

**2001 No. 2659**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000  
(Consequential and Transitional Provisions)  
(Miscellaneous) (No. 2) Order 2001**

<i>Made - - - - -</i>	<i>20th July 2001</i>
<i>Laid before Parliament</i>	<i>20th July 2001</i>
<i>Coming into force</i>	
<i>For the purposes of articles 2, 4     and 7</i>	<i>11th August 2001</i>
<i>For all other purposes</i>	<i>3rd September 2001</i>

The Treasury, in exercise of the powers conferred on them by sections 426, 427 and 428(3) of the Financial Services and Markets Act 2000(a), hereby make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) (No. 2) Order 2001.

(2) This Order comes into force for the purposes of articles 2, 4 and 7 on 11th August 2001, and for all other purposes on 3rd September 2001.

(3) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“the Authorised Persons Order” means the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001(b);

“the Banking Act” means the Banking Act 1987(c);

“commencement” means the beginning of the day on which section 19 comes into force;

“the Financial Services Act” means the Financial Services Act 1986(d);

“the Insurance Companies Act” means the Insurance Companies Act 1982(e);

“pending authorised person” means a person who has been given a Part IV permission under section 42 (even though the permission is not yet in force);

“regulated person” means—

(a) an authorised person within the meaning of the Financial Services Act;

(b) a person who is an exempted person by virtue of section 43(f) (listed money market institutions) or section 44(g) (appointed representatives) of that Act;

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(a) 2000 c. 8.

(b) S.I. 2000/2636.

(c) 1987 c. 22.

(d) 1986 c. 60.

(e) 1982 c. 50.

(f) Amended by the Bank of England Act 1998 (c. 11) sections 23, 25 and 26 and modified by S.I. 1992/3218, S.I. 1995/3275 and S.I. 1996/1669.

(g) Modified by S.I. 1992/3218 and S.I. 1995/3275.

- (c) an authorised institution within the meaning of the Banking Act;
- (d) a person who is authorised under section 3 or 4 of the Insurance Companies Act(a);
- (e) a European institution within the meaning of the Banking Coordination (Second Council Directive) Regulations 1992(b);
- (f) a European investment firm within the meaning of the Investment Services Regulations 1995(c);
- (g) an EC company within the meaning of the Insurance Companies Act which, by virtue of paragraph 1 or 8 of Schedule 2F to that Act(d), is able to carry on direct insurance business through a branch in the United Kingdom or provide insurance in the United Kingdom;
- (h) a friendly society which is authorised or treated as authorised for the purposes of Part IV of the Friendly Societies Act 1992(e), or which is permitted by virtue of section 31(2) or (3) of that Act to carry on any activities without authorisation under that Part;
- (i) a building society which is authorised or treated as authorised for the purposes of the Building Societies Act 1986(f); or
- (j) any person who is not, but has at any time been, a person specified by any of subparagraphs (a) to (i);

“transitional authorised person” means a person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, immediately before commencement) he will, at commencement, be treated as having a Part IV permission by virtue of the Authorised Persons Order;

“transitional permission” means any Part IV permission which a transitional authorised person will be treated as having at commencement by virtue of the Authorised Persons Order.

(4) In this Order, except where otherwise specified, references to a numbered section, Part or Schedule are references to that section or Part of, or Schedule to, the Act.

#### **Information gathering—transitional modifications of section 165**

2.—(1) Section 165 (Authority’s power to require information) has effect until commencement as if—

- (a) each reference to an authorised person (except the references in subsections (7)(b) and (8)) included a reference to a regulated person in relation to whom the Authority has reasonable grounds to believe that it will be able to impose a requirement under that section immediately after commencement;
- (b) the reference in subsection (4) to information and documents reasonably required in connection with the exercise by the Authority of functions conferred on it by or under the Act—
  - (i) so far as that subsection relates to documents and information held by or on behalf of—
    - (aa) a regulated person who falls within paragraph (j) of the definition of that term, or
    - (bb) a person connected with such a person,
 were a reference to information and documents reasonably required in connection with the exercise by the Authority of functions which will, at commencement, be conferred on it by, or exercisable by it by virtue of, the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) Order 2001(g) in relation to that regulated person;
  - (ii) otherwise, included a reference to information and documents reasonably

