
STATUTORY INSTRUMENTS

1996 No. 1669

**The Financial Institutions (Prudential
Supervision) Regulations 1996**

PART IV

FINANCIAL SERVICES

Grant and refusal of authorisation

9.—(1) Section 27 of the Financial Services Act (grant and refusal of authorisation) shall have effect as if it included provision that the Board shall refuse an application made by a UK investment firm which is not a UK authorised institution if it appears to the Board that—

- (a) the firm is an undertaking which is closely linked with any person; and
- (b) the firm's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as would prevent the effective exercise by the Board of its supervisory functions in relation to the firm.

(2) Section 28 of that Act (withdrawal and suspension of authorisation) shall have effect as if it included provision that the Board may withdraw or suspend any authorisation held by a UK investment firm which is not a UK authorised institution if it appears to the Board that—

- (a) the firm is an undertaking which is closely linked with any person; and
- (b) the firm's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as to prevent the effective exercise by the Board of its supervisory functions in relation to the firm.

(3) Section 43 of that Act (listed money market institutions) shall have effect as if it included provision that the conditions and arrangements mentioned in subsection (2) shall be such that no UK investment firm which is not a UK authorised institution shall be admitted to the list, and any such firm may be removed from the list, if it appears to the Bank that—

- (a) the firm is an undertaking which is closely linked with any person; and
- (b) the firm's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as to prevent the effective exercise by the Bank of its supervisory functions in relation to the firm.

(4) Paragraph 2 of Schedule 2 to that Act (requirements for recognition of self-regulating organisation) shall have effect as if it included provision that the rules and practices there mentioned shall be such that no UK investment firm which is not a UK authorised institution shall be admitted to membership of the organisation, and any such firm may be expelled from such membership, if it appears to the organisation that—

- (a) the firm is an undertaking which is closely linked with any person; and
- (b) the firm's close links with that person, or any matters relating to any non-EEA laws or administrative provisions to which that person is subject, are such as to prevent the effective exercise by the organisation of its supervisory functions in relation to the firm.

(5) In this regulation—

“non-EEA laws” means laws of a country or territory outside the European Economic Area, and “non-EEA administrative provision” shall be construed accordingly;

“UK authorised institution” and “UK investment firm” have the same meanings as in the Investment Services Regulations 1995⁽¹⁾.

Communication by auditor with supervisory bodies

10.—(1) Section 109 of the Financial Services Act (communication by auditor with supervisory bodies) shall have effect as if—

(a) the reference in subsection (1) to an auditor of an authorised person included—

(i) a reference to an auditor of a body with which a qualifying person is closely linked by control who is also an auditor of that person; and

(ii) a reference to an auditor of a qualifying undertaking;

(b) the second reference in that subsection to the authorised person, and the reference in subsection (3) to that person, included a reference to such a body or undertaking.

(2) In this regulation—

“qualifying person” means a UK investment firm, or a trustee or manager of a qualifying undertaking;

“qualifying undertaking” means an undertaking to which the UCITS Directive applies and which is, within the meaning of that Directive, situated in the United Kingdom;

“trustee” means—

(a) in relation to a qualifying undertaking which is a unit trust scheme, means the person holding the property in question on trust for the participants;

(b) in relation to any other qualifying undertaking, means any person who (whether or not under a trust) is entrusted with the custody of the property in question;

“the UCITS Directive” means the Council Directive of 20th December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No.85/611/EEC);

“UK investment firm” has the same meaning as in the Investment Services Regulations 1995;

and other expressions which are also used in the Financial Services Act have the same meanings as in that Act.

Disclosure of information: investment services

11.—(1) In paragraph (3) of regulation 48 of the Investment Services Regulations 1995, for the words “the Investment Services Directive, the text of which” there shall be substituted the words “the Investment Services Directive (as amended by the Prudential Supervision Directive), the text of which (as so amended)”.

(2) After paragraph (9) of that regulation there shall be inserted the following paragraph—

“(10) In this regulation “the Prudential Supervision Directive” has the same meaning as in the Financial Institutions (Prudential Supervision) Regulations 1996.”

(3) In Schedule 8 to those Regulations (text of article 25 of the Investment Services Directive), for paragraph 6 there shall be substituted the paragraphs set out in Schedule 2 to these Regulations.

(1) S.I.1995/3275.

Disclosure of information: UCITS

12.—(1) This paragraph applies to any confidential information which—

- (a) any person who works or has worked for any person designated by the United Kingdom as a competent authority for the purposes of Article 49 of the UCITS Directive; or
- (b) any auditor or expert instructed by such an authority,

has received in the course of discharging his duties as such a person, auditor or expert in relation to an undertaking to which the UCITS Directive applies and which is, within the meaning of that Directive, situated in an EEA State.

(2) Section 179 of the Financial Services Act shall not apply to information to which paragraph (1) above applies.

(3) Information to which paragraph (1) above applies shall not be disclosed by any person referred to in sub-paragraph (a) or (b) of that paragraph, or by any person receiving it directly or indirectly from such a person, except in any of the circumstances specified in paragraphs 2 to 11 of Article 50 of the UCITS Directive (as inserted by the Prudential Supervision Directive), the text of which (as so inserted) is set out in Schedule 3 to these Regulations.

(4) For the purposes of paragraph (3) above information to which paragraph (1) above applies may, subject to the provisions of paragraph (6) below, be disclosed in the circumstances described in Article 50.11 of the UCITS Directive.

(5) Information received under Article 50.3 of the UCITS Directive may not be communicated in the circumstances referred to in Article 50.10 of that Directive without the express consent of the supervisory authority from whom it was obtained.

(6) Information of the kind described in the third paragraph of Article 50.11 of the UCITS Directive may not be disclosed in the cases referred to in Article 50.11 except with the express consent of whichever is relevant of the authorities mentioned in the third paragraph of Article 50.11.

(7) Any person who contravenes any provision of this regulation shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

(8) Proceedings in respect of an offence under this Regulation shall not be instituted—

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

(9) In proceedings brought against any person for an offence under this regulation, it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(10) In this regulation “the UCITS Directive” has the same meaning as in regulation 10 above.

The Board’s functions under the Regulations

13. The functions of the Board under these Regulations shall be treated for the purposes of the Financial Services Act and the Transfer of Functions (Financial Services) Order 1992(2) as if they were functions under Chapter VI of Part I of that Act which—

(2) S.I. 1992/1315.

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- (a) had been functions of the Secretary of State; and
- (b) had been transferred to the Board by the Financial Services Act 1986 (Delegation) Order 1987⁽³⁾.

⁽³⁾ S.I. 1987/942.