



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVII

COLLECTIVE INVESTMENT SCHEMES

CHAPTER V

RECOGNISED OVERSEAS SCHEMES

Schemes constituted in other EEA States

264 Schemes constituted in other EEA States

- (1) A collective investment scheme constituted in another EEA State is a recognised scheme if—
 - (a) it satisfies such requirements as are prescribed for the purposes of this section; and
 - (b) not less than two months before inviting persons in the United Kingdom to become participants in the scheme, the operator of the scheme gives notice to the Authority of his intention to do so, specifying the way in which the invitation is to be made.
- (2) But this section does not make the scheme a recognised scheme if within two months of receiving the notice under subsection (1) the Authority notifies—
 - (a) the operator of the scheme, and
 - (b) the authorities of the State in question who are responsible for the authorisation of collective investment schemes,that the way in which the invitation is to be made does not comply with the law in force in the United Kingdom.
- (3) The notice to be given to the Authority under subsection (1)—

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- (a) must be accompanied by a certificate from the authorities mentioned in subsection (2)(b) to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument;
 - (b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
 - (c) must contain or be accompanied by such other information and documents as may be prescribed.
- (4) A notice given by the Authority under subsection (2) must—
- (a) give the reasons for which the Authority considers that the law in force in the United Kingdom will not be complied with; and
 - (b) specify a reasonable period (which may not be less than 28 days) within which any person to whom it is given may make representations to the Authority.
- (5) For the purposes of this section a collective investment scheme is constituted in another EEA State if—
- (a) it is constituted under the law of that State by a contract or under a trust and is managed by a body corporate incorporated under that law; or
 - (b) it takes the form of an open-ended investment company incorporated under that law.
- (6) The operator of a recognised scheme may give written notice to the Authority that he desires the scheme to be no longer recognised by virtue of this section.
- (7) On the giving of notice under subsection (6), the scheme ceases to be a recognised scheme.

265 Representations and references to the Tribunal

- (1) This section applies if any representations are made to the Authority, before the period for making representations has ended, by a person to whom a notice was given by the Authority under section 264(2).
- (2) The Authority must, within a reasonable period, decide in the light of those representations whether or not to withdraw its notice.
- (3) If the Authority withdraws its notice the scheme is a recognised scheme from the date on which the notice is withdrawn.
- (4) If the Authority decides not to withdraw its notice, it must give a decision notice to each person to whom the notice under section 264(2) was given.
- (5) The operator of the scheme to whom the decision notice is given may refer the matter to the Tribunal.

266 Disapplication of rules

- (1) Apart from—
 - (a) financial promotion rules, and
 - (b) rules under section 283(1),

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rules made by the Authority under this Act do not apply to the operator, trustee or depositary of a scheme in relation to the carrying on by him of regulated activities for which he has permission in that capacity.

(2) “Scheme” means a scheme which is a recognised scheme by virtue of section 264.

267 Power of Authority to suspend promotion of scheme

(1) Subsection (2) applies if it appears to the Authority that the operator of a scheme has communicated an invitation or inducement in relation to the scheme in a manner contrary to financial promotion rules.

(2) The Authority may direct that—

- (a) the exemption from subsection (1) of section 238 provided by subsection (4) (c) of that section is not to apply in relation to the scheme; and
- (b) subsection (5) of that section does not apply with respect to things done in relation to the scheme.

(3) A direction under subsection (2) has effect—

- (a) for a specified period;
- (b) until the occurrence of a specified event; or
- (c) until specified conditions are complied with.

(4) The Authority may, either on its own initiative or on the application of the operator of the scheme concerned, vary a direction given under subsection (2) if it appears to the Authority that the direction should take effect or continue in force in a different form.

(5) The Authority may, either on its own initiative or on the application of the operator of the recognised scheme concerned, revoke a direction given under subsection (2) if it appears to the Authority—

- (a) that the conditions specified in the direction have been complied with; or
- (b) that it is no longer necessary for the direction to take effect or continue in force.

(6) If an event is specified, the direction ceases to have effect (unless revoked earlier) on the occurrence of that event.

(7) For the purposes of this section and sections 268 and 269—

- (a) the scheme’s home State is the EEA State in which the scheme is constituted (within the meaning given by section 264);
- (b) the competent authorities in the scheme’s home State are the authorities in that State who are responsible for the authorisation of collective investment schemes.

(8) “Scheme” means a scheme which is a recognised scheme by virtue of section 264.

(9) “Specified”, in relation to a direction, means specified in it.

268 Procedure on giving directions under section 267 and varying them on Authority’s own initiative

(1) A direction under section 267 takes effect—

- (a) immediately, if the notice given under subsection (3)(a) states that that is the case;

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- (b) on such date as may be specified in the notice; or
 - (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.
- (2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to its reasons for exercising its power under section 267, considers that it is necessary for the direction to take effect immediately (or on that date).
- (3) If the Authority proposes to give a direction under section 267, or gives such a direction with immediate effect, it must—
 - (a) give the operator of the scheme concerned written notice; and
 - (b) inform the competent authorities in the scheme’s home State of its proposal or (as the case may be) of the direction.
- (4) The notice must—
 - (a) give details of the direction;
 - (b) inform the operator of when the direction takes effect;
 - (c) state the Authority’s reasons for giving the direction and for its determination as to when the direction takes effect;
 - (d) inform the operator that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
 - (e) inform him of his right to refer the matter to the Tribunal.
- (5) The Authority may extend the period allowed under the notice for making representations.
- (6) Subsection (7) applies if, having considered any representations made by the operator, the Authority decides—
 - (a) to give the direction in the way proposed, or
 - (b) if it has been given, not to revoke the direction.
- (7) The Authority must—
 - (a) give the operator of the scheme concerned written notice; and
 - (b) inform the competent authorities in the scheme’s home State of the direction.
- (8) Subsection (9) applies if, having considered any representations made by a person to whom the notice was given, the Authority decides—
 - (a) not to give the direction in the way proposed,
 - (b) to give the direction in a way other than that proposed, or
 - (c) to revoke a direction which has effect.
- (9) The Authority must—
 - (a) give the operator of the scheme concerned written notice; and
 - (b) inform the competent authorities in the scheme’s home State of its decision.
- (10) A notice given under subsection (7)(a) must inform the operator of his right to refer the matter to the Tribunal.
- (11) A notice under subsection (9)(a) given as a result of subsection (8)(b) must comply with subsection (4).

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- (12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (13) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.
- (14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

269 Procedure on application for variation or revocation of direction

- (1) If, on an application under subsection (4) or (5) of section 267, the Authority proposes—
 - (a) to vary a direction otherwise than in accordance with the application, or
 - (b) to refuse the application,it must give the operator of the scheme concerned a warning notice.
- (2) If, on such an application, the Authority decides—
 - (a) to vary a direction otherwise than in accordance with the application, or
 - (b) to refuse the application,it must give the operator of the scheme concerned a decision notice.
- (3) If the application is refused, the operator of the scheme may refer the matter to the Tribunal.
- (4) If, on such an application, the Authority decides to grant the application it must give the operator of the scheme concerned written notice.
- (5) If the Authority decides on its own initiative to revoke a direction given under section 267 it must give the operator of the scheme concerned written notice.
- (6) The Authority must inform the competent authorities in the scheme's home State of any notice given under this section.