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(a) Section 3 was amended by S.I. 1997/2781.  
 (b) S.I. 1992/3218; relevant amendments are made by S.I. 1999/2094.  
 (c) S.I. 1995/3275; to which there are amendments not relevant to this Order.  
 (d) Inserted by S.I. 1994/1696 and amended by S.I. 1997/2781.  
 (e) 1992 c. 40.  
 (f) 1986 c. 53.  
 (g) S.I. 2001/2657.

required in connection with the exercise by the Authority of functions which the Authority has reasonable grounds to believe will be conferred on it by or under the Act at commencement;

- (c) the reference to a recognised investment exchange or recognised clearing house in subsection (7)(c) included a reference to a recognised investment exchange or a recognised clearing house (in each case, within the meaning of the Financial Services Act) in relation to which the Authority has reasonable grounds to believe that it will be able to impose a requirement under that section immediately after commencement.

(2) In determining whether a person is connected with a regulated person under section 165(11), Part I of Schedule 15 has effect as if each reference to an authorised person were a reference to a regulated person.

(3) The reference to a requirement imposed by the Authority under section 165 in section 176(11) does not include a requirement imposed under that section as modified by this article.

(4) At commencement—

- (a) any requirement imposed under section 165 or subsection (1) of section 175 (information and documents: supplemental provisions) ceases to have effect if it could not be imposed under that enactment immediately after commencement;
- (b) any requirement imposed under subsection (2) or (3) of section 175 (a “supplementary requirement”) ceases to have effect if the requirement pursuant to which the supplementary requirement was imposed ceases to have effect at commencement by virtue of sub-paragraph (a) (and no such supplementary requirement may be imposed thereafter); and
- (c) no action may be taken or continued under or pursuant to the Act in relation to any requirement which ceases to have effect by virtue of this paragraph.

#### **Other transitional modifications of the Act**

3.—(1) The following transitional provisions apply until commencement.

(2) Subsection (1)(b) of section 45 (variation etc. of Part IV permission on Authority’s own initiative) and subsection (1)(d) of section 254 (revocation of authorisation order in respect of unit trust scheme otherwise than by consent) do not apply.

(3) In sections 44, 45, 46, 47, 48, 50, 52, 53, 54 and 55 (variation of Part IV permissions etc.), sections 56 and 60 (performance of regulated activities) and section 148 (modification or waiver of rules)—

- (a) the references to an authorised person are to be read as references to a pending authorised person or a transitional authorised person;
- (b) references to Part IV permissions are to be read as references to—
  - (i) Part IV permissions even though not yet in force; and
  - (ii) transitional permissions.

(4) In sections 42(3), (4) and (5) (giving permission), 56(8) (prohibition orders) and 329(1) (orders in relation to the general prohibition), the references to a person who is exempt from the general prohibition, or to whom the general prohibition does not apply by virtue of any provision, are to be read as references to any person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, when the provision comes into force) he will then be so exempt, or the general prohibition will not then apply to him.

(5) In sections 194, 195, 196 and 197 (incoming firms: intervention by the Authority), the references to an “incoming firm” are to be read as references to any person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, immediately before commencement) he will, at commencement, be treated as being an “incoming firm” by virtue of the Authorised Persons Order.

(6) In section 250(2) (modification or waiver of trust scheme rules or scheme particulars rules), the reference to a person to whom any rules apply is to be read as a reference to any person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, at or after commencement) any rules will then apply to him.

(7) In sections 251 (alteration of authorised unit trust schemes etc.), 252 (procedure when refusing approval of change of manager or trustee) and 257(1)(b) (powers of intervention), references to an authorised unit trust scheme are to be read as references to—

- (a) a scheme in respect of which an order has been made under section 243 (even though the order is not yet in force); or
- (b) a scheme—
  - (i) as respects which there is in force an order made under section 78(1) of the Financial Services Act (or having effect as if so made); and
  - (ii) which is a unit trust scheme within the meaning of section 237; (which will, if it is still such a scheme immediately before commencement, be treated at commencement as an authorised unit trust scheme under section 243 by virtue of the Authorised Persons Order).

