
STATUTORY INSTRUMENTS

1995 No. 3275

The Investment Services Regulations 1995

PART V

AMENDMENTS OF FINANCIAL SERVICES ACT

Authorisation by membership of recognised self-regulating organisations

21.—(1) Section 7 of the Financial Services Act (authorisation by membership of recognised self-regulating organisation) shall have effect as if it included provision that a person who—

- (a) is a European investment firm or quasi-European investment firm; and
- (b) is a member of a recognised self-regulating organisation,

is not, by virtue of its membership of that organisation, an authorised person as respects any home-regulated investment business.

(2) Paragraph 1 of Schedule 2 to that Act⁽¹⁾ (requirements for recognition of self-regulating organisations) shall have effect as if it included provision that the rules and practices of the organisation must be such as to secure—

- (a) that the requirements of paragraph (3) below are met with respect to each member which is a UK investment firm and is not a UK authorised institution; and
 - (b) that a UK investment firm (other than a UK authorised institution) is admitted to membership only if the requirements of paragraph (4) below are met with respect to the firm.
- (3) The requirements of this paragraph are that—
- (a) the head office of the firm, and, if the firm has a registered office, its registered office, must be situated in the United Kingdom;
 - (b) in the case of a firm which is neither a body corporate nor a partnership constituted under the law of Scotland, the firm must carry on business in the United Kingdom;
 - (c) the firm must have adequate capital to meet the requirements of any rules applicable to it requiring the maintenance of financial resources; and
 - (d) except in the case of a firm which is subject to rules of the organisation making provision with respect to the matters dealt with in section 48(2)(1) of the Financial Services Act (protection of investors on death etc. of natural person), its business is effectively directed by two or more persons.
- (4) The requirements of this paragraph are that—
- (a) the firm has submitted to the organisation concerned a programme of operations containing at least the following information—
 - (i) a description of the listed services that the firm proposes to provide; and
 - (ii) a description of the firm's structure; and

(1) Schedule 2 has been amended by sections 203, 204 and 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

- (b) in a case in which the firm is—
 - (i) a subsidiary undertaking;
 - (ii) a subsidiary undertaking of the parent undertaking; or
 - (iii) controlled by the 50 per cent. controller,
 of an investment firm or credit institution which is for the time being authorised to act as such a firm or institution by the relevant supervisory authority in another EEA State, the organisation concerned has consulted that authority.

(5) Paragraph 2 of Schedule 2 to the Financial Services Act shall have effect as if it included provision that the rules and practices of the organisation relating to the admission of members must be such as to secure that each applicant for membership that is a UK investment firm is informed of the organisation's decision on the application not later than six months after the date on which the application was received.

Applications for authorisation

22. Section 26 of the Financial Services Act (applications for authorisation) shall have effect as if it included provision that an application for authorisation in respect of any home-regulated investment business may not be made by a European investment firm or quasi-European investment firm.

Grant and refusal of authorisation

23.—(1) Section 27 of the Financial Services Act (grant and refusal of authorisation) shall have effect as if it included provision that where a European investment firm or a quasi-European investment firm holds an authorisation granted under that section, the firm is not by virtue of that authorisation an authorised person as respects any home-regulated investment business.

(2) That section shall also have effect in relation to a relevant firm, that is to say, a UK investment firm which is not a UK authorised institution, as if it included provision—

- (a) that the Board may not grant authorisation to a relevant firm unless the Board is satisfied that the requirements of paragraph (3) below are met;
 - (b) that the Board may not grant authorisation to a relevant firm where it is—
 - (i) a subsidiary undertaking;
 - (ii) a subsidiary undertaking of the parent undertaking; or
 - (iii) controlled by the 50 per cent. controller,
 of an investment firm or credit institution which is for the time being authorised to act as such a firm or institution by the relevant supervisory authority in another EEA State, unless the Board has consulted that authority;
 - (c) that the Board is required to specify, in a notice given under section 27(8) of the Financial Services Act to a relevant firm, that the date on which authorisation takes effect is the date upon which the notice is given; and
 - (d) that the Board is under an obligation to notify each applicant who is a relevant firm of the Board's decision on the application not later than six months after the date on which the application was received.
- (3) The requirements of this paragraph are that—
- (a) the head office of the firm, and, if the firm has a registered office, its registered office, must be situated in the United Kingdom;

- (b) in the case of a firm which is neither a body corporate nor a partnership constituted under the law of Scotland, the firm must carry on business in the United Kingdom;
- (c) the firm must have adequate capital to meet the requirements of any rules applicable to it requiring the maintenance of financial resources; and
- (d) except in the case of a firm which is subject to rules of the organisation making provision with respect to the matters dealt with in section 48(2)(1) of the Financial Services Act (protection of investors on death etc. of natural person), its business is effectively directed by two or more persons.

