STATUTORY INSTRUMENTS

2004 No. 1862

FINANCIAL SERVICES AND MARKETS

The Financial Conglomerates and Other Financial Groups Regulations 2004

Made - - - -	*19th July 2004*
Laid before Parliament	*19th July 2004*
Coming into force - -	*10th August 2004*

Whereas the Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to—

(a) the authorisation of the carrying on of insurance business and the regulation of such business and its conduct(**2**);

(b) credit and financial institutions and the taking of deposits or other repayable funds from the public(**3**);

(c) measures relating to investment firms and to the provision of investment services(**4**); and

(d) collective investment in transferable securities and other liquid assets(**5**);

Now therefore the Treasury, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972 and sections 183(2), 188(2), 417(1)(**6**) and 428(3) of the Financial Services and Markets Act 2000(**7**) hereby make the following Regulations:

(**1**) 1972 c. 68. By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51), regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).
(**2**) S.I. 1997/2781.
(**3**) S.I. 2001/3495.
(**4**) S.I. 1993/2661.
(**5**) S.I. 2002/2840.
(**6**) See the definition of "prescribed".
(**7**) 2000 c. 8.

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Conglomerates and Other Financial Groups Regulations 2004 and come into force on 10th August 2004.

(2) In these Regulations—

"the Act" means the Financial Services and Markets Act 2000;

"the Banking Advisory Committee" means the Committee established pursuant to Article 57 of the banking consolidation directive(**8**);

"the capital adequacy directive" means Council Directive 93/6/EEC of 15th March 1993 on the capital adequacy of investment firms and credit institutions(**9**);

"competent authority", except in the term "third-country competent authority" as defined in regulation 7(1), means any national authority of an EEA State which is empowered by law or regulation to supervise regulated entities, whether on an individual or group-wide basis;

"the conglomerates directive" means Directive 2002/87/EC of the European Parliament and of the Council of 16th December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC, 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council(**10**);

"co-ordinator" means the competent authority which has been appointed, for the purposes of Article 10 of the conglomerates directive, as the competent authority which is responsible for the co-ordination and exercise of supplementary supervision of a financial conglomerate;

"directive requirement" means any procedural requirement (including a requirement to consult or obtain consent) imposed on a competent authority by—

(a) the conglomerates directive; or

(b) Article 56a(**11**) of the banking consolidation directive (as it is applied by that directive or by Article 7(2) of the capital adequacy directive);

"financial conglomerate", except in the term "third-country financial conglomerate" as defined in regulation 7(1), has the meaning given by Article 2(14) of the conglomerates directive;

"the Financial Conglomerates Committee" means the Committee established pursuant to Article 21 of the conglomerates directive;

"relevant competent authorities" means those competent authorities, within the meaning of Article 2(17) of the conglomerates directive, which are, or which have been appointed as, relevant competent authorities in relation to a financial conglomerate;

"regulated entity" means—

(a) a credit institution (within the meaning of the second sub-paragraph of Article 1(1) of the banking consolidation directive);

(b) an insurance undertaking (within the meaning of Article 4 of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning

(**8**) The definition of the banking consolidation directive was inserted in Schedule 3 to the Act by S.I. 2000/2952.
(**9**) OJ No. L141 11.6.1993, p.1; amended by Directives 98/31/EC and 98/33/EC of the European Parliament and Council and the conglomerates directive.
(**10**) OJ No. L35 11.2.2003, p.1; applied to the EEA by Joint Committee Decision 104/2004 of 9th July 2004 (not yet published in the Official Journal of the European Communities).
(**11**) Inserted by Article 29(11) of the conglomerates directive.

life assurance(**12**), Article 6 of the first non-life insurance directive or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council of 27th October 1998 on the supplementary supervision of insurance undertakings in an insurance group);

(c) a management company (within the meaning of Article 1a(2) of the UCITS directive) or an undertaking which is outside the EEA but which would require authorisation in accordance with Article 5 of the UCITS directive if it had its registered office in the EEA; or

(d) an investment firm (within the meaning of Article 1(2) of the investment services directive, including the undertakings referred to in Article 2(4) of the capital adequacy directive); and

"supplementary supervision" means the supervision of a regulated entity to the extent and in the manner prescribed by the conglomerates directive.

