



# Financial Services Act 1986

## 1986 CHAPTER 60

### PART I

#### REGULATION OF INVESTMENT BUSINESS

### CHAPTER III

#### AUTHORISED PERSONS

##### *Members of recognised self-regulating organisations*

#### **7 Authorisation by membership of recognised self-regulating organisations**

- (1) Subject to subsection (2) below, a member of a recognised self-regulating organisation is an authorised person by virtue of his membership of that organisation.
- (2) This section does not apply to a member who is an authorised person by virtue of section 22 or 23 below or an insurance company which is an authorised person by virtue of section 31 below.

#### **8 Self-regulating organisations**

- (1) In this Act a "self-regulating organisation" means a body (whether a body corporate or an unincorporated association) which regulates the carrying on of investment business of any kind by enforcing rules which are binding on persons carrying on business of that kind either because they are members of that body or because they are otherwise subject to its control.
- (2) In this Act references to the members of a self-regulating organisation are references to the persons who, whether or not members of the organisation, are subject to its rules in carrying on the business in question.

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- (3) In this Act references to the rules of a self-regulating organisation are references to the rules (whether or not laid down by the organisation itself) which the organisation has power to enforce in relation to the carrying on of the business in question or which relate to the admission and expulsion of members of the organisation or otherwise to its constitution.
- (4) In this Act references to guidance issued by a self-regulating organisation are references to guidance issued or any recommendation made by it to all or any class of its members or persons seeking to become members which would, if it were a rule, fall within subsection (3) above.

## **9 Applications for recognition**

- (1) A self-regulating organisation may apply to the Secretary of State for an order declaring it to be a recognised self-regulating organisation for the purposes of this Act.
- (2) Any such application—
  - (a) shall be made in such manner as the Secretary of State may direct; and
  - (b) shall be accompanied by such information as the Secretary of State may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.
- (5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.
- (6) Every application shall be accompanied by a copy of the applicant's rules and of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form.

## **10 Grant and refusal of recognition**

- (1) The Secretary of State may, on an application duly made in accordance with section 9 above and after being furnished with all such information as he may require under that section, make or refuse to make an order (" a recognition order ") declaring the applicant to be a recognised self-regulating organisation.
- (2) Subject to subsection (4) below and to Chapter XIV of this Part of this Act, the Secretary of State shall make a recognition order if it appears to him from the information furnished by the organisation making the application and having regard to any other information in his possession that the requirements of subsection (3) below and of Schedule 2 to this Act are satisfied as respects that organisation.
- (3) Where there is a kind of investment business with which the organisation is not concerned, its rules must preclude a member from carrying on investment business of that kind unless he is an authorised person otherwise than by virtue of his membership of the organisation or an exempted person in respect of that business.
- (4) The Secretary of State may refuse to make a recognition order in respect of an organisation if he considers that its recognition is unnecessary having regard to the

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existence of one or more other organisations which are concerned with investment business of a kind with which the applicant is concerned and which have been or are likely to be recognised under this section.

(5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect specifying a requirement which in the opinion of the Secretary of State is not satisfied, stating that the application is refused on the ground mentioned in subsection (4) above or stating that it is refused by virtue of Chapter XIV.

(6) A recognition order shall state the date on which it takes effect.

## **11 Revocation of recognition**

(1) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—

- (a) that section 10(3) above or any requirement of Schedule 2 to this Act is not satisfied in the case of the organisation to which the recognition order relates ("the recognised organisation");
- (b) that the recognised organisation has failed to comply with any obligation to which it is subject by virtue of this Act; or
- (c) that the continued recognition of the organisation is undesirable having regard to the existence of one or more other organisations which have been or are to be recognised under section 10 above.

(2) An order revoking a recognition order shall state the date on which it takes effect and that date shall not be earlier than three months after the day on which the revocation order is made.

(3) Before revoking a recognition order the Secretary of State shall give written notice of his intention to do so to the recognised organisation, take such steps as he considers reasonably practicable for bringing the notice to the attention of members of the organisation and publish it in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

(4) A notice under subsection (3) above shall state the reasons for which the Secretary of State proposes to act and give particulars of the rights conferred by subsection (5) below.

(5) An organisation on which a notice is served under subsection (3) above, any member of the organisation and any other person who appears to the Secretary of State to be affected may within three months after the date of service or publication, or within such longer time as the Secretary of State may allow, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State; and the Secretary of State shall have regard to any representations made in accordance with this subsection in determining whether to revoke the recognition order.

