
STATUTORY INSTRUMENTS

1995 No. 3275

The Investment Services Regulations 1995

PART II

RECOGNITION IN UK OF EUROPEAN INVESTMENT FIRMS

Preliminary

European investment firms

3.—(1) An investment firm is a European investment firm for the purposes of these regulations if—

- (a) it is incorporated in or formed under the law of another EEA State;
- (b) its head office is in that State;
- (c) it is for the time being, either a European authorised institution or authorised to act as an investment firm by a relevant supervisory authority in that State; and
- (d) in the case of an investment firm which is not a European authorised institution and was not on the commencement date a European subsidiary, the requirements of paragraph 1 of Schedule 3 to these Regulations have been complied with in relation to its provision of a service or its establishment of a branch.

(2) In these Regulations “quasi-European investment firm” means an investment firm other than a European authorised institution—

- (a) which is not a European investment firm; but
- (b) which would be such an investment firm if the requirements of paragraph 1 of Schedule 3 to these Regulations had been complied with in relation to its provision of a service or its establishment of a branch.

(3) Schedule 3 to these Regulations (which contains requirements to be complied with by or in relation to European investment firms) shall have effect.

Authorised services

4. For the purposes of these Regulations a European investment firm is authorised to provide in its home State any listed service which its authorisation as an investment firm or as a credit institution authorises it to provide.

Effect of recognition

Authorisations and licences not required

5.—(1) Subject to paragraph (2) below, nothing in the following enactments, namely—

- (a) sections 3 and 4 of the Financial Services Act (restrictions on carrying on investment business); and
- (b) sections 21, 39(1) and 147(1) of the Consumer Credit Act (Consumer Credit Act businesses needing a licence),

shall prevent a European investment firm from providing in the United Kingdom any listed service which it is authorised to provide in its home State.

(2) In relation to a European investment firm in respect of which a prohibition under these Regulations is in force—

- (a) paragraph (1)(a) above shall not apply if the prohibition is under regulation 9 below; and
- (b) paragraph (1)(b) above shall not apply if the prohibition is under regulation 15 below.

Procedural requirements for carrying on listed services

6.—(1) A European investment firm (other than a credit institution authorised in its home State to provide one or more core investment services) shall not—

- (a) provide in the United Kingdom by the provision of services any listed service; or
- (b) establish a branch in the United Kingdom for the purpose of providing such a service,

unless the requirements of paragraph 1 of Schedule 3 to these Regulations have been complied with in relation to its provision of the service or, as the case may be, its establishment of the branch.

(2) A European investment firm (other than a credit institution authorised in its home State to provide one or more core investment services) which does not have a branch in the United Kingdom shall not change the requisite details of its activities in the United Kingdom unless the requirements of paragraph 4 of Schedule 3 to these regulations have been complied with in relation to its making of the change.

(3) A European investment firm (other than a credit institution authorised in its home member state to provide one or more core investment services) shall not change the requisite details of a branch established by it in the United Kingdom unless the requirements of paragraph 5 of Schedule 3 to these Regulations have been complied with in relation to its making of the change.

(4) An investment firm which contravenes paragraph (1), (2) or (3) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but such a contravention shall not invalidate any transaction.

(5) In proceedings brought against an investment firm for an offence under paragraph (4) above it shall be a defence for the investment firm to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(6) Proceedings in respect of an offence under any provision of this regulation shall not be instituted—

- (a) in England and Wales, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

Effect of non-recognition

Prohibition on carrying on certain listed services

7.—(1) A quasi-European investment firm shall not—

- (a) provide in the United Kingdom by the provision of services any listed service; or

(b) establish a branch in the United Kingdom for the purpose of providing such a service.

(2) An investment firm which contravenes paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but such a contravention shall not invalidate any transaction.