(3) Save as is otherwise provided, any expression used in these Regulations which is defined for the purposes of the Act has the meaning given by the Act.

PART 2

Exercise of supplementary supervision of regulated entitiesin a financial conglomerate

Notification of identification as a financial conglomerate and choice of co-ordinator

2.—(1) Where the Authority has become the co-ordinator for a financial conglomerate, it must notify—

(a) the relevant member of that financial conglomerate;

(b) any competent authority which has given EEA authorisation to a regulated entity which is a member of that financial conglomerate;

(c) the competent authorities of the EEA State in which the parent undertaking of that financial conglomerate has its head office, unless that parent undertaking is a regulated entity; and

(d) the Commission,

that the group has been identified as a financial conglomerate for the purposes of Article 4 of the conglomerates directive and that the Authority is the co-ordinator for that financial conglomerate.

(2) Paragraph (3) applies if—

(a) the Authority is a relevant competent authority in relation to a financial conglomerate, and

(b) the Authority, in conjunction with the other relevant competent authorities, proposes to waive the criteria specified in Article 10(2) of the conglomerates directive (selection of the co-ordinator) and appoint a different competent authority as co-ordinator.

(3) Before the Authority, in conjunction with the other relevant competent authorities, waives the criteria specified in Article 10(2) of the conglomerates directive and appoints a different competent authority as co-ordinator, the Authority must, where there is a directive requirement to do so, give the financial conglomerate an opportunity to make representations.

(4) In this regulation, "the relevant member" of a financial conglomerate is—

(a) the parent undertaking at the head of the financial conglomerate; or

(b) where there is no parent undertaking at the head of the financial conglomerate, the regulated entity which—

(**12**) OJ No. L345 19.12.2002, p.1.

(i) is in the most important financial sector (within the meaning given by Article 3(2) of the conglomerates directive); and

(ii) has the largest balance-sheet total in that sector.

Exercise of functions under Part IV of the Act for the purposes of carrying on supplementary supervision

3.—(1) This regulation applies if the Authority is considering varying the Part IV permission of any person ("A") where—

(a) A is a member of a financial conglomerate; and

(b) the Authority is acting in the course of carrying on supplementary supervision for the purposes of any provision (other than Article 11, 12, 16, 17 or 18(3)) of the conglomerates directive.

(2) Section 49(2) of the Act (obligation to consult home state regulators of connected persons) does not apply.

(3) Before varying the Part IV permission of A, the Authority must, where there is a directive requirement to do so—

(a) consult the relevant competent authorities in relation to the financial conglomerate of which A is a member;

(b) obtain the consent of those competent authorities; and

(c) consult the financial conglomerate of which A is a member.

Exercise of functions under section 148 of the Act for the purposes of carrying on supplementary supervision

4.—(1) Paragraph (2) applies if the Authority is considering exercising any of the powers conferred on it by section 148 of the Act (modification or waiver of rules) in the course of carrying on supplementary supervision of a financial conglomerate for the purposes of any provision (other than Article 11, 12, 16, 17 or 18(3)) of the conglomerates directive.

(2) Before the Authority exercises such a power in relation to an authorised person who is a member of a financial conglomerate, the Authority must, where there is a directive requirement to do so—

(a) consult the relevant competent authorities in relation to the financial conglomerate of which that person is a member;

(b) obtain the consent of those competent authorities; and

(c) consult the financial conglomerate of which that person is a member.