(6) If in any case the Secretary of State considers it essential to do so in the interests of investors he may revoke a recognition order without regard to the restriction imposed by subsection (2) above and notwithstanding that no notice has been given or published under subsection (3) above or that the time for making representations in pursuance of such a notice has not expired.

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- (7) An order revoking a recognition order may contain such transitional provisions as the Secretary of State thinks necessary or expedient.
- (8) A recognition order may be revoked at the request or with the consent of the recognised organisation and any such revocation shall not be subject to the restrictions imposed by subsections (1) and (2) or the requirements of subsections (3) to (5) above.
- (9) On making an order revoking a recognition order the Secretary of State shall give the organisation written notice of the making of the order, take such steps as he considers reasonably practicable for bringing the making of the order to the attention of members of the organisation and publish a notice of the making of the order in such manner as he thinks appropriate for bringing it to the attention of any other persons who are in his opinion likely to be affected.

## **12 Compliance orders**

- (1) If at any time it appears to the Secretary of State—
  - (a) that subsection (3) of section 10 above or any requirement of Schedule 2 to this Act is not satisfied in the case of a recognised organisation; or
  - (b) that a recognised organisation has failed to comply with any obligation to which it is subject by virtue of this Act,he may, instead of revoking the recognition order under section 11 above, make an application to the court under this section.
- (2) If on any such application the court decides that subsection (3) of section 10 or the requirement in question is not satisfied or, as the case may be, that the organisation has failed to comply with the obligation in question it may order the organisation to take such steps as the court directs for securing that that subsection or requirement is satisfied or that that obligation is complied with.
- (3) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.

## **13 Alteration of rules for protection of investors**

- (1) If at any time it appears to the Secretary of State that the rules of a recognised organisation do not satisfy the requirements of paragraph 3(1) of Schedule 2 to this Act he may, instead of revoking the recognition order or making an application under section 12 above, direct the organisation to alter, or himself alter, its rules in such manner as he considers necessary for securing that the rules satisfy those requirements.
- (2) If at any time it appears to the Secretary of State that the rules or practices of a recognised organisation which is concerned with two or more kinds of investment business do not satisfy any requirement of Schedule 2 to this Act in respect of investment business of any of those kinds he may, instead of revoking the recognition order or making an application under section 12 above, direct the organisation to alter, or himself alter, its rules so that they preclude a member from carrying on investment business of that kind unless he is an authorised person otherwise than by virtue of membership of the organisation or an exempted person in respect of that business.
- (3) Any direction given under this section shall, on the application of the Secretary of State, be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the Court of Session Act 1868.

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- (4) Before giving a direction or making any alteration under subsection (1) above the Secretary of State shall consult the organisation concerned.
- (5) A recognised organisation whose rules have been altered by or pursuant to a direction given by the Secretary of State under subsection (1) above may apply to the court and if the court is satisfied—
  - (a) that the rules without the alteration satisfied the requirements mentioned in that subsection; or
  - (b) that other alterations proposed by the organisation would result in the rules satisfying those requirements,the court may set aside the alteration made by or pursuant to the direction given by the Secretary of State and, in a case within paragraph (b) above, order the organisation to make the alterations proposed by it; but the setting aside of an alteration under this subsection shall not affect its previous operation.
- (6) The jurisdiction conferred by subsection (5) above shall be exercisable by the High Court and the Court of Session.
- (7) Section 11(2) to (7) and (9) above shall, with the necessary modifications, have effect in relation to any direction given or alteration made by the Secretary of State under subsection (2) above as they have effect in relation to an order revoking a recognition order.
- (8) The fact that the rules of a recognised organisation have been altered by or pursuant to a direction given by the Secretary of State or pursuant to an order made by the court under this section shall not preclude their subsequent alteration or revocation by that organisation.

#### **14 Notification requirements**

- (1) The Secretary of State may make regulations requiring a recognised organisation to give him forthwith notice of the occurrence of such events relating to the organisation or its members as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Secretary of State may make regulations requiring a recognised organisation to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the organisation or its members as is so specified.
- (3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act
- (4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.
- (5) Any notice or information required to be given or furnished under the foregoing provisions of this section shall be given in writing or in such other manner as the Secretary of State may approve.
- (6) Where a recognised organisation amends, revokes or adds to its rules or guidance it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition; but notice need not be given of the revocation of guidance other

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than such as is mentioned in section 9(6) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned.

(7) Contravention of, or of regulations under, this section shall not be an offence.