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STATUTORY INSTRUMENTS

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**2001 No. 2636**

**The Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001**

**PART II**

**AUTHORISATION AND PERMISSION FOR PERSONS AUTHORISED ETC. UNDER OLD LAW**

**CHAPTER III**

authorisation, permission etc. under schedule 4

*Treaty firms authorised under section 31 of the Financial Services Act*

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**28.**—(1) This article applies to a Treaty firm which immediately before commencement—

- (a) was authorised under section 31 of the Financial Services Act; or
- (b) would have been so authorised but for a direction under section 33 of that Act.

(2) If no such notice as is required by paragraph 3(2) of Schedule 4 has been given as respects the firm in relation to a relevant activity which the firm has received home state authorisation to carry on, the notice is deemed to have been given.

(3) A relevant activity is a regulated activity which, immediately before commencement, the firm was by reason of its authorisation under section 31 of the Financial Services Act (or would have been but for a direction under section 33 of that Act) able to carry on in the United Kingdom without contravening section 3 of that Act.

(4) Any notice of the firm's intention to carry on a regulated activity in the United Kingdom which was given by the firm before commencement—

- (a) under section 32 of the Financial Services Act; or
- (b) in accordance with rules or regulations as mentioned in section 48(2)(a)(ii) of that Act,

is to be treated for the purposes of paragraph 5 of Schedule 4 as having been a written notice of that intention given to the Authority in accordance with that paragraph.

(5) Where the firm was, immediately before commencement, subject to a direction under section 33 of the Financial Services Act, the direction has effect after commencement as if it were a requirement, imposed under section 196, that the firm refrain from carrying on any activity which immediately before commencement it was prevented by the direction from carrying on.

(6) In the case of a limited direction, a requirement having effect by virtue of paragraph (5) is to be taken to be framed so as to expire when (but for the repeal of the Financial Services Act) the direction would have expired.

(7) A limited direction means a direction which was framed so as to expire at the end of a specified period or on the occurrence of a specified event or on compliance with specified conditions.

### **Certificates under section 31(4) of the Financial Services Act**

**29.** Any certificate issued under section 31(4) of the Financial Services Act as respects a particular EEA State shall, if in force immediately before commencement, have effect after commencement as if it were a certificate, issued by the Treasury under paragraph 3(4) of Schedule 4, that the provisions of the law of that State afford equivalent protection (within the meaning of that Schedule) in relation to the activities specified in the certificate.

#### *Treaty firms which are insurance companies*

### **EC companies carrying on reinsurance business through UK branch**

**30.—**(1) This article applies to a Treaty firm which has received home state authorisation to carry on reinsurance business and which immediately before commencement was—

- (a) an EC company within the meaning of the Insurance Companies Act; and
- (b) by reason of compliance with the requirements of paragraph 4 of Schedule 2F to that Act, able to carry on reinsurance business through a branch in the United Kingdom without contravening section 2(1) of that Act.

(2) But this article applies only if the condition in paragraph 3(1)(b) of Schedule 4 is satisfied as respects reinsurance business.

(3) The statement served by the firm as required by paragraph 4(2)(a)(ii) of Schedule 2F to the Insurance Companies Act is to be treated as the notice required by paragraph 3(2) of Schedule 4.

(4) The notice served by the firm as required by paragraph 4(2)(a)(i) of Schedule 2F to the Insurance Companies Act of its intention to carry on reinsurance business is to be treated for the purposes of paragraph 5 of Schedule 4 as having been a notice of that intention given to the Authority in accordance with that paragraph.

### **EC companies carrying on investment business as Treaty firms**

**31.—**(1) This article applies to a Treaty firm which immediately before commencement was—

- (a) an EC company within the meaning of the Insurance Companies Act; and
- (b) an authorised person (within the meaning of the Financial Services Act) by reason of regulation 57 of the 3ID Regulations.

(2) But this article applies only if there is an activity (a “relevant investment activity”)—

- (a) which immediately before commencement the firm was, by reason of that regulation, able to carry on in the United Kingdom without contravening section 3 of the Financial Services Act;
- (b) which it was then carrying on in the United Kingdom, or had previously carried on there;
- (c) which it has received home state authorisation to carry on;
- (d) which it has no EEA right to carry on; and
- (e) as respects which the condition in paragraph 3(1)(b) of Schedule 4 is satisfied.

(3) Where this article applies—

- (a) if no such notice as is required by paragraph 3(2) of Schedule 4 has been given as respects the firm in relation to a relevant investment activity, the notice is deemed to have been given; and

- (b) if no such notice of intention as is required by paragraph 5 of Schedule 4 was given by the firm as respects its intention to carry on a relevant investment activity, the notice is deemed to have been given.

*Status for purposes of Part XIII of the Act*

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**32.** For the avoidance of doubt, where article 28, 30 or 31 applies, the Treaty firm is to be taken to be an “incoming firm” for the purposes of Part XIII of the Act.