(3) In proceedings brought against an investment firm for an offence under paragraph (2) above it shall be a defence for the investment firm to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) Proceedings in respect of an offence under this regulation shall not be instituted—

- (a) in England and Wales, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

Functions of Board

Duty to prepare for supervision

8.—(1) In any case where the Board receives from a relevant supervisory authority in an investment firm’s home State a notice given in accordance with paragraph 3 of Schedule 3 to these Regulations, the Board shall, before the expiry of the relevant period draw to the attention of the firm such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the services mentioned in the notice, the Board considers appropriate.

(2) In any case where the Board receives from the relevant supervisory authority in an investment firm’s home State such a notice as is mentioned in paragraph (1) above stating that the firm intends to establish a branch in the United Kingdom—

- (a) the Board shall also, before the expiry of the relevant period, consider whether the situation as respects the investment firm is such that the powers conferred by regulation 9(1) below are likely to become exercisable; and
- (b) if so, the Board may impose, as soon as the requirements of paragraph 1 of Schedule 3 to these Regulations have been complied with in relation to the firm, such restriction under regulation 10 below as appears to it desirable.

(3) In any case where the Bank receives from the relevant supervisory authority in an investment firm’s home State such a notice as is mentioned in regulation 13(1) below stating that the firm intends to establish a branch in the United Kingdom, the Bank may request the Board to exercise the powers conferred on it by regulation 10 below in relation to the firm and, if the Board is satisfied that the situation with respect to the firm is such that the powers conferred by regulation 9(1) below are likely to become exercisable, the Board may impose, as soon as the requirements of paragraph 1 of Schedule 3 to these Regulations have been complied with in relation to the firm, such restriction under regulation 10 as appears to it, after consulting the Bank, to be desirable.

(4) In any case where the Board receives from an investment firm a notice given in accordance with paragraph 4 or 5 of Schedule 3 to these Regulations, the Board shall draw to the attention of the firm such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the proposed change mentioned in the notice, the Board considers appropriate.

(5) In this regulation—

- (a) “the relevant Acts” means the Financial Services Act and the Consumer Credit Act; and
- (b) “the relevant period” means—

- (i) in relation to a notice given in accordance with paragraph 3 of Schedule 3 to these Regulations which states that the investment firm intends to establish a branch in the United Kingdom, the period of two months beginning with the day on which the Board received the notice;
- (ii) in any other case, the period of one month beginning with the day on which the Board received the notice.

Power to prohibit the provision of listed services

9.—(1) If it appears to the Board that a European investment firm—

- (a) has contravened or is likely to contravene any provision of the Financial Services Act or any rules or regulations made under it;
- (b) in purported compliance with any such provision, has furnished it with false, inaccurate or misleading information;
- (c) has contravened or is likely to contravene any prohibition or requirement imposed under that Act; or
- (d) has failed to comply with any statement of principle issued under that Act,

it may impose on the investment firm a prohibition under this regulation, that is to say, a prohibition on providing or purporting to provide in the United Kingdom any listed services.

(2) Where the investment firm is a member of a recognised self-regulating organisation—

- (a) the reference in paragraph (1) above to rules made under the Financial Services Act shall be taken to include a reference to the rules of that organisation; and
- (b) the reference in that paragraph to any prohibition or requirement imposed under that Act shall be taken to include a reference to any prohibition or requirement imposed by virtue of the rules of that organisation.

(3) A prohibition under this regulation—

- (a) may be absolute; or
- (b) may be limited, that is to say, imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with;

and any period, event or conditions specified in the case of a limited prohibition may be varied by the Board on the application of the investment firm concerned.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Board on the investment firm concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) Schedule 4 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation and restrictions imposed under regulation 10 below) shall have effect.

Power to restrict provision of listed services

10.—(1) Where it appears to the Board that the situation as respects a European investment firm providing any listed service in the United Kingdom is such that the powers conferred by regulation 9(1) above are exercisable, the Board may, instead of or as well as imposing a prohibition, exercise—

- (a) in relation to the investment firm; or
- (b) except in the case of the power conferred by section 65 of the Financial Services Act, in relation to any appointed representative of the investment firm,

the powers conferred on the Board by Chapter VI of Part I of that Act (powers of intervention).