Consultation in the case of major sanctions or exceptional measures

5.—(1) Before the Authority—

(a) varies the Part IV permission of a member of a financial conglomerate ("D");

(b) publishes a statement under section 205 of the Act (public censure) that it considers that D has contravened a requirement imposed on him by or under the Act;

(c) imposes a penalty on D in respect of such a contravention under section 206 of the Act (financial penalties); or

(d) exercises any of its powers (other than its powers under section 381, 383 or 384(2)) under Part XXV of the Act (injunctions and restitution) in relation to D,

it must, if it considers that the action constitutes a major sanction or an exceptional measure and is of importance for the supervisory tasks of the competent authority of any regulated entity which is a member of the same financial conglomerate as D, consult that competent authority.

(2) But paragraph (1) does not apply—

(a) where the Authority considers that there is an urgent need to act;

(b) where the Authority considers that such consultation may jeopardise the effectiveness of the action mentioned in paragraph (1); or

(c) where regulation 3, 8(3) or (4), 9 or 10 applies.

(3) Where paragraph (1) does not apply by virtue of paragraph (2)(a) or (b), the Authority must, as soon as is reasonably practicable, inform the competent authority referred to in paragraph (1) of the action that it has taken.

Authority functions and service of notifications

6.—(1) Any function carried out by the Authority (whether in the capacity of a co-ordinator, a relevant competent authority or otherwise) for the purposes of the conglomerates directive (including a function conferred by these Regulations) is to be treated as a function conferred on the Authority by a provision of the Act.

(2) The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(**13**) apply to any notifications given under regulation 2(1)(a) as they apply to any notice, direction or document of any kind given under the Act.

PART 3

Supplementary supervision of third-country financial conglomeratesand third-country groups

Supervision of third-country financial conglomerates and third-country groups—interpretation

7.—(1) For the purposes of this Part—

"asset management company" means—

(a) any EEA firm falling within paragraph 5(f) of Schedule 3 to the Act(**14**); or

(b) any UK firm whose EEA right derives from the UCITS directive;

"credit institution" means—

(a) any EEA firm falling within paragraph 5(b) of Schedule 3 to the Act; or

(b) any UK firm whose EEA right derives from the banking consolidation directive;

"investment firm" means—

(a) any EEA firm falling within paragraph 5(a) of Schedule 3 to the Act; or

(b) any UK firm whose EEA right derives from the investment services directive;

"third-country competent authority" means the authority of a country or territory which is not an EEA State which is empowered by law or regulation to supervise (whether on an individual or group-wide basis) regulated entities;

(**13**) S.I. 2001/1420.
(**14**) Paragraph 5 of Schedule 3 was amended by S.I. 2000/2952, S.I. 2003/1473 and S.I. 2003/2066.

"third-country financial conglomerate" means a group—

(a) which, subject to Article 3 of the conglomerates directive, meets the conditions in Article 2(14) of that directive, and

(b) in which the parent undertaking has its head office outside the EEA;

"third-country group" means a group of which the parent undertaking has its head office outside the EEA.

(2) For the purposes of this Part a regulated entity is in a third-country group if the parent undertaking of the group in which it is a member has its head office outside the EEA.

Supervision of third-country financial conglomerates

8.—(1) Where the Authority is, for the purposes of Article 18(1) of the conglomerates directive (parent undertakings outside the Community), verifying whether the regulated entities in a third-country financial conglomerate are subject to supervision, by a third-country competent authority, which is equivalent to that provided for by the provisions of the conglomerates directive, it must, where there is a directive requirement to do so, before completing this verification—

(a) consult the other relevant competent authorities in relation to that third-county financial conglomerate;

(b) consult the Financial Conglomerates Committee for the purposes of obtaining any applicable guidance prepared by that Committee in accordance with Article 21(5) of the conglomerates directive (guidance on whether third-country competent authorities are likely to achieve objectives of supplementary supervision); and

(c) take into account any such guidance.

