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

2.1.9 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 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 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 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 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 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 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 (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*. 