(2) Except where they are required to be exercised by virtue of section 128C of that Act⁽¹⁾ (enforcement in support of overseas regulatory authority), the powers conferred by that Chapter shall not, subject to paragraph (3) below, be exercisable in relation to—

- (a) a European investment firm providing any listed service in the United Kingdom which is a member of a recognised self-regulating organisation and is subject to the rules of such an organisation in the provision of listed services provided by it in the United Kingdom; or
- (b) an appointed representative whose principal or, in the case of such a representative with more than one principal, each of whose principals is—
 - (i) a member of a recognised self-regulating organisation; and
 - (ii) subject to the rules of such an organisation in providing the listed service in respect of which it has accepted responsibility for the appointed representative's activities.

(3) The powers conferred by section 67(1)(b) of the Financial Services Act may on any of the grounds specified in regulation 9(1) above be exercised in relation to a person mentioned in paragraph (2) above at the request of any recognised self-regulating organisation of which he or, in the case of an appointed representative, any of his principals is a member.

(4) In this regulation, “principal” has the same meaning as in the Financial Services Act.

Limitations on Board's powers

11.—(1) This regulation applies where it appears to the Board that the situation is such that its power—

- (a) to impose a prohibition on a European investment firm under regulation 9 above;
- (b) to publish a statement with respect to such a firm under section 60 (public statement as to person's misconduct) of the Financial Services Act;
- (c) to make an application with respect to such a firm under section 61(1) (injunctions) of that Act;
- (d) to impose a prohibition or requirement on such an investment firm under Chapter VI of Part I of that Act (powers of intervention);
- (e) to vary a prohibition or requirement imposed on such an investment firm under that Chapter; or
- (f) to refuse an application for the variation or rescission of a prohibition or requirement so imposed,

is exercisable by virtue of any contravention of any provision which is made pursuant to a provision of the Investment Services Directive that confers power on the host States and which is conferred under that Act.

(2) The Board shall require the investment firm in writing to remedy the situation.

(3) If the investment firm fails to comply with the requirement under paragraph (2) above within a reasonable time, the Board shall give a notice to that effect to the relevant supervisory authority in the investment firm's home State requesting that authority—

- (a) to take all appropriate measures for the purpose of ensuring that the investment firm concerned remedies the situation which has given rise to the issue of the notice; and
- (b) to inform the Board of the measures it proposes to take or has taken or the reasons for not taking such measures.

(1) Section 128C is amended by paragraph 34 of Schedule 7 to these Regulations.

(4) Subject to paragraph (5) below, the Board shall not take any such action as is mentioned in sub-paragraph (a) to (f) of paragraph (1) above with respect to a European investment firm unless it is satisfied—

- (a) that the relevant supervisory authority has failed or refused to take measures for the purpose mentioned in paragraph (3)(a) above; or
- (b) that the measures taken by that authority have proved inadequate for that purpose.

(5) Where the Board decides that it should take action as mentioned in any of sub-paragraphs (a) to (e) of paragraph (1) above with respect to a European investment firm as a matter of urgency in order to protect the interests of investors, it may take that action—

- (a) before complying with paragraphs (2) and (3) above; or
- (b) where it has complied with those requirements, before it is satisfied as mentioned in paragraph (4) above;

but in such a case it shall, at the earliest opportunity, inform the relevant supervisory authority in the investment firm's home State and the European Commission of the action taken.

(6) In any case where—

- (a) by virtue of paragraph (5) above, the Board has taken action as mentioned in any of sub-paragraphs (a) to (e) of paragraph (1) above before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above; and
- (b) the European Commission decides under the Investment Services Directive that the Board must withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement,

the Board shall in accordance with the decision withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement.

(7) For the purposes of paragraph (6)(b) above the Board shall be taken to withdraw or amend a statement if it publishes a further statement retracting or, as the case may be, correcting it; and the Board shall after publication of the further statement send a copy of it to any person to whom a copy of the previous statement was sent under section 60(5) of the Financial Services Act.