(2) Paragraphs (3) and (4) apply if the Authority, for the purposes of Article 18(3) of the conglomerates directive (application of other methods for the purposes of ensuring appropriate supplementary supervision of the regulated entities in a third-country financial conglomerate), exercises its powers to—

(a) vary the Part IV permission of a regulated entity in a third-country financial conglomerate;

(b) disapply from, or apply in a modified form to, such a regulated entity the rules specified in subsection (1) of section 148 of the Act (modification or waiver of rules) in accordance with that section;

(c) impose conditions under section 185 of the Act (conditions attached to approval of change of control) on a person who is, or proposes to be, a controller of such a regulated entity; or

(d) give a notice under section 186 or 187 of the Act (notice of objection to acquisition of, or existing, control) to a person who is, or proposes to be, a controller of such a regulated entity.

(3) Where there is a directive requirement to do so, the Authority must before taking the action specified in paragraph (2)—

(a) where the Authority is the co-ordinator, consult the relevant competent authorities in relation to that third-country financial conglomerate; or

(b) where the Authority is not the co-ordinator, obtain the consent of the co-ordinator for that third-country financial conglomerate to take that action.

(4) If the Authority decides to take that action, it must, where there is a directive requirement to do so, notify—

(a) the competent authority of each regulated entity in that third-country financial conglomerate, and

(b) the Commission,

that it has done so.

Supervision of third-country banking groups

9.—(1) Where the Authority is, for the purposes of Article 56a of the banking consolidation directive (third-country parent undertakings), verifying whether a credit institution in a third-country group is subject to supervision by a third-country competent authority which is equivalent to that governed by the principles laid down in Article 52 of that directive (supervision on a consolidated basis of credit institutions), it must, where there is a directive requirement to do so, before completing this verification—

(a) consult any competent authority which supervises a credit institution in that third-country group;

(b) consult the Banking Advisory Committee for the purposes of obtaining any applicable guidance prepared by that Committee in accordance with the second paragraph of Article 56a of that directive; and

(c) take into account any such guidance.

(2) Paragraphs (3) and (4) apply if the Authority exercises, for the purposes of the fifth paragraph of Article 56a of the banking consolidation directive, its powers to—

(a) vary the Part IV permission of a credit institution in a third-country group;

(b) disapply from, or apply in modified form to, such a credit institution, the rules specified in subsection (1) of section 148 of the Act in accordance with that section;

(c) impose conditions under section 185 of the Act on a person who is, or proposes to be, a controller of such a credit institution; or

(d) give a notice under section 186 or 187 of the Act to a person who is, or proposes to be, a controller of such a credit institution.

(3) Where there is a directive requirement to do so, the Authority must before exercising its powers to take the action specified in paragraph (2)—

(a) where the Authority would be responsible for supervising that third-country group for the purposes of Article 53 of the banking consolidation directive (competent authorities responsible for exercising supervision on a consolidated basis) if alternative techniques were not applied, consult the competent authorities which are involved in the supervision of any of the credit institutions in that third-country group; and

(b) where the Authority would not be so responsible, obtain the consent of the competent authority which would be responsible for supervising that third-country group for the purposes of Article 53 of the banking consolidation directive if alternative techniques were not applied.

(4) If the Authority decides to take that action, it must, where there is a directive requirement to do so, notify—

(a) any competent authority which supervises a credit institution in that third-country group; and

(b) the Commission,

that it has done so.

(5) Where the Authority has, for the purposes of Article 30 of the conglomerates directive (asset management companies), included an asset management company in the scope of supervision of a credit institution in a third-country group, each reference in this regulation to a "credit institution" is to be treated as including a reference to that asset management company.

