



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVIII

#### RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

#### CHAPTER I

#### EXEMPTION

##### *General*

#### **285 Exemption for recognised investment exchanges and clearing houses**

- (1) In this Act—
  - (a) “recognised investment exchange” means an investment exchange in relation to which a recognition order is in force; and
  - (b) “recognised clearing house” means a clearing house in relation to which a recognition order is in force.
- (2) A recognised investment exchange is exempt from the general prohibition as respects any regulated activity—
  - (a) which is carried on as a part of the exchange’s business as an investment exchange; or
  - (b) which is carried on for the purposes of, or in connection with, the provision of clearing services by the exchange.
- (3) A recognised clearing house is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house.

## **286 Qualification for recognition**

- (1) The Treasury may make regulations setting out the requirements—
  - (a) which must be satisfied by an investment exchange or clearing house if it is to qualify as a body in respect of which the Authority may make a recognition order under this Part; and
  - (b) which, if a recognition order is made, it must continue to satisfy if it is to remain a recognised body.
- (2) But if regulations contain provision as to the default rules of an investment exchange or clearing house, or as to proceedings taken under such rules by such a body, they require the approval of the Secretary of State.
- (3) “Default rules” means rules of an investment exchange or clearing house which provide for the taking of action in the event of a person’s appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange or clearing house.
- (4) “Market contract” means—
  - (a) a contract to which Part VII of the Companies Act 1989 applies as a result of section 155 of that Act or a contract to which Part V of the Companies (No. 2)(Northern Ireland) Order 1990 applies as a result of Article 80 of that Order; and
  - (b) such other kind of contract as may be prescribed.
- (5) Requirements resulting from this section are referred to in this Part as “recognition requirements”.

### *Applications for recognition*

## **287 Application by an investment exchange**

- (1) Any body corporate or unincorporated association may apply to the Authority for an order declaring it to be a recognised investment exchange for the purposes of this Act.
- (2) The application must be made in such manner as the Authority may direct and must be accompanied by—
  - (a) a copy of the applicant’s rules;
  - (b) a copy of any guidance issued by the applicant;
  - (c) the required particulars; and
  - (d) such other information as the Authority may reasonably require for the purpose of determining the application.
- (3) The required particulars are—
  - (a) particulars of any arrangements which the applicant has made, or proposes to make, for the provision of clearing services in respect of transactions effected on the exchange;
  - (b) if the applicant proposes to provide clearing services in respect of transactions other than those effected on the exchange, particulars of the criteria which the applicant will apply when determining to whom it will provide those services.

## **288 Application by a clearing house**

- (1) Any body corporate or unincorporated association may apply to the Authority for an order declaring it to be a recognised clearing house for the purposes of this Act.
- (2) The application must be made in such manner as the Authority may direct and must be accompanied by—
  - (a) a copy of the applicant’s rules;
  - (b) a copy of any guidance issued by the applicant;
  - (c) the required particulars; and
  - (d) such other information as the Authority may reasonably require for the purpose of determining the application.
- (3) The required particulars are—
  - (a) if the applicant makes, or proposes to make, clearing arrangements with a recognised investment exchange, particulars of those arrangements;
  - (b) if the applicant proposes to provide clearing services for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

## **289 Applications: supplementary**

- (1) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.
- (2) Information which the Authority requires in connection with an application must be provided in such form, or verified in such manner, as the Authority may direct.
- (3) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

## **290 Recognition orders**

- (1) If it appears to the Authority that the applicant satisfies the recognition requirements applicable in its case, the Authority may make a recognition order declaring the applicant to be—
  - (a) a recognised investment exchange, if the application is made under section 287;
  - (b) a recognised clearing house, if it is made under section 288.
- (2) The Treasury’s approval of the making of a recognition order is required under section 307.
- (3) In considering an application, the Authority may have regard to any information which it considers is relevant to the application.
- (4) A recognition order must specify a date on which it is to take effect.
- (5) Section 298 has effect in relation to a decision to refuse to make a recognition order—
  - (a) as it has effect in relation to a decision to revoke such an order; and
  - (b) as if references to a recognised body were references to the applicant.