(8) In any case where—

- (a) the Board has, by virtue of sub-paragraph (5) above, given notice to a European investment firm under section 60(2) of the Financial Services Act before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above;
- (b) the statement to which the notice relates has not been published; and
- (c) the European Commission decides under the Investment Services Directive that the Board must not publish the statement, or must publish a different statement under that section,

the Board shall in accordance with the decision withdraw the notice or give a different notice in substitution.

Obligation of Board where investment firm ceases to be a European investment firm etc.

12. Where the Board is informed that—

- (a) a person has ceased to be a European investment firm; or
- (b) a European investment firm has ceased to provide any particular listed service in the United Kingdom,

the Board shall inform every other authority which it knows is a connected UK authority of that fact.

Functions of the Bank

Duty to prepare for supervision

13.—(1) In any case where the Bank receives from the relevant supervisory authority in an investment firm’s home State a notice given in accordance with paragraph 3 of Schedule 3 to these Regulations, the Bank shall, before the expiry of the relevant period, draw to the attention of the firm such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the services mentioned in the notice, the Bank considers appropriate.

(2) In any case where the Bank receives from an investment firm a notice given in accordance with paragraph 4 or 5 of Schedule 3 to these Regulations, the Bank shall draw to the attention of the firm such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the proposed change mentioned in the notice, the Bank considers appropriate.

(3) In this regulation, “the relevant Acts” and “the relevant period” have the same meanings as in regulation 8 above.

Obligation of Bank where investment firm ceases to be a European investment firm etc.

14. Where the Bank is informed that—

- (a) a person in respect of whom it has received a notice in accordance with paragraph 3 of Schedule 3 to these Regulations has ceased to be a European investment firm; or
- (b) a European investment firm in respect of whom it has received such a notice has ceased to provide any particular listed service in the United Kingdom,

the Bank shall inform every other authority which it knows is a connected UK authority of that fact.

Functions of Director

Power to prohibit the carrying on of Consumer Credit Act business

15.—(1) If it appears to the Director that paragraph (2) below has been or is likely to be contravened as respects a European investment firm, he may impose on the investment firm a prohibition under this regulation, that it to say, a prohibition on carrying on, or purporting to carry on, in the United Kingdom any Consumer Credit Act business which consists of or includes provision of any one or more listed service.

(2) This paragraph is contravened as respects a European investment firm if—

- (a) the investment firm or any of the investment firm’s employees, agents or associates (whether past or present); or
- (b) where the investment firm is a body corporate, any controller of the firm or an associate of any such controller,

does any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act(2).

(3) A prohibition under this regulation may be absolute or may be imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and any period, event or conditions specified in the case of a prohibition may be varied by the Director on the application of the investment firm concerned.

(2) 1974 c. 39.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Director on the investment firm concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) In this regulation “associate” has the same meaning as in section 25(2) of the Consumer Credit Act and “controller” has the meaning given by section 189(1) of that Act.

(6) Schedule 5 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation and restrictions imposed under regulation 16 below) shall have effect.

Power to restrict the carrying on of Consumer Credit Act business

16.—(1) In this regulation “restriction” means a direction that a European investment firm may not provide in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any Consumer Credit Act business which—

- (a) consists of or includes the provision of any listed service; and
- (b) is specified in the direction.

(2) Where it appears to the Director that the situation as respects a European investment firm is such that the powers conferred by regulation 15(1) above are exercisable, the Director may, instead of imposing a prohibition, impose such restriction as appears to him desirable.

(3) Any restriction imposed under this regulation—

- (a) may be withdrawn; or
- (b) may be varied with the agreement of the investment firm concerned,

by written notice served by the Director on the investment firm; and any such notice shall take effect on such date as is specified in the notice.

(4) An investment firm which contravenes or fails to comply with a restriction shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(5) The fact that a restriction has not been complied with (whether or not constituting an offence under paragraph (4) above) shall be a ground for the imposition of a prohibition under regulation 15 above.