

SCHEDULE 11

Regulation 83.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

RECOGNITION OF INSTITUTIONS

*European authorised institutions*

1.—(1) This paragraph applies to a credit institution incorporated in or formed under the law of another member State which immediately before the commencement date is authorised to act as a credit institution by the relevant supervisory authority in that State.

(2) If an institution to which this paragraph applies—

- (a) is immediately before the commencement date carrying on in the United Kingdom by the provision of services any home-regulated activity; or
- (b) has established in the United Kingdom for the purpose of carrying on such an activity a branch which immediately before that date is in existence,

it shall be treated for all purposes of these Regulations as if the requirements of paragraph 1 of Schedule 2 to these Regulations had been complied with in relation to its carrying on of the activity or, as the case may be, its establishment of the branch.

*UK authorised institutions*

2.—(1) This paragraph applies to a credit institution incorporated in or formed under the law of any part of the United Kingdom which immediately before the commencement date is authorised by the Bank under the Banking Act(1) or by the Commission under the Building Societies Act(2).

(2) If an institution to which this paragraph applies—

- (a) is immediately before the commencement date carrying on in another member State by the provision of services any listed activity; or
- (b) has established in another member State for the purpose of carrying on such an activity a branch which immediately before that date is in existence,

it shall be treated for all purposes of these Regulations as if the requirements of paragraph 1 of Schedule 6 to these Regulations had been complied with in relation to its carrying on of the activity or, as the case may be, its establishment of the branch.

3.—(1) An institution which by virtue of paragraph 2 above is treated as if the requirements of paragraph 1 of Schedule 6 to these Regulations had been complied with in relation to its carrying on of one or more listed activities shall, before the end of the period of three months beginning with the commencement date, give to the UK authority a notice stating the activity or activities in question.

(2) An institution which by virtue of paragraph 2 above is treated as if the requirements of paragraph 1 of Schedule 6 to these Regulations had been complied with in relation to its establishment of a branch shall, before the end of the period of three months beginning with the commencement date, give to the UK authority a notice stating the requisite details of the branch.

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(1) 1987 c. 22.

(2) 1986 c. 53.

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(3) An institution which fails to comply with sub-paragraph (1) or (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## PART II

### AMENDMENTS OF BANKING ACT

#### *Requirement as to minimum initial capital*

4.—(1) This paragraph applies to a credit institution incorporated in or formed under the law of any part of the United Kingdom which immediately before the commencement date is authorised by the Bank under the Banking Act.

(2) Paragraph 4(3A) of Schedule 3 to the Banking Act (c) (institution to have own funds amounting to ecu 5 million or equivalent) shall have effect in relation to an institution to which this paragraph applies as if the reference to ecu 5 million were a reference to the relevant amount.

(3) Subject to sub-paragraphs (4) to (7) below, the relevant amount is the amount of own funds which the institution has on the commencement date.

(4) If, at any time after 22nd December 1989, the institution had or has own funds of a greater amount than the amount of its own funds on the commencement date, the relevant amount is that greater amount, or ecu 5 million, whichever is the less.

(5) Subject to sub-paragraph (6) below if, at any time after the commencement date, there is any change in the person who is the parent controller of the institution (not being a parent controller which is a subsidiary undertaking of another parent controller of the institution) the relevant amount is ecu 5 million.

(6) If—

- (a) the institution merges with another institution which is also an institution to which this paragraph applies; and
- (b) the Bank is satisfied that in the circumstances the merged institution need not have own funds amounting to not less than ecu 5 million,

then, subject to sub-paragraph (7) below, the relevant amount in relation to the merged institution is the aggregate own funds of the merging institutions on the date of the change, or ecu 5 million, whichever is the less.

(7) If, at any time after the commencement date, the merged institution has own funds of ecu 5 million or more, the relevant amount is ecu 5 million.

(8) Any reference in this paragraph to ecu 5 million includes a reference to an amount of equal value denominated wholly or partly in a different unit of account.

#### *Revocation of authorisation*

5.—(1) This paragraph applies to a credit institution incorporated in or formed under the law of any part of the United Kingdom which immediately before the commencement date is authorised by the Bank under the Banking Act.

(2) If an institution to which this paragraph applies is immediately before the commencement date carrying on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits from the public), it shall be treated for the purposes of subsection (1A)(b) of section 11 of

the Banking Act<sup>(3)</sup> (revocation of authorisation) as if it had given prior notice to the Bank of its intention to carry on that activity.

#### *Restriction of authorisation*

6.—(1) This paragraph applies to a credit institution incorporated in or formed under the law of another member State which immediately before the commencement date—

- (a) is authorised to act as a credit institution by the relevant supervisory authority in that State; and
- (b) is authorised by the Bank under the Banking Act.