Authorisation in other EEA State

24. Section 31 of the Financial Services Act (authorisation in other EEA State) shall have effect as if it included provision that an investment firm to which that section applies and which is a European investment firm or a quasi-European investment firm is not, by virtue of that section, an authorised person as respects any home-regulated investment business.

Certain EEA regulated markets

- 25.** A person who provides the trading facilities constituting a market which—
- (a) appears on the list drawn up by another EEA State pursuant to Article 16 of the Investment Services Directive; and
 - (b) operates without any requirement that a person dealing on the market should have a physical presence in the EEA State from which the trading facilities are provided or on any trading floor that the market may have,

shall not be an exempted person by virtue of section 36 of the Financial Services Act as respects anything done in connection with or for the purposes of the provision of those trading facilities which constitutes investment business.

Exempted persons

26.—(1) Section 43 of the Financial Services Act (listed money market institutions) shall have effect as if it included provision that an investment firm which—

- (a) is a European investment firm or quasi-European investment firm; and
- (b) is for the time being included in a list maintained for the purposes of that section,

is not, by virtue of its inclusion in that list, an exempted person as respects any home-regulated investment business.

(2) That section shall also have effect as if it included provision that the conditions and arrangements referred to in subsection (2) must be such as to secure that—

- (a) no European investment firm, other than one on which an absolute prohibition has been imposed under regulation 9 of these Regulations or under regulation 15 of the Banking Coordination (Second Council Directive) Regulations, is refused admission to the list, or removed from it, for reasons relating to—
 - (i) the fitness of the firm to provide listed services;
 - (ii) the financial standing of the firm; or
 - (iii) any other matter for which, under the Investment Services Directive, responsibility is reserved to a supervisory authority in the firm's home State;
- (b) where any power that the Bank has by virtue of those conditions and arrangements is exercisable by virtue of a European investment firm's contravention of any provision

made by the Bank pursuant to any provision of the Investment Services Directive that confers power on host States, the exercise of the power is subject to such restrictions as are necessary for the purposes of complying with article 19 of the Investment Services Directive;

- (c) the Bank is under an obligation—
 - (i) upon admitting a UK investment firm which is neither an authorised person nor a UK authorised institution to the list, to issue the firm with a written statement specifying the core investment services which that firm is permitted to provide by virtue of its inclusion in the list;
 - (ii) upon becoming aware of the occurrence of any change in the range of core investment services which such a firm is permitted to provide by virtue of its inclusion in the list, to withdraw the previous statement and to issue the firm in question with a further written statement reflecting the change;
 - (iii) upon becoming aware that such a firm has become an authorised person or a UK authorised institution, to withdraw from the firm the written statement specifying the core investment services which the firm is permitted to provide by virtue of its inclusion in the list; and
 - (iv) to inform each applicant for admission to the list who is a UK investment firm but who is neither an authorised person nor a UK authorised institution of the Bank's decision on the application not later than six months after the date on which the application was received; and
 - (d) no UK investment firm which is neither an authorised person nor a UK authorised institution is admitted to the list unless the requirements of paragraph (3) below are met.
- (3) The requirements of this paragraph are that—
- (a) the head office of the firm, and if the firm has a registered office, its registered office, must be situated in the United Kingdom;
 - (b) the firm must be a fit and proper person to carry on listed services;
 - (c) in the case of a firm which is neither a body corporate nor a partnership constituted under the law of Scotland, the firm must carry on business in the United Kingdom;
 - (d) the firm must have adequate capital to meet the requirements of any rules applicable to it requiring the maintenance of financial resources;
 - (e) either the firm will, if admitted to the list, be subject to conditions making provision with respect to the matters mentioned in section 48(2)(l) of the Financial Services Act (protection of investor on death etc. of natural person) or its business will be effectively directed by two or more persons of sufficiently good repute and experience to provide listed services;
 - (f) the firm must have submitted to the Bank a programme of operations of the business to be carried on by the firm containing at least the following information—
 - (i) a description of the particular listed services that the firm proposes to provide; and
 - (ii) particulars of the firm's structure; and
 - (g) in the case of a firm which is not and is not seeking to become, an authorised person but which is—
 - (i) a subsidiary undertaking;
 - (ii) a subsidiary undertaking of the parent undertaking; or
 - (iii) controlled by the 50 per cent. controller,

of an investment firm or credit institution which is for the time being authorised to act as such a firm or institution by a relevant supervisory authority in another EEA State, the Bank has consulted that authority.