Supervision of third-country groups subject to the capital adequacy directive

10.—(1) Paragraph (2) applies if—

(a) the Authority is, for the purposes of Article 56a of the banking consolidation directive, as applied by Article 7(2) of the capital adequacy directive (groups containing both credit institutions and investment firms), verifying whether a credit institution or an investment firm in a third-country group is subject to supervision by a third-country competent authority which is equivalent to that governed by the principles laid down in Article 7(2) of the capital adequacy directive; or

(b) the Authority is, for the purposes of Article 56a of the banking consolidation directive, as applied by Article 7(3) of the capital adequacy directive (groups containing investment firms but no credit institutions), verifying whether an investment firm in a third-country group is subject to supervision, by a third-country competent authority, which is equivalent to that governed by the principles laid down in Article 7(3) of the capital adequacy directive.

(2) The Authority must, where there is a directive requirement to do so, before completing the verification referred to in paragraph (1)—

(a) consult any competent authority which supervises an investment firm or a credit institution (if any) in that third-country group;

(b) consult the Banking Advisory Committee for the purposes of obtaining any applicable guidance prepared by that Committee in accordance with the second paragraph of Article 56a of that directive; and

(c) take into account any such guidance.

(3) Paragraphs (4) and (5) apply if the Authority exercises, for the purposes of the fifth paragraph of Article 56a of the banking consolidation directive as applied by Article 7 of the capital adequacy directive, its powers to—

(a) vary the Part IV permission of an investment firm or credit institution in a third-country group;

(b) disapply from or apply in modified form to, such an investment firm or credit institution the rules specified in subsection (1) of section 148 of the Act in accordance with that section;

(c) impose conditions under section 185 of the Act on a person who is, or proposes to be, a controller of such an investment firm or credit institution; or

(d) give a notice under section 186 or 187 of the Act to a person who is, or proposes to be, a controller of such an investment firm or credit institution.

(4) Where there is a directive requirement to do so, the Authority must, before exercising its powers to take the action specified in paragraph (3)—

(a) where the Authority would be responsible for supervision of that third-country group for the purposes of Article 53 of the banking consolidation directive, as applied by article 7 of the capital adequacy directive, if alternative techniques were not applied, consult the competent authorities which are involved in the supervision of any of the investment firms or credit institutions (if any) in that third-country group; and

(b) where the Authority would not be so responsible, obtain the consent of the competent authority which would be responsible for supervision of that third-country group for the purposes of Article 53 of the banking consolidation directive, as applied by Article 7 of the capital adequacy directive, if alternative techniques were not applied.

(5) If the Authority decides to take that action, it must, where there is a directive requirement to do so, notify—

(a) any competent authority which supervises an investment firm or a credit institution (if any) in that third-country group; and

(b) the Commission,

that it has done so.

(6) If the Authority has, for the purposes of Article 30 of the conglomerates directive, included an asset management company in the scope of supervision of—

(a) credit institutions and investment firms in a third-country group; or

(b) investment firms in a third-country group,

each reference in this regulation to an "investment firm" is to be treated as including a reference to that asset management company.

PART 4

Provisions relating to information

Disclosure of confidential information

11. In regulation 2 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**15**) (interpretation)—

(a) after the definition of "Authority worker", insert—

> ""conglomerates directive" means Directive 2002/87/EC of the European Parliament and of the Council of 16th December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC, 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council(**16**);";

(b) in the definition of "single market directive information", after "single market directives", insert "or the conglomerates directive".

Obtaining information—avoidance of duplication of reporting

12.—(1) Paragraph (2) applies if the Authority is the co-ordinator in relation to any financial conglomerate.

(2) If the Authority requires any disclosed information in connection with its functions as the co-ordinator, it must so far as possible obtain that information by requesting the competent authority which holds that information to disclose it to the Authority.

(3) In this regulation, "disclosed information" means information which a regulated entity in a financial conglomerate has disclosed to its competent authority.

(**15**) S.I. 2001/2188; regulation 2 was amended by S.I. 2001/3624, S.I. 2003/693, S.I. 2003/1473 and S.I. 2003/2066.
(**16**) OJ No. L35 11.2.2003, p.1; applied to the EEA by Joint Committee Decision 104/2004 of 9th July 2004 (not yet published in the Official Journal of the European Communities).