(2) Subject to sub-paragraph (3) below, if immediately before the commencement date the authorisation of an institution to which this paragraph applies is subject to a restriction under section 12 of the Banking Act (restriction of authorisation), the restriction shall, if and to the extent that it is capable after that date of being imposed under regulation 10 of these Regulations, have effect as if it had been so imposed.

(3) If the restriction under that section imposes a limit on the duration of the authorisation, the restriction shall, at the time when (but for these Regulations) the authorisation would have expired, have effect as if it were a prohibition imposed on the institution under regulation 9 of these Regulations.

(4) The Bank shall, as soon as practicable after the commencement date, give written notice of every restriction under that section having effect as mentioned in sub-paragraph (2) or (3) above—

- (a) to the institution;
- (b) to the relevant supervisory authority in the institution's home State; and
- (c) to every other authority which the Bank knows is a connected UK authority.

#### *Information and documents*

7. Where a notice served on an institution to which paragraph 6 above applies under—

- (a) section 39 of the Banking Act (power to obtain information and require production of documents); or
- (b) section 41 of that Act (investigations on behalf of Bank),

is in force immediately before the commencement date, the notice shall have effect on and after that date as if it had been served under that section as extended by paragraph 8 or, as the case may be, paragraph 10 of Schedule 8 to these Regulations.

## PART III

### AMENDMENTS OF FINANCIAL SERVICES ACT

#### *Preliminary*

8.—(1) Any reference in this Part of this Schedule to a statement of principle or to rules or regulations is a reference to a statement of principle issued, or to rules or regulations made, before the commencement date.

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(3) 1987 c. 22; section 11(1A) is inserted by regulation 28(1) of these Regulations.

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(2) Expressions used in this Part of this Schedule which are also used in Schedule 9 to these Regulations have the same meanings as in that Schedule.

#### *Statements of principle*

**9.**—(1) A statement of principle issued under section 47A of the Financial Services Act<sup>(4)</sup> shall, unless the contrary intention appears, apply to a European institution carrying on home-regulated investment business in the United Kingdom to the same extent as it would apply if the institution were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular European institution, the Board may, on the application or with the consent of the institution, by order direct that all or any of the provisions of such a statement—

- (a) shall not apply to the institution; or
- (b) shall apply to it with such modifications as may be specified in the order.

#### *Conduct of business rules*

**10.**—(1) Rules made under section 48 of the Financial Services Act<sup>(5)</sup> (conduct of business rules) shall, unless the contrary intention appears, apply in relation to the conduct of homeregulated investment business carried on by a European institution in the United Kingdom to the same extent as they would apply if the institution were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular European institution, the Board may, on the application or with the consent of the institution, by order direct that all or any of the provisions of such rules—

- (a) shall not apply in relation to the conduct of home-regulated investment business carried on by the institution; or
- (b) shall apply in relation to the conduct of such business with such modifications as may be specified in the order.

(3) A member of a recognised self-regulating organisation who contravenes a rule applying to him by virtue of this paragraph shall be treated as having contravened the rules of the organisation.

#### *Financial resources rules*

**11.** If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular institution which is a European institution and an authorised person, the Board may, on the application or with the consent of the institution, by order direct that all or any of the provisions of rules under section 49 of the Financial Services Act<sup>(6)</sup> (financial resources rules)—

- (a) shall not apply to the institution; or
- (b) shall apply to it with such modifications as may be specified in the order.

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<sup>(4)</sup> Section 47A was inserted by section 192 of the Companies Act 1989 (c. 40).

<sup>(5)</sup> Section 48 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989 (c. 40).

<sup>(6)</sup> Section 49 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

### *Cancellation rules*

**12.—**(1) Rules made under section 51 of the Financial Services Act (cancellation rules) shall, unless the contrary intention appears, apply in relation to a person who has entered or offered to enter into an investment agreement to which sub-paragraph (2) below applies as they apply in relation to a person mentioned in that section.

(2) This sub-paragraph applies to an investment agreement which is made by a European institution in the course of the carrying on by it of home-regulated investment business in the United Kingdom.

### *Notification regulations*

**13.—**(1) Regulations made under section 52 of the Financial Services Act<sup>(7)</sup> (notification regulations) shall, unless the contrary intention appears, apply in relation to a European institution carrying on home-regulated investment business in the United Kingdom to the same extent as they would apply if the institution were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular European institution, the Board may, on the application or with the consent of the institution, by order direct that all or any of the provisions of such regulations—

- (a) shall not apply to the institution; or
- (b) shall apply to it with such modifications as may be specified in the order.

### *Compensation fund*

**14.—**(1) Rules under section 54 of the Financial Services Act (compensation fund) shall, unless the contrary intention appears, apply in cases where a person who is or has been a European institution is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by it in connection with home-regulated investment business carried on by it in the United Kingdom to the same extent as they would apply if the institution were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular person who is or has been a European institution, the Board may, on the application or with the consent of that person, by order direct that all or any of the provisions of such rules—

- (a) shall not apply in relation to cases where that person is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by it in connection with home-regulated investment business carried on by it; or
- (b) shall apply in relation to such cases with such modifications as may be specified in the order.