(8) In section 264(2) (recognition of collective investment schemes constituted in other EEA States), the reference to the Authority giving a notification “within two months of receiving the notice under subsection (1)” is to be read as a reference to the Authority giving a notification within that period or (if later) on the day on which section 19 comes into force.

(9) In sections 277(1) (alteration of schemes etc.) and 281 (directions), the references to a scheme recognised by virtue of (or under) section 270 or 272 are to be read as references to—

- (a) a scheme in respect of which the Authority has given approval under section 270(1)(d)(i), or in respect of which an order has been made under section 272 (even though the approval or order is not yet in force); or
- (b) a scheme of such a description, and with respect to which such conditions are met that (if it is of that description, and if those conditions are met, immediately before commencement) it will, at commencement, be treated as a recognised scheme under section 270 or 272 by virtue of the Authorised Persons Order.

(10) In section 294 (modification or waiver of rules applying to recognised bodies), references to a recognised body are to be read as references to—

- (a) a body or association in respect of which a recognition order has been made (even though the order is not yet in force); or
- (b) a body or association which is a recognised investment exchange or a recognised clearing house under the Financial Services Act (which will, if it still has that status immediately before commencement, be treated at commencement as a recognised investment exchange or a recognised clearing house under the Act by virtue of regulation 9 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(a)).

(11) In sections 296 to 298 (directions in relation to recognised bodies etc.), in subsections (1), (4), (5), (7) and (8) of section 311 (exclusion from the Competition Act 1998: the Chapter I prohibition), and for the purposes of subsection (1)(b) of section 312 (the Chapter II prohibition), references to a recognised body are to be read as references to a body or association in respect of which a recognition order has been made (even though the order is not yet in force).

(12) In paragraph 5(1) of Schedule 4 (Treaty firms), the reference to a Treaty firm which qualifies for authorisation under that Schedule is to be read as a reference to a Treaty firm which will so qualify for authorisation when paragraph 2 of that Schedule comes into force.

#### **Information from recognised professional bodies**

4.—(1) Until commencement, the Authority may by notice in writing require any recognised professional body, within the meaning of the Financial Services Act, to furnish it with information—

- (a) which relates to investment business (within the meaning of that Act) carried on by a person who holds or has held a certificate issued by that body for the purposes of Part I of that Act or the regulation or supervision of such business; and
- (b) which is reasonably required in connection with the exercise by the Authority of functions which the Authority has reasonable grounds to believe will be conferred on it by or under the Act at commencement.

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(a) S.I. 2001/995.

(2) Any requirement imposed under paragraph (1) ceases to have effect at commencement if it could not be imposed immediately after commencement under the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) Order 2001, and no action may be taken or continued under or pursuant to the Act in relation to such a requirement after commencement.

### **Rehabilitation of offenders—transitional modification of the Banking Act**

**5.—(1)** Section 95 of the Banking Act(a) (restriction of Rehabilitation of Offenders Act 1974(b)) has effect until commencement as if the following provisions were inserted after paragraph (5)—

“(5A) Nothing in section 4(1) (restriction on evidence as to spent convictions in proceedings) shall prevent the determination in any proceeding (including proceedings on appeal to any court) arising out of any relevant decision of the Authority, or prevent the admission or requirement in any such proceedings of any evidence, relating to a person’s previous convictions for any such offence as is mentioned in subsection (1) above or the circumstances ancillary thereto.

(5B) A conviction for such an offence as is mentioned in subsection (1) above shall not be regarded as spent for the purposes of section 4(2) (questions relating to an individual’s previous convictions) if—

- (a) the question is put by or on behalf of the Authority and the individual is a person who is or is seeking to become a director, controller or manager of a person who—
  - (i) has made an application for permission to accept deposits under Part IV of the Financial Services and Markets Act 2000 (“Part IV”) which has not been determined,
  - (ii) a person who has been given such permission (albeit that permission is not yet in force), or
  - (iii) a transitional authorised person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, immediately before commencement) he will, at commencement, be treated as having permission to accept deposits under Part IV, or
- (b) the question is put on behalf of such a person and the individual is or is seeking to become a director, controller or manager of that person,

and the person questioned is informed that by virtue of this section convictions for any such offence are to be disclosed.