PART 5

Miscellaneous

Consultation on change of control

13.—(1) The Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001(**17**) are amended as follows.

(2) In regulation 2 (definitions), after the definition of "EEA credit institution", insert—

""EEA insurance undertaking" means an EEA firm falling within paragraph 5(d) of Schedule 3 to the Act;".

(3) In regulation 3, for "paragraph (1), (2) or (3)", substitute "paragraph (1), (2), (3) or (4)".

(4) In regulation 4(a), for "paragraph (1), (2) or (3)", substitute "paragraph (1), (2), (3) or (4)".

(5) In regulation 5—

(a) in paragraph (1), for sub-paragraph (c), substitute—

"(c) the acquirer is any of the following—

(i) an EEA investment firm;

(ii) an EEA credit institution;

(iii) an EEA insurance undertaking; or

(iv) the parent undertaking of an EEA firm of a kind specified by paragraph (i), (ii) or (iii);";

(b) in paragraph (2), for sub-paragraph (c), substitute—

"(c) the acquirer is any of the following—

(i) an EEA investment firm;

(ii) an EEA credit institution;

(iii) an EEA insurance undertaking; or

(iv) the parent undertaking of an EEA firm of a kind specified by paragraph (i), (ii) or (iii);";

(c) in paragraph (3), for sub-paragraph (c), substitute—

"(c) the acquirer is any of the following—

(i) an EEA investment firm;

(ii) an EEA credit institution;

(iii) an EEA insurance undertaking;

(iv) an EEA management company; or

(v) the parent undertaking of an EEA firm of a kind specified by paragraph (i), (ii), (iii) or (iv);";

(d) after paragraph (3), insert—

"(4) This paragraph applies where—

(a) a person ("the acquirer") proposes to acquire or has acquired control, an additional kind of control or an increase in a relevant kind of control over a UK authorised person in circumstances falling within section 178(1) or (2) of the Act;

(**17**) S.I. 2001/2509; amended by S.I. 2003/2066, regulation 6.

(b) that UK authorised person has permission to effect or carry on contracts of insurance (within the meaning of the Regulated Activities Order);

(c) the acquirer is any of the following—

(i) an EEA investment firm;

(ii) an EEA credit institution;

(iii) an EEA insurance undertaking; or

(iv) the parent undertaking of an EEA firm of a kind specified by paragraph (i), (ii) or (iii); and

(d) as a result of the acquisition or proposed acquisition, the acquirer is or would become a parent undertaking of the UK authorised person.".

(6) For regulation 6, substitute—

"**6.** The requirement specified by this regulation is that the Authority must, as the case may be, consult the home state regulator of any EEA firm that is mentioned in paragraph (1)(c), (2)(c), (3)(c) or (4)(c) of regulation 5.".

(7) After regulation 6, insert—

"**7.**—(1) Where paragraph (3) applies, the requirement specified by paragraph (5) is prescribed for the purposes of section 183(2) of the Act and so must be complied with by the Authority before it determines whether to approve the change of control or give a warning notice under section 183(3) or 185(3) of the Act.

(2) Where paragraph (4) applies, the requirement specified by paragraph (5) is prescribed for the purposes of section 188(2) of the Act and so must be complied with by the Authority before it gives a warning notice under section 188(1) of the Act.

(3) This paragraph applies where—

(a) a person ("the acquirer") proposes to acquire or has acquired control, an additional kind of control or an increase in a relevant kind of control over a UK authorised person in circumstances falling within section 178(1) or (2) of the Act;

(b) that UK authorised person has an EEA right to carry on an activity in an EEA State other than the United Kingdom which derives from any of—

(i) the insurance directives;

(ii) the banking consolidation directive;

(iii) the investment services directive; or

(iv) the UCITS directive; and

(c) that UK authorised person is a member of a financial conglomerate (within the meaning of article 2(14) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 93/6/EEC, 93/22/EEC and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council).