### *Clients' money*

**15.—**(1) Regulations under section 55 of the Financial Services Act<sup>(8)</sup> (clients' money) shall, unless the contrary intention appears, apply in relation to money which a European institution holds

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(7) Section 52 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

(8) Section 55 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

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in the course of home-regulated investment business carried on by it in the United Kingdom to the same extent as they would apply if the institution were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Second Council Directive so far as relating to any particular European institution, the Board may, on the application or with the consent of the institution, by order direct that all or any of the provisions of such regulations—

- (a) shall not apply in relation to money which the institution holds in the course of homeregulated investment business carried on by it; or
- (b) shall apply in relation to such money with such modifications as may be specified in the order.

(3) A member of a recognised self-regulating organisation who contravenes a regulation applying to him by virtue of this paragraph shall be treated as having contravened the rules of the organisation.

#### *Unsolicited calls*

**16.**—(1) Regulations under section 56 of the Financial Services Act<sup>(9)</sup> (unsolicited calls) shall, unless the contrary intention appears, apply in relation to a European institution carrying on home-regulated investment business in the United Kingdom to the same extent as they would apply if the institution were an authorised person.

(2) A member of a recognised self-regulating organisation who contravenes a regulation applying to him by virtue of this paragraph shall be treated as having contravened the rules of the organisation.

#### *Supplemental*

**17.**—(1) An order under this Part of this Schedule may be subject to conditions.

(2) Such an order may be revoked at any time by the Board; and the Board may at any time vary any such order on the application or with the consent of the European institution to which it applies

## PART IV

### AMENDMENTS OF BUILDING SOCIETIES ACT

#### *Requirements as to qualifying capital and own funds*

**18.**—(1) This paragraph applies to a building society which immediately before the commencement date is authorised by the Commission under the Building Societies Act<sup>(10)</sup>.

(2) In relation to a society to which this paragraph applies—

- (a) sections 41(6)(a) and 44(4)(a) of the Building Societies Act (society to have on renewal of authorisation or reauthorisation qualifying capital of not less than the prescribed minimum); and
- (b) the first criterion in section 45(3) of that Act<sup>(11)</sup> (society to have own funds amounting to not less than that minimum),

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<sup>(9)</sup> Section 56 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

<sup>(10)</sup> 1986 c. 53.

<sup>(11)</sup> Section 45(3) is amended by regulation 73 of these Regulations.

shall have effect as if the reference to the prescribed minimum were a reference to the relevant amount.

(3) Subject to sub-paragraphs (4) to (6) below, the relevant amount for the purposes of subparagraph (2)(a) above is the amount of qualifying capital which the society has on the commencement date.

(4) If, at any time after 22nd December 1989, the society had or has qualifying capital of a greater amount than the amount of its qualifying capital on the commencement date, the relevant amount is that greater amount, or the prescribed minimum, whichever is the less.

(5) If—

- (a) the society merges with another society which is also a society to which this paragraph applies; and
- (b) the Commission is satisfied that in the circumstances the merged society need not have qualifying capital amounting to not less than the prescribed minimum,

then, subject to sub-paragraph (6) below, the relevant amount in relation to the merged society is the aggregate qualifying capital of the merging societies on the date of the change, or the prescribed minimum, whichever is the less.

(6) If, at any time after the commencement date, the merged society has qualifying capital of not less than the prescribed minimum, the relevant amount is the prescribed minimum.

(7) Sub-paragraphs (3) to (6) above shall apply for the purposes of sub-paragraph (2)(b) above with the following modifications, namely, that for the references to qualifying capital there shall be substituted references to own funds.

(8) In this paragraph “the prescribed minimum” and “qualifying capital” have the meanings given by section 9(13) of the Building Societies Act(12).

(9) A society merges with another for the purposes of this paragraph if either—

- (a) it amalgamates with the other by establishing a building society as their successor under section 93 of the Building Societies Act (amalgamations); or
- (b) it transfers all of its engagements to the other under section 94 of that Act (transfers of engagements);

and references in this paragraph to the merged society or the merging societies shall be construed accordingly.

#### *Revocation of authorisation*

**19.**—(1) This paragraph applies to a building society which immediately before the commencement date is authorised by the Commission under the Building Societies Act.

(2) If a society to which this paragraph applies is immediately before the commencement date carrying on in the United Kingdom or elsewhere a listed activity (other than the acceptance of deposits or other repayable funds from the public), it shall be treated for the purposes of subsection (1A)(b) of section 43 of the Building Societies Act(13) (revocation of authorisation) as if it had given prior notice to the Commission of its intention to carry on that activity.

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(12) Section 9(13) is amended by regulation 68(2) of these Regulations.

(13) Section 43(1A) is inserted by regulation 71(1) of these Regulations.