(5C) Section 4(3)(b) (spent convictions not to be ground for excluding person from office, occupation etc.) shall not—

- (a) prevent the Authority from refusing to give, varying or cancelling permission to accept deposits under Part IV on the ground that an individual is not a fit and proper person to be a director, controller or manager of the person concerned or from imposing a requirement under Part IV that relates to the acceptance of deposits requiring the removal of an individual as director, controller or manager of such a person, or
- (b) prevent—
  - (i) a person who has made an application for permission to accept deposits under Part IV which has not been determined,
  - (ii) a person who has been given such permission (albeit that permission is not yet in force), or
  - (iii) a transitional authorised person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, immediately before commencement) he will, at commencement, be treated as having permission to accept deposits under Part IV,

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(a) Amended by the Bank of England Act 1998 (c. 11) Schedule 5. Repealed by the Police Act 1997 (c. 50) Schedule 10 from a day to be appointed.  
(b) 1974 c. 53.

from dismissing or excluding an individual from being a director, controller or manager of that person,  
by reason, or partly by reason, of a spent conviction of that individual for such an offence as is mentioned in subsection (1) above or any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances.

(5D) For the purposes of subsections (5B) and (5C) above an application for permission by a person is not determined until the determination of the Authority is communicated to the person.

(5E) In subsections (5B) and (5C)—

“commencement” means the beginning of the day on which section 19 of the Financial Services and Markets Act 2000 comes into force;

“director”, “controller” and “manager” have the meanings given by that Act;

“transitional authorised person” has the meaning given by the Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) (No. 2) Order 2001.

(5F) In subsection (5A), “relevant decision” means a decision—

(a) to refuse an application for permission to accept deposits under Part IV,

(b) to impose a requirement under Part IV that relates to the acceptance of deposits,

(c) to vary or to cancel permission to accept deposits given under Part IV, or

(d) to refuse to vary or cancel such permission,

except any such decision made by the Authority as a result of a direction under section 405 of the Financial Services and Markets Act 2000 (directions in relation to third countries).”.

#### **Rehabilitation of offenders—transitional modification of the Financial Services Act**

6.—(1) Section 189 of the Financial Services Act has effect until commencement as if—

(a) after subsection (4)(c) there were inserted—

“(d) as respects action within paragraph 5 or 6 of that Part, a person who is connected with that person;

(e) as respects action within paragraph 5 of that Part consisting of a decision of a kind mentioned in paragraph 7(e) of Part I of that Schedule, the operator or trustee (within the meaning of the Financial Services and Markets Act 2000) of the scheme or a person who is connected with that person.”; and

(b) after subsection (6), there were inserted—

“(6A) In this section and that Schedule, a person is connected with another (“A”) if he is—

(a) where A is a body corporate, a director, manager or controller of A;

(b) where A is a partnership, a partner or manager of A;

(c) where A is an unincorporated association, a member of its governing body or an officer, manager or controller of A;

(d) where A is an individual, a manager of A.

(6B) In subsection (6A), “director”, “manager” and “controller” have the meanings given by the Financial Services and Markets Act 2000.”.

(2) Schedule 14 to the Financial Services Act has effect until commencement as if—

(a) after paragraph 6 of Part I (exempted proceedings) there were inserted—

“7. Any proceedings with respect to a decision or proposed decision of the Financial Services Authority—

(a) refusing an application for permission under Part IV of the Financial Services and Markets Act 2000 (“Part IV”) to carry on relevant activities;

(b) deciding to impose requirements under Part IV that relate to relevant activities;

(c) varying or cancelling permission to carry on relevant activities given under Part IV;

(d) refusing to vary or cancel such permission; or

(e) refusing to make or revoking an authorisation order under section 243 of that

Act or an order under section 272 of that Act declaring a scheme to be a recognised scheme or refusing to give its approval to a scheme being recognised under section 270 of that Act or directing that a scheme recognised under that section is to cease to be recognised.”;

(b) after paragraph 8 of Part II (exempted questions) there were inserted—

“9. The Financial Services Authority.