(4) This paragraph applies where—

(a) a circumstance has arisen in respect of which the Authority may give a decision notice to a UK authorised person under section 187 of the Act;

(b) that UK authorised person has an EEA right to carry on activity in an EEA State other than the United Kingdom which derives from any of—

(i) the insurance directives;

(ii) the banking consolidation directive;

(iii) the investment services directive; or

(iv) the UCITS directive;

(c) that UK authorised person is a member of a financial conglomerate (within the meaning of article 2(14) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 93/6/EEC, 93/22/EEC and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council).

(5) The requirement specified by this paragraph is that the Authority must, where it considers that the action it proposes to take—

(a) constitutes a major sanction or an exceptional measure; and

(b) is of importance for the supervisory tasks of the home state regulator of any EEA firm that is a member of a financial conglomerate and is—

(i) an EEA investment firm;

(ii) an EEA credit institution; or

(iii) an EEA insurance undertaking,

consult that home state regulator.

(6) But paragraph (5) does not apply where the Authority—

(a) considers that there is an urgent need to act;

(b) considers that such consultation may jeopardise the effectiveness of any action to be taken by it; or

(c) has already consulted that home state regulator regarding that matter.

(7) Where paragraph (5) does not apply by virtue of paragraph (6)(a) or (b), the Authority must inform the home state regulator in question as soon as is reasonably practicable.".

References to existing directives

14.—(1) In section 119(2B) of the Building Societies Act 1986 (definition of "Banking Consolidation Directive")(**18**), at the end insert "(as last amended by Directive 2002/87/EC of the European Parliament and of the Council)".

(2) In section 17(7C) of the Bank of England Act 1998 (power to obtain information)(**19**), after "Council Directive 2000/12/EC of the European Parliament and the Council", insert "(as last amended by Directive 2002/87/EC of the European Parliament and of the Council)".

(3) In article 2(3) of the Cash Ratio Deposits (Eligible Liabilities) Order 1998 (interpretation)(**20**), at the end, insert "(as last amended by Directive 2002/87/EC of the European Parliament and of the Council)".

(4) In the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(**21**), in regulation 2(5)(e)(i) and regulation 3(3)(e)(i) (content of consent and regulator's notice), after

(**18**) 1986 c. 53; definition inserted by S.I. 1996/1669, substituted by S.I. 2000/2952.
(**19**) 1998 c. 11; section 17(7C) was inserted by S.I. 2001/3649.
(**20**) S.I. 1998/1130; article 2(3) was amended by S.I. 2000/2952.
(**21**) S.I. 2001/2511; regulation 2 was amended by S.I. 2002/765 and S.I. 2003/2066 and regulation 3 was amended by S.I. 2003/1473 and S.I. 2003/2066.

"first non-life insurance directive", insert "(as last amended by Directive 2002/87/EC of the European Parliament and of the Council)".

Extension of power to vary Part IV permissions

15.—(1) Subject to paragraph (2), the Authority may exercise its own-initiative power (within the meaning of section 45 of the Act (variation etc. on the Authority's own initiative)) in relation to an authorised person, if it appears to it that it is desirable to do so for the purpose of—

(a) carrying out supplementary supervision in accordance with the conglomerates directive;

(b) acting in accordance with any of Articles 54, 55a or 56 of the banking consolidation directive (as they are applied by that directive or by article 7(2) or (3) of the capital adequacy directive); or

(c) acting in accordance with Article 8(2) or Annex I.1.B of Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group.

(2) The Authority may exercise its own-initiative power, for the purposes set out in paragraph (1), to vary a Part IV permission in any of the ways mentioned in section 44(1) of the Act (variation etc. at request of authorised person); and this extends to including any provision in the permission as varied that could be included if a fresh permission were given in response to an application under section 40 of the Act (application for permission).

