

## Chapter 13A

# Qualifying for authorisation under the Act

## 13A.3 Qualifications for authorisation under the Act

### EEA firms

**13A.3.1** **G** Section 31 of the *Act* (Authorised persons) states that an *EEA firm* is *authorised* for the purposes of the *Act* if it qualifies for *authorisation* under Schedule 3 to the *Act* (EEA Passport Rights). Under paragraph 12 of Part II of that Schedule, an *EEA firm* that is an *EEA pure reinsurer*, or an *EEA firm* that has received authorisation under article 18 of the *auction regulation*, qualifies for *authorisation* without condition. Other than those two types of *EEA firm*, an *EEA firm* qualifies for *authorisation* if:

- (1) it is seeking to establish a *branch* in the *United Kingdom* in exercise of an *EEA right* and satisfies the *establishment conditions* (see ■ SUP 13A.4.1 G and ■ SUP 13A.4.2 G); or
- (2) it is seeking to provide *cross border services* into the *United Kingdom* in exercise of an *EEA right* and satisfies the *service conditions* (see ■ SUP 13A.5.3 G).

**13A.3.1A** **G** If an *EEA MiFID investment firm* seeks to use a *tied agent* established in the *UK*, the *EEA MiFID investment firm* will be treated as if it were seeking to establish a *branch* and must satisfy the *establishment conditions* (see ■ SUP 13A.4.1 G).

**13A.3.1C** **G** (1) Under paragraph 15A(1) of Part II of Schedule 3 to the *Act*, an *EEA UCITS management company* intending to exercise an *EEA right* to provide *collective portfolio management services* for a *UCITS scheme* must, before it undertakes that activity, obtain the *FCA's* approval to manage that *UCITS scheme*. *Firms* should use the application form set out in ■ SUP 13A Annex 3 R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom) for this purpose.

- (1A) If the *firm's* immediate group includes a *PRA-authorised person*, the *FCA* will give the *PRA* a copy of the application referred to in (1).
- (2) If the *FCA* refuses the application referred to in (1), it will give a notice to the *firm* and the *firm's Home State regulator* in accordance with paragraph 15A of Part II of Schedule 3 to the *Act*. Before refusing an application, the *FCA* will consult with the *firm's Home State regulator*.

- (3) Under paragraph 15B(1) of Part II of Schedule 3 to the Act, if any representations are made to the FCA by a firm to which the notice referred to in (2) has been given, the FCA is required to decide whether to withdraw that notice. If the FCA decides not to withdraw that notice it must give the firm a decision notice.
- (4) [deleted]

13A.3.1D G For details of the FCA's procedures for the giving of notices see DEPP 2 (Statutory notices and allocation of decision making).

- 13A.3.2 G
- (1) On qualifying for authorisation, subject to SUP 13A.3.1CG (1), an EEA firm (except for an EEA firm that has received authorisation under article 18 of the auction regulation) will have permission to carry on each permitted activity (see (3) below) which is a regulated activity.
  - (2) [deleted]
  - (3) The permitted activities of an EEA firm (except for an EEA firm that has received authorisation under article 18 of the auction regulation) are those activities identified in the consent notice, regulator's notice or notice of intention. Those permitted activities may include activities that are within the scope of a Single Market Directive but which are unregulated activities in the United Kingdom.
  - (3A) An EEA firm that received authorisation under article 18 of the auction regulation has permission to carry on bidding in emissions auctions.
  - (4) The permission will be treated as being on terms equivalent to those appearing in the consent notice, regulator's notice, notice of intention or (in respect of an EEA firm that has received authorisation under article 18 of the auction regulation) to those appearing in the authorisation granted to the EEA firm under article 18 of the auction regulation. For example, it will reflect any limitations or requirements which are included in the firm's Home State authorisation.

13A.3.3 G An EEA firm which has qualified for authorisation is referred to in the Handbook as an incoming EEA firm.