(a) An applicant for permission under Part IV to carry on relevant activities whose application has not been determined.

(b) A person who has been given permission under Part IV to carry on relevant activities (albeit that permission is not yet in force).

(c) A transitional authorised person who is of such a description, and with respect to whom such conditions are met, that (if he is of that description, and if those conditions are met, immediately before commencement) he will, at commencement, be treated as having permission under Part IV to carry on relevant activities.

(d) The operator or trustee (within the meaning of the Financial Services and Markets Act 2000) of a collective investment scheme (within the meaning of that Act) in respect of which a notice has been given under section 270 of that Act or an application has been made under section 272 of that Act.

(e) The operator or trustee (within the meaning of that Act) of a prospective recognised scheme.

(f) An individual who is connected with a person (whether or not an individual) described in paragraph (a), (b), (c), (d) or (e) above.

10. A person (whether or not an individual) described in paragraph 9(a), (b), (c), (d) or (e).

An individual who is or is seeking to become connected with the person in column 1.”;

(c) in Part III (exempted actions), there were inserted—

(i) after the words “Part I of this Schedule” in each place they appear in column 2, “, except for any decision or proposed decision as is mentioned in paragraph 7 of that Part”; and

(ii) after paragraph 4—

“5. The Financial Services Authority.

Any such decision or proposed decision as is mentioned in paragraph 7 of Part I of this Schedule.

6. A person (whether or not an individual) described in paragraph 9(a), (b), (c), (d) or (e) of Part II of this Schedule.

Dismissing or excluding an individual from being or becoming connected with the person in column 1.”;

(d) in Part IV (supplemental), there were inserted after paragraph 3—

“4. “Relevant activities” means any regulated activity of the kind specified by any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a), or article 64 of that Order (agreeing to carry on specified kinds of activity) so far as relevant to any such activity—

(a) article 14 (dealing in investments as principal);

(b) article 21 (dealing in investments as agent);

(c) article 25 (arranging deals in investments);

(d) article 37 (managing investments);

(e) article 40 (safeguarding and administering investments);

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(a) S.I. 2001/544.

- (f) article 45 (sending dematerialised instructions);
- (g) article 51 (establishing etc. a collective investment scheme);
- (h) article 53 (advising on investments).

5. In paragraph 9 of Part II of this Schedule—

“commencement” means the beginning of the day on which section 19 of the Financial Services and Markets Act 2000 comes into force;

“prospective recognised scheme” means a collective investment scheme (within the meaning of the Financial Services and Markets Act 2000)—

- (a) in respect of which the Financial Services Authority has given approval under section 270(1)(d)(i) of that Act or in respect of which an order has been made under section 272 of that Act (even though the approval or order is not yet in force); or
- (b) which is of such a description, and with respect to which such conditions are met that (if it is of that description, and if those conditions are met, immediately before commencement) it will, at commencement (within the meaning given by this paragraph) be treated as a recognised scheme under section 270 or 272 of that Act by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Authorised Persons etc.) Order 2001;

“transitional authorised person” has the meaning given by the Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) (No. 2) Order 2001.

6. In Parts II and III of this Schedule, references to an applicant for permission are references to an applicant who has not yet been informed of the determination of his application.

7. Paragraph 9(d) and (e) of Part II of this Schedule and so much of paragraph 9(f) as relates to those paragraphs—

- (a) apply only if the question is put to elicit information for the purpose of determining whether the operator or trustee is a fit and proper person to act as operator or trustee of the scheme in question;
- (b) apply in the case of a scheme in respect of which a notice has been given under section 270 of the Financial Services and Markets Act 2000 or an application has been made under section 272 of that Act only until the applicant has been informed of the determination of the application.”.

