

**2003 No. 2066**

**FINANCIAL SERVICES AND MARKETS**

**The Collective Investment Schemes (Miscellaneous  
Amendments) Regulations 2003**

*Made - - - - - 11th August 2003*

*Laid before Parliament 11th August 2003*

*Coming into force - - 13th February 2004*

Whereas the Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to collective investment in transferable securities and other liquid assets;

Now therefore the Treasury, in exercise of the powers conferred upon them by section 2(2) of the European Communities Act 1972, and sections 183(2), 188(2), 213(10), 214(5), 224(4), 264(3), 349(1)(b), (2) and (3), 417(1)(c) and 428(3) of, and paragraphs 13(1)(b)(iii), 14(1)(b), 17(b) and 22 of Schedule 3 to, the Financial Services and Markets Act 2000(d), hereby make the following Regulations:

PART 1

GENERAL

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Collective Investment Schemes (Miscellaneous Amendments) Regulations 2003 and come into force on 13th February 2004.

(2) In these Regulations—

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

“the Passport Rights Regulations” means the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(e).

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(a) S.I. 2002/2840.

(b) 1972 c. 68. By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51), regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) See the definition of “prescribed”.

(d) 2000 c. 8.

(e) S.I. 2001/2511; amended by S.I. 2002/765 and S.I. 2003/1473.

## PART 2

### PASSPORT RIGHTS OF MANAGEMENT COMPANIES

#### General

2.—(1) For paragraph (a) of subsection (1) of section 425 of the Act (definitions in relation to the single market directives)(a), substitute—

“(a) “banking consolidation directive”, “EEA authorisation”, “EEA firm”, “EEA right”, “EEA State”, “first life insurance directive”, “first non-life insurance directive”, “insurance directives”, “insurance mediation directive”, “investment services directive”, “single market directives” and “UCITS directive” have the meaning given in Schedule 3; and”.

(2) In Part 1 of Schedule 3 to the Act (EEA passport rights—defined terms)(b)—

(a) in paragraph 1 (the single market directives)—

(i) at the end of sub-paragraph (d), omit “and”; and

(ii) at the end of sub-paragraph (e), insert—

“; and

(f) the UCITS directive.”;

(b) after paragraph 4A, insert—

#### *“The UCITS directive*

**4B.** “The UCITS directive” means the Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No. 85/611/EEC).”(c);

(c) in paragraph 5 (EEA firm)—

(i) at the end of sub-paragraph (d), omit “or”; and

(ii) at the end of sub-paragraph (e), insert—

“; or

(f) a management company (as defined in Article 1a.2 of the UCITS directive) which is authorised (within the meaning of Article 5) by its home state regulator.”.

(3) In regulation 1(2) (interpretation) of the Passport Rights Regulations, after the definition of the “ISD Regulations”, insert—

““management company” means an EEA firm falling within paragraph 5(f) of Schedule 3;”.

#### Passporting by EEA management companies

3.—(1) In Part 2 of Schedule 3 to the Act (exercise of passport rights by EEA firms)(d)—

(a) in paragraph 13 (establishment), in sub-paragraph (1), for “(c) or (d)”, substitute “(c), (d) or (f)”;

(b) in paragraph 14 (services), in sub-paragraph (1)(b), for “(d) or (e)”, substitute “(d), (e) or (f)”;

(c) in paragraph 15 (grant of permission), after sub-paragraph (1), insert—

“(1A) Sub-paragraph (1) is to be read subject to paragraph 15A(3).”;

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(a) Amended by S.I. 2000/2952 and S.I. 2003/1473.

(b) Amended by S.I. 2000/2952, S.I. 2001/1376 and S.I. 2003/1473.

(c) OJ L375, 31.12.85, p. 3; amended by Council Directive 88/220/EEC, European Parliament and Council Directive 95/26/EC, European Parliament and Council Directive 2001/107/EC and European Parliament and Council Directive 2001/108/EC.

(d) Amended by S.I. 2003/1473.

