2) provides that an *exempt professional firm* must be a *member* of a profession or be controlled or managed by one or more *members*. The *FCA* considers that "managed" here should be read with its natural meaning. However, it may not be sufficient for a compliance manager to fulfil the role of manager, unless that individual is also able to exercise significant management functions involving overall oversight of the operation/business of the relevant *person*.

2.1.6 G The effect of section 327(7) of the *Act* is that an *exempt professional firm* can carry on *regulated activities* in that capacity or as an *exempt person* but

not otherwise. Therefore, an *exempt professional firm* cannot be an *authorised person*.

2.1.7 G The *Act* does not, however, prevent an *exempt professional firm* from carrying on, in addition to *exempt regulated activities*, any *regulated activities* in relation to which it is an *exempt person*. For example, it is possible for an *exempt professional firm* to carry on *regulated activities* as an *appointed representative*.

2.1.8 G Section 327 also sets out the conditions which determine the particular *regulated activities* an *exempt professional firm* may carry on.

2.1.9 G Section 327(6) of the *Act* gives the Treasury power to make an order specifying activities, or activities relating to specified *investments*, that a *person* cannot carry on as an *exempt professional firm*. The relevant orders are listed in ■ PROF 2 Annex 2 G.

2.1.10 G Section 332(3) of the *Act* requires a *designated professional body* to make rules that define the particular *regulated activities* which its *members* are allowed to carry on. Section 332(4) of the *Act* provides that those rules must be designed to secure that, in providing a particular professional service to a particular *client*, a *member* must carry on only *regulated activities* which arise out of, or are complementary to, the provision by the *member* of that professional service to the *client*.

2.1.11 G The *FCA* is required to approve the rules *designated professional bodies* make under section 332(3) of the *Act*. These rules must be in place in order to allow a *person* to be an *exempt professional firm*. They add to the other conditions within section 327 but do not override them, and a firm may need to refer to section 327 if it is in doubt whether an activity is an *exempt regulated activity*.

2.1.12 G Section 327(3) deals with the treatment by a firm of a pecuniary reward or other advantage received from anyone other than the firm's *client*. For a *regulated activity* to be treated as an *exempt regulated activity*, the firm must account to its *client* for any such receipt. The *FCA* considers this to mean that an *exempt professional firm* must hold to the order of its *client* any such reward or other advantage that it receives.

2.1.13 G Section 327(4) states that the manner of the provision of any service in the course of carrying on *regulated activities* must be incidental to the provision by the *exempt professional firm* of professional services. For this purpose, professional services are services which do not constitute carrying on a *regulated activity*, and the provision of which is supervised and regulated by a *designated professional body*.

2.1.14 G The *FCA* considers that to satisfy the condition in section 327(4) *regulated activities* cannot be a major part of the practice of the firm. The *FCA* also considers the following further factors to be among those that are relevant:

(1) the scale of *regulated activity* in proportion to other professional services provided;

(2) whether and to what extent activities that are *regulated activities* are held out as separate services; and

(3) the impression given of how the firm provides *regulated activities*, for example through its advertising or other promotions of its services.

2.1.15 G The *FCA's* view is that, in the context of section 327 as an exemption from the *general prohibition*, the conditions in section 327 should be interpreted as not imposing any restriction on the *regulated activities* that an *exempt professional firm* may carry on outside the *United Kingdom*. For further guidance on when a *regulated activity* is carried on 'in the *United Kingdom*', *exempt professional firms* are referred to section 418 of the *Act* and the *guidance* in ■ PERG 2.4 (Link between activities and the United Kingdom).

2.1.16 G

(1) An *exempt professional firm* providing a service which is an *investment service* is required to do so in accordance with article 4 of the *MiFID Org Regulation*.

(2) In the *FCA's* view, ■ PROF 2.1.14G is also relevant for these purposes as well as the approach to disclosure described in ■ PROF 4.1.4G, noting that article 4(c) of the *MiFID Org Regulation* imposes a disclosure obligation when an *exempt professional firm* markets or otherwise promotes its ability to provide *investment services*.

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On 28 March 2001 the following professional bodies were designated by the Treasury under section 326(1) of the *Act*:

the Law Society of England & Wales

the Law Society of Scotland

the Law Society of Northern Ireland

the Institute of Chartered Accountants in England and Wales

the Institute of Chartered Accountants of Scotland

the Institute of Chartered Accountants in Ireland

the Association of Chartered Certified Accountants

the Institute of Actuaries.

On 14 January 2005, the Council for Licensed Conveyancers was designated by the Treasury under section 326(1) of the *Act*.

On 10 February 2006, the Royal Institution of Chartered Surveyors was designated by the Treasury under section 326(1) of the *Act*.

Status of exempt professional firm G

Non Exempt activities orders under section 327(6) of the Act (see ■ PROF 2.1.9 G)

As at 31 October 2004, the Treasury had made the following orders under section 327(6):

The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227), as amended by: article 3 of the Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001 (SI 2001/3650); article 7 of the Financial Services and Markets act 2000 (Regulated activities) (Amendment) Order 2002 (SI 2002/682); article 3 of the Financial Services and Markets Act 2000 (Commencement of Mortgage Regulation) (Amendment) Order 2002 (SI 2002/1777); article 24 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 1) Order 2003 (SI 2003/1475), and article 16 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2003 (SI 2003/1476).