### Exemptions from restrictions on disclosure

7. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(a) have effect until commencement as if—

- (a) the reference in Part I of Schedule 1 to a recognised investment exchange included a reference to a recognised investment exchange within the meaning of the Financial Services Act;
- (b) after the reference in that Part to the scheme manager and to its functions under Part XV of the Act, there were inserted the following entries—

“The Policyholders Protection Board	Its functions under the Policyholders Protection Act 1975(b)
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The Deposit Protection Board	Its functions as such
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The body administering a scheme under section 54 of the Financial Services Act 1986(c)	Its functions as such”;
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- (c) the reference in that Part to a body which was, immediately before the coming into force of section 19 of the Act, a recognised professional body within the meaning of

(a) S.I. 2001/1820.

(b) 1975 c. 75.

(c) Amended by S.I. 1989/2405 (NI 19) and modified by S.I. 1992/3218 and S.I. 1995/3275.



- the Financial Services Act included a reference to a recognised professional body, a self-regulating organisation and a self-regulating organisation for friendly societies, in each case, within the meaning of that Act;
- (d) the reference in that Part to an auditor exercising functions conferred by or under the Act included a reference to a person approved under section 108 of the Financial Services Act<sup>(a)</sup> for the purposes of exercising any function;
  - (e) the reference in that Part to a person appointed to conduct an investigation under section 167 or section 168(3) or (5) of the Act included a reference to each of the following—
    - (i) an inspector appointed under section 94 or 177 of the Financial Services Act<sup>(b)</sup>;
    - (ii) a person authorised to exercise powers under section 106 of that Act<sup>(c)</sup>;
    - (iii) a person authorised to exercise powers under section 43A or 44 of the Insurance Companies Act<sup>(d)</sup>;
  - (f) the reference in that Part to an auditor of an authorised person appointed under or as a result of an enactment included a reference to each of the following—
    - (i) an auditor of an authorised person, within the meaning of the Financial Services Act;
    - (ii) an auditor appointed under section 21 of the Insurance Companies Act<sup>(e)</sup>;
  - (g) the reference in that Part to an actuary exercising functions conferred by or under the Act included a reference to an actuary exercising functions under the Insurance Companies Act;
  - (h) the reference in Part 4 of that Schedule and Schedule 2 to a recognised clearing house included a reference to a recognised clearing house within the meaning of the Financial Services Act.

#### **Transitional saving in relation to the Civil Jurisdiction and Judgments Act 1982**

8. Notwithstanding paragraph 3 of Schedule 20, the reference in paragraph 10 of Schedule 5 to the Civil Jurisdiction and Judgments Act 1982<sup>(f)</sup> (proceedings excluded from the operation of Schedule 4 to that Act) to section 188 of the Financial Services Act<sup>(g)</sup> is to be treated as if it had not been omitted, until that section is repealed.

#### **The Open-Ended Investment Companies Regulations 2001**

9. Before commencement, and although the Open-Ended Investment Companies Regulations 2001<sup>(h)</sup> are not in force for these purposes, applications may be made for, and the Authority may make, authorisation orders under those Regulations to come into force not sooner than commencement.

*Tony McNulty*  
*John Heppell*

20th July 2001

Two of the Lords Commissioners of Her Majesty's Treasury

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(a) Amended by S.I. 1996/2827.

(b) Section 94 was amended by the Companies Act 1989 (c. 40), section 72 and repealed in part by Schedule 24 to that Act. Section 177 was amended by the Criminal Justice Act 1993 (c. 9), Schedule 5 and the Companies Act 1989, section 74.

(c) Amended by the Companies Act 1989 (c. 40), section 73 and modified by S.I. 1992/3218, S.I. 1995/2049 and S.I. 1995/3275.

(d) Section 43A was inserted by S.I. 1994/1696 and amended (except in relation to Scotland) by the Youth Justice and Criminal Evidence Act 1999 (c. 23), Schedule 3 and S.I. 1997/2781. Section 44 was amended by the Companies Act 1989 (c. 40), section 77; the Youth Justice and Criminal Evidence Act 1999, Schedule 3 (except in relation to Scotland); S.I. 1994/1696 and S.I. 1997/2781.