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- (6) Subsection (5) does not apply in a case in which the Treasury have failed to give their approval under section 307.

## **291 Liability in relation to recognised body’s regulatory functions**

- (1) A recognised body and its officers and staff are not to be liable in damages for anything done or omitted in the discharge of the recognised body’s regulatory functions unless it is shown that the act or omission was in bad faith.
- (2) But subsection (1) does not prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.
- (3) “Regulatory functions” means the functions of the recognised body so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of this Act.

## **292 Overseas investment exchanges and overseas clearing houses**

- (1) An application under section 287 or 288 by an overseas applicant must contain the address of a place in the United Kingdom for the service on the applicant of notices or other documents required or authorised to be served on it under this Act.
- (2) If it appears to the Authority that an overseas applicant satisfies the requirements of subsection (3) it may make a recognition order declaring the applicant to be—
- (a) a recognised investment exchange;
  - (b) a recognised clearing house.
- (3) The requirements are that—
- (a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with recognition requirements;
  - (b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the investment exchange or clearing house;
  - (c) the applicant is able and willing to co-operate with the Authority by the sharing of information and in other ways;
  - (d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the applicant in the country or territory in which the applicant’s head office is situated.
- (4) In considering whether it is satisfied as to the requirements mentioned in subsection (3) (a) and (b), the Authority is to have regard to—
- (a) the relevant law and practice of the country or territory in which the applicant’s head office is situated;
  - (b) the rules and practices of the applicant.
- (5) In relation to an overseas applicant and a body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2)—

- (a) the reference in section 313(2) to recognition requirements is to be read as a reference to matters corresponding to the matters in respect of which provision is made in the recognition requirements;
- (b) sections 296(1) and 297(2) have effect as if the requirements mentioned in section 296(1)(a) and section 297(2)(a) were those of subsection (3)(a), (b), and (c) of this section;
- (c) section 297(2) has effect as if the grounds on which a recognition order may be revoked under that provision included the ground that in the opinion of the Authority arrangements of the kind mentioned in subsection (3)(d) no longer exist.

### *Supervision*

#### **293 Notification requirements**

- (1) The Authority may make rules requiring a recognised body to give it—
  - (a) notice of such events relating to the body as may be specified; and
  - (b) such information in respect of those events as may be specified.
- (2) The rules may also require a recognised body to give the Authority, at such times or in respect of such periods as may be specified, such information relating to the body as may be specified.
- (3) An obligation imposed by the rules extends only to a notice or information which the Authority may reasonably require for the exercise of its functions under this Act.
- (4) The rules may require information to be given in a specified form and to be verified in a specified manner.
- (5) If a recognised body—
  - (a) alters or revokes any of its rules or guidance, or
  - (b) makes new rules or issues new guidance,it must give written notice to the Authority without delay.
- (6) If a recognised investment exchange makes a change—
  - (a) in the arrangements it makes for the provision of clearing services in respect of transactions effected on the exchange, or
  - (b) in the criteria which it applies when determining to whom it will provide clearing services,it must give written notice to the Authority without delay.
- (7) If a recognised clearing house makes a change—
  - (a) in the recognised investment exchanges for whom it provides clearing services, or
  - (b) in the criteria which it applies when determining to whom (other than recognised investment exchanges) it will provide clearing services,it must give written notice to the Authority without delay.
- (8) Subsections (5) to (7) do not apply to an overseas investment exchange or an overseas clearing house.
- (9) “Specified” means specified in the Authority’s rules.