**Treaty firms**

- 13A.3.4 G Under section 31 of the Act, a Treaty firm is authorised for the purposes of the Act if it qualifies for authorisation under Schedule 4 (Treaty Rights), that is:
- (1) the Treaty firm is seeking to carry on a regulated activity; and
  - (2) the conditions set out in paragraph 3(1) of Schedule 4 to the Act are satisfied.

13A.3.5 G On qualifying for authorisation a Treaty firm will have permission to carry on each permitted activity which is a regulated activity. This permission will be

treated on the same terms as those which apply to the *Treaty firm's Home State authorisation*. For example, it will reflect any limitations or requirements which are included in the *firm's Home State authorisation*.

**13A.3.6** G The effect of paragraph 5(1) and 5(2) of Schedule 4 to the Act is that a *Treaty firm* which qualifies for *authorisation* under that Schedule must, at least seven days before it carries on any of the *regulated activities* covered by its *permission*, give the *appropriate UK regulator* written notice of its intention to do so. Failure to do so is a criminal offence under paragraph 6(1) of that Schedule.

**13A.3.6A** G Where the *PRA* receives a notification, it will give a copy to the *FCA*, and where the *FCA* receives a notification, it will give a copy to the *PRA* where relevant.

**13A.3.7** D

- (1) A written notice from a *Treaty firm* under paragraph 5(2) of Schedule 4 to the Act must be:
  - (a) addressed for the attention of the authorisations team in the *PRA* or *FCA*, as appropriate; and
  - (b) delivered to the *appropriate UK regulator* by one of the methods in (2).
- (2) The written notice may be delivered by:
  - (a) *post* to either of the following addresses, as appropriate:
    - (i) the address for notices to the *FCA*: The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN; or
    - (ii) the address for notices to the *PRA*: The Prudential Regulation Authority, 20 Moorgate, London, EC2R 6DA; or
  - (b) leaving the application at the address in ■ SUP 13A.3.9 G below and obtaining a time-stamped receipt; or
  - (c) hand delivery to a member of the authorisations team in the *PRA* or *FCA*, as appropriate.

**13A.3.8** G The written notice required by paragraph 5(2) of Schedule 4 to the Act should be accompanied by confirmation of the *Treaty firm's* authorisation from the *Home State regulator*, as referred to in paragraph 3(2) of Schedule 4 to the Act.

**13A.3.9** G (1) For further information, a *Treaty firm* should contact the *FCA* and/or *PRA* authorisations teams using the details provided on that regulator's website.

**13A.3.10** G

- (1) The *guidance* in ■ PERG 2 is relevant to *Treaty firms* to help them determine if they require *authorisation* under the Act.
- (2) A *Treaty firm* which qualifies for *authorisation* is referred to in the *Handbook* as an *incoming Treaty firm*.

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UCITS qualifiers

- 13A.3.12 **G** Under Schedule 5 to the Act (Persons concerned in collective investment schemes), a *person* who for the time being is an *operator, trustee or depositary* of a *scheme* which is a *recognised scheme* under section 264 of the Act is an *authorised person*. Such a *person* is referred to in the Handbook as a *UCITS qualifier*.
- 13A.3.13 **G** A *UCITS qualifier* has *permission* under paragraph 2 of Schedule 5 to the Act, to carry on, as far as is appropriate to the capacity in which it acts in relation to the *scheme*:
- (1) the *regulated activity of establishing, operating or winding up a collective investment scheme*; and
  - (2) any activity in connection with, or for the purposes of, the *scheme* (including the *regulated activity of managing a UCITS*).
- 13A.3.14 **G** A *UCITS qualifier* should refer to *COLLG* or to the following sections of *COLL* for requirements for *recognised schemes*:
- (1) ■ *COLL 9.2.1 G* for *guidance* on notifications;
  - (2) ■ *COLL 9.2.1 G* for *guidance* on information and documentation requirements; and
  - (3) ■ *COLL 9.4* which includes *rules* on what facilities need to be maintained.