(e) Amended by S.I. 1991/1997.

(f) 1982 c. 27. Paragraph 10 of Schedule 5 was inserted by section 188 of the Financial Services Act 1986 (c. 60) and substituted by section 200(1) of the Companies Act 1989 (c. 40).

(g) Section 188 was substituted by section 200(1) of the Companies Act 1989.

(h) S.I. 2001/1228.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes consequential and transitional provisions for the purposes of the Financial Services and Markets Act 2000 (“the Act”) and in consequence of the Financial Services and Markets Act 2000 (Commencement No. 5) Order (S.I. 2001/2632 (C. 87)). That Order brings into force the provisions of the Act relating to (amongst other things) the making of applications under the Act for permission or authorisation coming into force on the day on which section 19 of the Act comes into force (“commencement”). That Order also brings into force Part XI of the Act (information gathering and investigations).

Article 2 modifies section 165 of the Act to enable the Financial Services Authority (“the Authority”) to exercise its powers under that section in relation to information or documents which are reasonably required in connection with the exercise by it of functions which it has reasonable grounds to believe will be conferred on it by or under the Act or, in the case of persons who are not regulated under existing legislation, functions which will be conferred on the Authority at commencement by the Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal Offences etc.) Order 2001 (S.I. 2001/2657). Under article 2, the Authority may require regulated persons (as defined by article 1) to provide information or to produce documents if the Authority has reasonable grounds to believe that it will be able to impose such a requirement under the Act after commencement on the person concerned. Article 2 also enables the Authority to impose information requirements on recognised clearing houses and recognised investment exchanges (within the meaning of the Financial Services Act 1986).

The modifications to section 165 made by article 2 will cease to have effect on commencement. Any requirement imposed under section 165 pursuant to article 2 (and any requirement imposed under Part XI in connection with such a requirement) ceases to have effect at commencement if the Authority could not impose such a requirement immediately after commencement.

Article 3 makes further transitional modifications of certain provisions of the Act brought into force by the Commencement No. 5 Order. For example, references in the Act to “authorised persons” are treated as referring to persons who *will be* authorised at commencement. These modifications have effect until commencement.

Article 4 enables the Authority to require a recognised professional body (within the meaning of the Financial Services Act 1986) to furnish it with information which relates to investment business carried on by a person who holds (or has held) a certificate issued by that body for the purposes of Part I of that Act (regulation of investment business). The Authority may only impose such a requirement in relation to information which is reasonably required in connection with the exercise of functions which it has reasonable grounds to believe will be conferred on it by or under the Act. Any such requirement ceases to have effect at commencement if it could not be imposed immediately after commencement.

Articles 5 and 6 make transitional modifications to section 95 of the Banking Act 1987 and section 189 of, and Schedule 14 to, the Financial Services Act 1986. These provisions provide for exceptions to the Rehabilitation of Offenders Act 1974 which relate to the determination of applications for authorisation under those Acts and related matters. The modifications provide that the exceptions also apply in relation to the determination of an application for permission under Part IV of the Act or applications by a collective investment scheme under Part XVII of the Act and related matters.

Article 7 makes transitional modifications to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/1820). These modifications will cease to have effect at commencement.

Article 8 makes transitional provision so that, despite the amendment made by paragraph 3 of Schedule 20 to the Act, the reference in Schedule 5 to the Civil Jurisdiction and Judgments Act 1982 to proceedings mentioned in section 188 of the Financial Services Act 1986 continues in effect until that section is repealed.

Article 9 provides that applications may be made for, and the Authority may grant, authorisation orders under the Open-Ended Investment Companies Regulations 2001 (S.I. 2001/1228), so as to come into force not sooner than commencement.



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**STATUTORY INSTRUMENTS**

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**2001 No. 2659****FINANCIAL SERVICES AND MARKETS**

The Financial Services and Markets Act 2000  
(Consequential and Transitional Provisions)  
(Miscellaneous) (No. 2) Order 2001

£2.50

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under the authority and superintendence of Carol Tullo, Controller of  
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.  
E1492 9/2001 649997 19585

ISBN 0-11-029927-2



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