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## **294 Modification or waiver of rules**

- (1) The Authority may, on the application or with the consent of a recognised body, direct that rules made under section 293 or 295—
  - (a) are not to apply to the body; or
  - (b) are to apply to the body with such modifications as may be specified in the direction.
- (2) An application must be made in such manner as the Authority may direct.
- (3) Subsections (4) to (6) apply to a direction given under subsection (1).
- (4) The Authority may not give a direction unless it is satisfied that—
  - (a) compliance by the recognised body with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and
  - (b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.
- (5) A direction may be given subject to conditions.
- (6) The Authority may—
  - (a) revoke a direction; or
  - (b) vary it on the application, or with the consent, of the recognised body to which it relates.

## **295 Notification: overseas investment exchanges and overseas clearing houses**

- (1) At least once a year, every overseas investment exchange and overseas clearing house must provide the Authority with a report.
- (2) The report must contain a statement as to whether any events have occurred which are likely—
  - (a) to affect the Authority’s assessment of whether it is satisfied as to the requirements set out in section 292(3); or
  - (b) to have any effect on competition.
- (3) The report must also contain such information as may be specified in rules made by the Authority.
- (4) The investment exchange or clearing house must provide the Treasury and the Director with a copy of the report.

## **296 Authority’s power to give directions**

- (1) This section applies if it appears to the Authority that a recognised body—
  - (a) has failed, or is likely to fail, to satisfy the recognition requirements; or
  - (b) has failed to comply with any other obligation imposed on it by or under this Act.
- (2) The Authority may direct the body to take specified steps for the purpose of securing the body’s compliance with—
  - (a) the recognition requirements; or
  - (b) any obligation of the kind in question.

- (3) A direction under this section is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (4) The fact that a rule made by a recognised body has been altered in response to a direction given by the Authority does not prevent it from being subsequently altered or revoked by the recognised body.

## **297 Revoking recognition**

- (1) A recognition order may be revoked by an order made by the Authority at the request, or with the consent, of the recognised body concerned.
- (2) If it appears to the Authority that a recognised body—
  - (a) is failing, or has failed, to satisfy the recognition requirements, or
  - (b) is failing, or has failed, to comply with any other obligation imposed on it by or under this Act,it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.
- (3) An order under this section (“a revocation order”) must specify the date on which it is to take effect.
- (4) In the case of a revocation order made under subsection (2), the specified date must not be earlier than the end of the period of three months beginning with the day on which the order is made.
- (5) A revocation order may contain such transitional provisions as the Authority thinks necessary or expedient.

## **298 Directions and revocation: procedure**

- (1) Before giving a direction under section 296, or making a revocation order under section 297(2), the Authority must—
  - (a) give written notice of its intention to do so to the recognised body concerned;
  - (b) take such steps as it considers reasonably practicable to bring the notice to the attention of members (if any) of that body; and
  - (c) publish the notice in such manner as it thinks appropriate for bringing it to the attention of other persons who are, in its opinion, likely to be affected.
- (2) A notice under subsection (1) must—
  - (a) state why the Authority intends to give the direction or make the order; and
  - (b) draw attention to the right to make representations conferred by subsection (3).
- (3) Before the end of the period for making representations—
  - (a) the recognised body,
  - (b) any member of that body, and
  - (c) any other person who is likely to be affected by the proposed direction or revocation order,may make representations to the Authority.
- (4) The period for making representations is—

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- (a) two months beginning—
    - (i) with the date on which the notice is served on the recognised body; or
    - (ii) if later, with the date on which the notice is published; or
  - (b) such longer period as the Authority may allow in the particular case.
- (5) In deciding whether to—
- (a) give a direction, or
  - (b) make a revocation order,
- the Authority must have regard to any representations made in accordance with subsection (3).
- (6) When the Authority has decided whether to give a direction under section 296 or to make the proposed revocation order, it must—
- (a) give the recognised body written notice of its decision; and
  - (b) if it has decided to give a direction or make an order, take such steps as it considers reasonably practicable for bringing its decision to the attention of members of the body or of other persons who are, in the Authority’s opinion, likely to be affected.
- (7) If the Authority considers it essential to do so, it may give a direction under section 296—
- (a) without following the procedure set out in this section; or
  - (b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.
- (8) If the Authority has, in relation to a particular matter, followed the procedure set out in subsections (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under subsection (1).