(d) after paragraph 15, insert—

*“Power to restrict permission of management companies*

**15A.**—(1) Sub-paragraph (2) applies if—

- (a) a firm falling within paragraph 5(f) qualifies for authorisation as a result of paragraph 12(1) (establishment conditions satisfied); but
- (b) the Authority determines that the way in which the firm intends to invite persons in the United Kingdom to become participants in any collective investment scheme which that firm manages does not comply with the law in force in the United Kingdom.

(2) The Authority may give a notice to the firm and the firm’s home state regulator of the Authority’s determination under sub-paragraph (1)(b).

(3) Paragraph 15(1) does not give a firm to which the Authority has given (and not withdrawn) a notice under sub-paragraph (2) permission to carry on through the firm’s United Kingdom branch the regulated activity of dealing in units in the collective investment schemes which the firm manages.

(4) Any notice given under sub-paragraph (2) must be given before the end of the period of two months beginning with the day on which the Authority received the consent notice.

(5) Sections 264(4) and 265(1), (2) and (4) apply to a notice given under sub-paragraph (2) as they apply to a notice given by the Authority under section 264(2).

(6) If a decision notice is given to the firm under section 265(4), by virtue of sub-paragraph (5), the firm may refer the matter to the Tribunal.

(7) In sub-paragraph (3)—

- (a) “units” has the meaning given by section 237(2); and
- (b) the reference to “dealing in” units in a collective investment scheme must be read with—
  - (i) section 22;
  - (ii) any relevant order under that section; and
  - (iii) Schedule 2.”.

(2) In the Passport Rights Regulations—

(a) in regulation 2 (establishment of a branch: contents of consent notice), after paragraph (2), insert—

“(2A) In the case of a management company, the prescribed information is—

- (a) a statement that the firm is a management company;
- (b) the requisite details of the branch; and
- (c) details of any compensation scheme which is intended to protect the branch’s investors.”;

(b) in regulation 3 (provision of services: contents of regulator’s notice), after paragraph (2), insert—

“(2A) In the case of a management company, the prescribed information is—

- (a) a statement that the firm is a management company;
- (b) particulars of the programme of operations to be carried on in the United Kingdom including a description of the particular EEA activities to be carried on; and
- (c) details of any compensation scheme which is intended to protect investors.”;

(c) in regulation 4 (investment firms, credit institutions and financial institutions: changes to branch details)—

- (i) in the heading, after “Investment firms”, insert “, management companies”;
- (ii) in paragraphs (1) and (6), after “investment firm”, insert “, management company”;

(d) in regulation 5 (investment firms; changes to services)—

- (i) in the heading, after “Investment firms”, insert “and management companies”;

(ii) after paragraph (1), insert—

“(1A) A management company which is providing services in the United Kingdom in the exercise of an EEA right must not make a change in any of the matters referred to in regulation 3(2A)(b), unless the relevant requirements have been complied with.”; and

(iii) in paragraph (4), after “investment firm”, insert “or a management company”.

### **Passporting by UK management companies**

4.—(1) In Part 3 of Schedule 3 to the Act (exercise of passport rights by UK firms)—

(a) in paragraph 19 (exercise of rights to establish a branch)—

(i) in sub-paragraph (6), for “the investment services directive or the banking consolidation directive”, substitute “the banking consolidation directive, the investment services directive or the UCITS directive”;

(ii) in sub-paragraph (12)(a), for “within three months beginning with the date when it received the notice of intention”, substitute “within the relevant period”;

(iii) after sub-paragraph (12), insert—

“(12A) In sub-paragraph (12), “the relevant period” means—

(a) if the firm’s EEA right derives from the UCITS directive, two months beginning with the date on which the Authority received the notice of intention;

(b) in any other case, three months beginning with that date.”; and

(b) in paragraph 20 (exercise of rights to provide services), in sub-paragraph (3)—

(i) for “the investment services directive or the banking consolidation directive”, substitute “the banking consolidation directive, the investment services directive or the UCITS directive”;

(ii) after “host state regulator”, insert “with such other information as may be specified”.