(4) That section shall also have effect as if it enabled the Bank to regard itself as satisfied with respect to any matter relevant for the purposes of its supervision of a person admitted to the list maintained for the purposes of section 43 of that Act who is a UK investment firm or a European authorised investment firm if—

- (a) any relevant regulatory authority informs the Bank that it is satisfied with respect to the matter; and
- (b) the Bank is satisfied as to the nature and scope of the supervision exercised by that regulatory authority.

(5) In paragraph (4) above, “relevant regulatory authority”—

- (a) in relation to a UK investment firm means any UK regulatory authority; and
- (b) in relation to a European investment firm means a supervisory authority in the firm’s home State.

Appointed representatives

27. Section 44 of the Financial Services Act (appointed representatives) shall have effect as if it included provision that a UK investment firm is not, by virtue of that section, an exempted person as respects a service specified in paragraph 1(a) of Section A of the Annex to the Investment Services Directive (reception and transmission of orders) unless that activity is carried out solely for the account of an investment firm.

Statement of services covered by authorisation

28.—(1) Section 102 of the Financial Services Act (register of authorised persons and recognised organisations etc.) shall have effect as if it required the Board—

- (a) upon it first appearing to it that a UK investment firm is a UK authorised investment firm to which this regulation applies, to issue the firm with a written statement specifying the core investment services which that firm is permitted to provide;
- (b) upon becoming aware of the occurrence of any change in the range of core investment services which such a UK authorised investment firm is permitted to provide, to withdraw the previous statement and issue the firm in question with a further written statement reflecting the change; and
- (c) upon a UK authorised investment firm ceasing to be a UK authorised investment firm to which this regulation applies, to withdraw from the firm the statement specifying the core investment services it was permitted to provide.

(2) This regulation applies to a UK authorised investment firm which is an authorised person.

Reciprocal facilities for investment business

29.—(1) No notice shall be served under section 183 of the Financial Services Act (reciprocal facilities for financial business) on a UK investment firm which—

- (a) appears to the Secretary of State or the Treasury to be a subsidiary undertaking of a person connected with a country outside the United Kingdom; and
- (b) is carrying on, or appears to the Secretary of State or the Treasury to intend to carry on, any investment, insurance or banking business in, or in relation to, the United Kingdom,

if the sole ground for giving that notice is the ground specified in paragraph (2) below.

(2) The ground referred to in paragraph (1) above is that it appears to the Secretary of State or the Treasury that by reason of—

- (a) the law of the country concerned; or
- (b) any action taken by, or the practices of, the government or any other authority or body in that country,

investment firms connected with the United Kingdom are unable to provide core investment services in, or in relation to, that country on terms as favourable as those on which investment firms connected with that country are able to provide such services in, or in relation to, the United Kingdom.

Exemption from liability for damages

30. No recognised self-regulating organisation which is a competent authority designated by the United Kingdom for the purposes of Article 22 of the Investment Services Directive or for the purposes of Article 9 of the Capital Adequacy Directive and none of the officers, servants or members of the governing body of such an organisation shall be liable in damages for anything done or omitted in the discharge or purported discharge of its functions as such an authority unless the act or omission is shown to have been in bad faith.

Recognised professional bodies

31. Paragraph 2 of Schedule 3 to the Financial Services Act (requirements for recognition of recognised professional bodies) shall have effect as if it included provision that the rules, practices and arrangements of a recognised professional body must be such as to secure that no UK investment firm can be certified by the body for the purposes of Part I of the Financial Services Act if it appears to the body that any core investment services provided by the firm are provided by it otherwise than in an incidental manner in the course of a professional activity.

Other amendments of Financial Services Act

32. The provisions of the Financial Services Act which are mentioned in Schedule 7 to these Regulations shall have effect subject to the amendments there specified.

Construction of Part V

33. If and to the extent that a European investment firm is an authorised person, nothing in this Part of these Regulations, except regulations 21(1), 23(1) and 24 and paragraphs 5, 6, 11(2), 20 and 28 of Schedule 7, shall affect the operation of the Financial Services Act in relation to it.