## **299 Complaints about recognised bodies**

- (1) The Authority must make arrangements for the investigation of any relevant complaint about a recognised body.
- (2) “Relevant complaint” means a complaint which the Authority considers is relevant to the question of whether the body concerned should remain a recognised body.

## **300 Extension of functions of Tribunal**

- (1) If the Treasury are satisfied that the condition mentioned in subsection (2) is satisfied, they may by order confer functions on the Tribunal with respect to disciplinary proceedings—
  - (a) of one or more investment exchanges in relation to which a recognition order under section 290 is in force or of such investment exchanges generally, or
  - (b) of one or more clearing houses in relation to which a recognition order under that section is in force or of such clearing houses generally.
- (2) The condition is that it is desirable to exercise the power conferred under subsection (1) with a view to ensuring that—
  - (a) decisions taken in disciplinary proceedings with respect to which functions are to be conferred on the Tribunal are consistent with—
    - (i) decisions of the Tribunal in cases arising under Part VIII; and



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- (ii) decisions taken in other disciplinary proceedings with respect to which the Tribunal has functions as a result of an order under this section; or
  - (b) the disciplinary proceedings are in accordance with the Convention rights.
- (3) An order under this section may modify or exclude any provision made by or under this Act with respect to proceedings before the Tribunal.
- (4) “Disciplinary proceedings” means proceedings under the rules of an investment exchange or clearing house in relation to market abuse by persons subject to the rules.
- (5) “The Convention rights” has the meaning given in section 1 of the Human Rights Act 1998.

#### *Other matters*

### **301 Supervision of certain contracts**

- (1) The Secretary of State and the Treasury, acting jointly, may by regulations provide for—
  - (a) Part VII of the Companies Act 1989 (financial markets and insolvency), and
  - (b) Part V of the Companies (No. 2)(Northern Ireland) Order 1990,to apply to relevant contracts as it applies to contracts connected with a recognised body.
- (2) “Relevant contracts” means contracts of a prescribed description in relation to which settlement arrangements are provided by a person for the time being included in a list (“the list”) maintained by the Authority for the purposes of this section.
- (3) Regulations may be made under this section only if the Secretary of State and the Treasury are satisfied, having regard to the extent to which the relevant contracts concerned are contracts of a kind dealt in by persons supervised by the Authority, that it is appropriate for the arrangements mentioned in subsection (2) to be supervised by the Authority.
- (4) The approval of the Treasury is required for—
  - (a) the conditions set by the Authority for admission to the list; and
  - (b) the arrangements for admission to, and removal from, the list.
- (5) If the Treasury withdraw an approval given by them under subsection (4), all regulations made under this section and then in force are to be treated as suspended.
- (6) But if—
  - (a) the Authority changes the conditions or arrangements (or both), and
  - (b) the Treasury give a fresh approval under subsection (4),the suspension of the regulations ends on such date as the Treasury may, in giving the fresh approval, specify.
- (7) The Authority must—
  - (a) publish the list as for the time being in force; and
  - (b) provide a certified copy of it to any person who wishes to refer to it in legal proceedings.

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- (8) A certified copy of the list is evidence (or in Scotland sufficient evidence) of the contents of the list.
- (9) A copy of the list which purports to be certified by or on behalf of the Authority is to be taken to have been duly certified unless the contrary is shown.
- (10) Regulations under this section may, in relation to a person included in the list—
  - (a) apply (with such exceptions, additions and modifications as appear to the Secretary of State and the Treasury to be necessary or expedient) such provisions of, or made under, this Act as they consider appropriate;
  - (b) provide for the provisions of Part VII of the Companies Act 1989 and Part V of the Companies (No. 2)(Northern Ireland) Order 1990 to apply (with such exceptions, additions or modifications as appear to the Secretary of State and the Treasury to be necessary or expedient).