(2) In the Passport Rights Regulations—

(a) in regulation 11 (UK investment firms, credit institutions and financial institutions: changes to branch details)—

(i) in the heading, after “investment firms”, insert “, management companies”; and

(ii) in paragraph (1), after “investment services directive”, insert “, the UCITS directive”; and

(b) in regulation 12 (UK investment firms: changes to services)—

(i) in the heading, after “investment firms”, insert “and management companies”; and

(ii) in paragraph (1), after “investment services directive”, insert “or the UCITS directive”.

## **PART 3**

### **AUTHORISATION OF UNIT TRUST SCHEMES AND MANAGEMENT COMPANIES**

#### **Power to restrict the activities of a management company**

5. In section 140 of the Act (restriction on managers of authorised unit trust schemes)—

(a) in the side note, for “authorised unit trust schemes”, substitute “certain collective investment schemes”;

(b) for subsection (1), substitute—

“(1) The Authority may make rules prohibiting an authorised person who has permission to act as—

(a) the manager of an authorised unit trust scheme, or

(b) the management company of an authorised UCITS open-ended investment company, from carrying on a specified activity.”; and

(c) after subsection (2), insert—

“(3) In this section—

- (a) “authorised UCITS open-ended investment company” means an authorised open-ended investment company to which the UCITS directive applies; and
- (b) “management company” has the meaning given by Article 1a.2 of the UCITS directive.”.

### **Control over management companies**

6. In the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001(a)—

(a) in regulation 2 (interpretation), after the definition of “EEA investment firm”, insert—

““EEA management company” means an EEA firm falling within paragraph 5(f) of Schedule 3 to the Act(b);”;

(b) in regulation 3, for “paragraph (1) or (2)”, substitute “paragraph (1), (2) or (3)”;

(c) in regulation 4(a), for “paragraph (1) or (2)”, substitute “paragraph (1), (2), or (3)”;

(d) in regulation 5, after paragraph (2), insert—

“(3) This paragraph applies where—

- (a) a person (“the acquirer”) proposes to acquire or has acquired control, an additional kind of control or an increase in a relevant kind of control over a UK authorised person in circumstances falling within section 178(1) or (2) of the Act;
- (b) that UK authorised person has permission to operate a collective investment scheme;
- (c) the acquirer is either—
  - (i) an EEA management company; or
  - (ii) the parent undertaking of an EEA management company; and
- (d) as a result of the acquisition or proposed acquisition, the acquirer is or would become a parent undertaking of the UK authorised person.”; and
- (e) in regulation 6, for “or each EEA credit institution that is mentioned in regulation 5(2)(c)(i) or (ii)”, substitute “, each EEA credit institution that is mentioned in regulation 5(2)(c)(i) or (ii) or each EEA management company that is mentioned in regulation 5(3)(c)(i) or (ii)”.

### **Participation of EEA management companies in the compensation scheme**

7. In the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001(c)—

(a) in regulation 1(2) (interpretation)—

(i) in the definition of “branch”, after paragraph (b), insert—

“(c) in relation to a relevant management company, has the meaning given by Article 1.5 of the investor-compensation schemes directive (as applied by Article 5f.2 of the UCITS directive);”;

(ii) after the definition of “investor-compensation schemes directive”, insert—

““relevant management company” means an EEA firm falling within paragraph 5(f) of Schedule 3 to the Act which—

(a) is authorised by its home state regulator to provide services of the kind specified by Article 5.3(a) of the UCITS directive (management of portfolios of investments); and

(b) is providing those services in the United Kingdom;”;

(b) in regulation 2 (persons not to be regarded as relevant persons)—

(i) at the end of paragraph (b), omit “and”; and

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(a) S.I. 2001/2509.

(b) Amended by S.I. 2000/2952, S.I. 2001/1376, S.I. 2003/1473 and these Regulations.

(c) S.I. 2001/1783; amended by S.I. 2003/1476.

- (ii) after paragraph (c), insert—
  - “; and
  - (d) any relevant management company.”;
- (c) in regulation 3 (persons who may elect to participate), in paragraph (1)(a), after “investment firm”, insert “or relevant management company”;
- (d) in regulation 4 (persons in respect of whom inspection under section 224 does not apply)—
  - (i) at the end of paragraph (b), omit “and”; and
  - (ii) after paragraph (c), insert—
    - “; and
    - (d) any relevant management company.”.