(3) The duty imposed by subsection (2) of section 41 of the Act (the threshold conditions) does not prevent the Authority from exercising its own-initiative power for the purposes set out in paragraph (1).

John Heppell,
Nick Ainger
Two of the Lords Commissioners of Her Majesty's Treasury

19th July 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in part, Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC, 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council ("the conglomerates directive") (OJNo. L 35 11.2.2003 p.1).

A Transposition Table setting out how the main elements of the conglomerates directive will be transposed into UK law is available from the Financial Stability and Regulatory Policy Team, HM Treasury, 1 Horse Guards Road, London SWIA 2HQ. The Transposition Table is also available on HM Treasury's website (*www.hm-treasury.gov.uk*).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

The conglomerates directive includes certain procedural requirements that competent authorities of EEA States must carry out. These requirements include consulting other competent authorities and notifying regulated entities that, for example, they are members of financial conglomerates. These Regulations impose obligations upon the Financial Services Authority, the competent authority for the United Kingdom, for the purpose of implementing these procedural requirements.

Part 2 of the Regulations makes provision in relation to the exercise of supplementary supervision of regulated entities in a financial conglomerate. Regulation 2 deals with procedural requirements relating to the notification of identification as a financial conglomerate and choice of co-ordinator. Regulation 3 deals with procedural requirements relating to the exercise of functions under Part IV of the Financial Services and Markets Act 2000 (c. 8.) ("the Act") for the purposes of carrying out supplementary supervision. Regulation 4 deals with procedural requirements relating to the exercise of functions under section 148 of the Act for the purposes of carrying on supplementary supervision. Regulation 5 makes provision in respect of the carrying out of consultation in the case of major sanctions or exceptional measures. Regulation 6 provides that any function carried out by the Financial Services Authority for the purposes of the conglomerates directive is to be treated as a function conferred on that Authority by a provision of the Act. Regulation 6 also applies the effect of the Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (S.I.2001/1420) to any notifications given under regulation 2(1)(a) of these Regulations.

Part 3 of the Regulations makes provision in relation to the supplementary or consolidated supervision of third-country financial conglomerates and third-country groups. Regulation 8 deals with procedural requirements relating to the supervision of third-country financial conglomerates. Regulation 9 deals with procedural requirements relating to the supervision of third-country banking groups. Regulation 10 deals with procedural requirements in relation to the supervision of third-country groups subject to Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (OJ L141 11.6.1993 p.1).

Part 4 of the Regulations makes provision relating to information. Regulation 11 amends the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188), so as to extend the effect of those Regulations to information necessary for the purposes of the conglomerates directive. Regulation 12 provides that the Financial Services Authority must, where it requires information that a regulated entity has disclosed to its competent authority, obtain that information from that competent authority.

Part 5 of the Regulations makes other miscellaneous provision. Regulation 13 amends the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001 (S.I. 2001/2509) so as to extend the effect of those Regulations to consultation required for the purpose of the conglomerates directive. Regulation 14 makes consequential amendments to references in UK legislation to Community legislation that is amended by the conglomerates directive. Regulation 15 extends the Financial Services Authority's own-initiative power (within the meaning of section 45 of the Act) so as to enable it to vary a Part IV permission where it considers that this is desirable to do so for the purpose of carrying out supplementary supervision in accordance with the conglomerates directive, acting in accordance with articles 55a or 56a of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ L126, 26.5.2000, p.1) or acting in accordance with Article 8(2) or Annex I.1.B of Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group (OJ No. L 330 5.12.98 p.1).

Regulations 2 to 12 and 14 and 15 are made in accordance with the powers conferred on the Treasury by section 2(2) of the European Communities Act 1972 (c. 68.). Regulation 13 is made in accordance with the powers conferred on the Treasury by sections 183(2), 188(2), 417(1) and 428(3) of the Act. Regulation 1 is made in accordance with section 2(2) of the European Communities Act 1972 and sections 183(2), 188(2), 417(1) and 428(3) of the Act.