#### **Amendment of the Open-Ended Investment Companies Regulations**

**8.** In regulation 15(6) of the Open-Ended Investment Companies Regulations 2001<sup>(a)</sup> (requirements for authorisation), omit “Part IV of”.

#### **Rules applying to management companies**

- 9.** In section 266 of the Act (disapplication of rules), after subsection (1), insert—
- “(1A) But subsection (1) does not affect the application of rules to an operator of a scheme if the operator is an EEA firm falling within paragraph 5(f) of Schedule 3 who qualifies for authorisation under that Schedule.”.

### PART 4

#### MISCELLANEOUS

#### **Open-ended investment companies incorporated in Northern Ireland**

- 10.** In Schedule 5 to the Act—
- (a) after paragraph 1(3) (authorised open-ended investment company to be an authorised person), insert—
    - “(4) A body—
      - (a) incorporated by virtue of regulations made under section 1 of the Open-Ended Investment Companies Act (Northern Ireland) 2002<sup>(b)</sup> in respect of which an authorisation order is in force, and
      - (b) to which the UCITS directive applies,
 is an authorised person.
    - (5) “Authorisation order” means an order made under (or having effect as made under) any provision of those regulations which is made by virtue of section 1(2)(1) of that Act (provision corresponding to Chapter 3 of Part 17 of the Act).”; and
  - (b) in paragraph 2(2), after “paragraph 1(3)”, insert “or (4)”.

#### **Regulations made under section 264 of the Act**

- 11.** In the Financial Services and Markets Act 2000 (Collective Investment Schemes Constituted in Other EEA States) Regulations 2001<sup>(c)</sup>—
- (a) in regulation 2, omit the definition of “the UCITS Directive”;
  - (b) in regulation 3—
    - (i) for “the UCITS Directive”, substitute “the UCITS directive”;
    - (ii) for “that Directive”, substitute “that directive”;
  - (c) in regulation 4, for paragraph (b), substitute—
    - “(b) its full and simplified prospectus (within the meaning of Section VI of the UCITS directive); and”.

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<sup>(a)</sup> S.I. 2001/1228.

<sup>(b)</sup> Act of the Northern Ireland Assembly; 2002 c. 13.

<sup>(c)</sup> S.I. 2001/2383.

## Disclosure of information

**12.** In the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(**a**)—

- (a) in regulation 2 (interpretation)—
  - (i) in the definition of “EEA competent authority”, omit “, the UCITS directive”;
  - (ii) omit the definitions of “the UCITS directive” and “UCITS directive information”;
- (b) in the heading to Part 3, omit “and UCITS directive information”;
- (c) in regulation 8 (application of Part 3), omit “and UCITS directive information”;
- (d) in regulation 11 (application of Part 4), omit paragraph (b);
- (e) in regulation 15 (disclosure of transitional information), in paragraph (4), omit “or the UCITS directive”, and “or UCITS directive information respectively”.

## References to the UCITS Directive

**13.**—(1) In section 199(8) of the Companies Act 1985(**b**) (definition of “UCITS”), for the words from “Council Directive 85/611/EEC” to “transferable securities”, substitute “Council Directive 85/611/EEC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as last amended by European Parliament and Council Directive 2001/108/EC”.(**c**)

(2) In regulation 2(1)(b) of the Personal Equity Plan Regulations 1989(**d**) (interpretation), in the definition of “UCITS”, for “Council Directive 85/611”, substitute “Council Directive 85/611/EEC, as last amended by European Parliament and Council Directive 2001/108/EC”.

(3) In Part 3 of Schedule 1 to the Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998(**e**) (interpretation), in the definition of “open-ended investment company”, for the words from “Council Directive No. 85/611/EEC” to “as amended” substitute “Council Directive No. 85/611/EEC co-ordinating the laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as last amended by European Parliament and Council Directive No. 2001/108/EC”.

(4) In regulation 2(1)(b) of the Individual Savings Account Regulations 1998(**f**) (interpretation), in the definition of “UCITS”, for “Council Directive 85/611”, substitute “Council Directive 85/611/EEC, as last amended by European Parliament and Council Directive 2001/108/EC”.

(5) In the Schedule to the Cross-Border Credit Transfer Regulations 1999(**g**), for “Directive 85/611/EEC”, substitute “Directive 85/611/EEC, as last amended by Directive 2001/108/EC”.

(6) In regulation 2(1) of the Personal Pension Schemes (Restriction on Discretion to Approve) (Permitted Investments) Regulations 2001(**h**) (interpretation), in the definition of “UCITS”, for “Council Directive 85/611”, substitute “Council Directive 85/611/EEC, as last amended by European Parliament and Council Directive 2001/108/EC”.

(7) In the Open-Ended Investment Companies Regulations 2001(**i**)—

- (a) in regulation 2(1) (interpretation), omit the definition of “the UCITS Directive”; and
- (b) in regulation 17(1) (certificates), for “the UCITS Directive”, substitute “the UCITS directive”.

*Jim Murphy*  
*Joan Ryan*

11th August 2003

Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) S.I. 2001/2188; amended by S.I. 2001/3437, S.I. 2001/3624, S.I. 2001/3648 and S.I. 2002/1775.

(b) 1985 c.6. Subsection (8) was inserted by S.I. 1993/1819 and amended by S.I. 2001/3649.

(c) OJ L41, 13.2.2002, p. 35.

(d) S.I. 1989/469; amended by S.I. 2001/923.

(e) S.I. 1998/1831; amended by S.I. 1999/3259 and by S.I. 2001/3649.

(f) S.I. 1998/1870.

(g) S.I. 1999/1876.

(h) S.I. 2001/117; amended by S.I. 2001/3629.

(i) S.I. 2001/1228; amended by S.I. 2001/3755.

## EXPLANATORY NOTE

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

Part 2 of these Regulations amends the Financial Services and Markets Act 2000 (“the Act”) and the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (S.I. 2001/2511) so as to enable management companies of undertakings for collective investment in transferable securities (“UCITS”) to exercise their Community law rights of free movement of services and right of establishment.

Part 3 of these Regulations amends the Act in so far as it applies to collective investment schemes which are UCITS. Regulation 5 provides that the Financial Services Authority may make rules restricting the activities of the management company of an authorised open-ended investment company which is a UCITS. Regulation 6 amends the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001 (S.I. 2001/2509). Regulation 7 amends the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 (S.I. 2001/1783) in so far as it applies to EEA firms which are management companies and which have authorisation from their home state regulator to carry on activities of the kind specified by Article 5.3(a) of Council Directive 85/611/EEC with regard to investments of UCITS (management of portfolios).

Part 4 of the Regulations makes miscellaneous amendments to related legislation. Regulation 10 amends Schedule 5 to the Act to provide that a body which is incorporated and authorised pursuant to the Open-Ended Investment Companies Act (Northern Ireland) 2002 and which is a UCITS is an authorised person. Regulation 11 amends the Financial Services and Markets Act 2000 (Collective Investment Schemes Constituted in Other EEA States) Regulations 2001 (S.I. 2001/2383) so as to provide that the notice given under section 264 of the Act (notice to the Authority of intention to invite persons in the United Kingdom to become participants in an EEA scheme) must include the scheme’s simplified prospectus. Regulation 12 amends the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188). These amendments are consequential on the amendments made to the Act by Part 2 of these Regulations.

Regulation 13 amends references to Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities in other legislation.

These Regulations implement in part Directive 2001/107/EC of the European Parliament and of the Council amending Council Directive 85/611/EEC with a view to regulating management companies and simplified prospectuses and Directive 2001/108/EC of the European Parliament and of the Council 2001/107/EC amending Council Directive 85/611/EEC with regard to investments of UCITS. A Transposition Note setting out how the main elements of these Directives will be transposed into UK law is available from the Banking and General Insurance Team, HM Treasury, 1 Horseguards Road, London SW1A 2HQ. The Transposition Note is also on HM Treasury’s website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

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