

2007 No. 1973

REGULATORY REFORM

FINANCIAL SERVICES AND MARKETS

**The Regulatory Reform (Financial Services and Markets Act
2000) Order 2007**

Made - - - - *11th July 2007*

Coming into force - - *12th July 2007*

The Treasury have—

- (a) consulted, in accordance with section 5(1) of the Regulatory Reform Act 2001(a)—
 - (i) such organisations as appeared to them to be representative of interests substantially affected by their proposals for this Order;
 - (ii) the statutory bodies to whose functions their proposals relate;
 - (iii) the National Assembly for Wales; and
 - (iv) such other persons as they considered appropriate;
- (b) following that consultation, considered it appropriate to vary part of their proposals, and undertaken such further consultation with respect to the variations as appeared to them to be appropriate;
- (c) following those consultations, considered it appropriate to proceed to make this Order;
- (d) laid a document containing their proposals before Parliament, in accordance with section 6 of the Regulatory Reform Act 2001(b), and the period for Parliamentary consideration under section 8 of that Act has expired;
- (e) had regard to the representations made during that period and in particular to the Fifth Report, Session 2006-2007, of the Delegated Powers and Regulatory Reform Committee of the House of Lords(c) and the Third Report, Session 2006-7, of the Regulatory Reform Committee of the House of Commons(d);
- (f) laid a draft of this Order before Parliament with a statement giving details of representations received during the period for Parliamentary scrutiny and of the changes the Treasury has made to their proposals in the light of them;

(a) 2001 c.6.

(b) The Regulatory Reform Act 2001 was repealed by section 30(1) of the Legislative and Regulatory Reform Act 2006 (c. 51), but the application of the Regulatory Reform Act 2001 was saved in relation to the making of an Order under section 1 of that Act giving effect to proposals in a document laid before Parliament under section 6(1) of that Act before the day on which the Legislative and Regulatory Reform Act 2006 came into force. A proposal under section 6(1) of the Regulatory Reform Act 2001 was laid before Parliament on 18 December 2006, before the date on which the Legislative and Regulatory Reform Act 2006 came into force.

(c) Fifth Report on 23 January 2007, HL Paper 30, HC 82-v.

(d) Third Report on 23 March 2007, HC 397.

- (g) reached the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
- (h) as this Order creates burdens affecting persons, reached the opinion that—
 - (i) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens created, and
 - (ii) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for this Order to be made.

The draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 4(2) of the Regulatory Reform Act 2001.

The Treasury, in exercise of the powers conferred upon them by section 1 of the Regulatory Reform Act 2001, make the following Order:

Citation and commencement

1. This Order may be cited as the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 and shall come into force on the day after the day on which it is made.

Amendments to the Financial Services and Markets Act 2000

2. The Financial Services and Markets Act 2000(a) is amended as follows.

Partnerships and unincorporated associations

3. In section 32 (partnerships and unincorporated associations)—

- (a) in subsection (2), after “in relation to any” insert “individual or”;
- (b) for subsection (3), substitute—

“(3) For the purposes of this section, an individual or firm is to be regarded as succeeding to the business of a dissolved firm only if succession is to the whole or substantially the whole of the business of the former firm.”.

Persons connected with an applicant

4. In section 49 (persons connected with an applicant), for subsection (2)(b) substitute—

“(b) varying any permission given by the Authority to such a person, where the effect of the variation is to grant permission for the purposes of a single market directive other than the one for the purposes of which the existing permission was granted,”.

Discontinuance and suspension of listing on the application of an issuer

5. In section 77 (discontinuance and suspension of listing)—

- (a) after subsection (2) insert—

“(2A) The competent authority may discontinue under subsection (1) or suspend under subsection (2) the listing of any securities on its own initiative or on the application of the issuer of those securities.”;

- (b) in subsection (5) after “any securities,” insert “on its own initiative,”.

6. In section 78 (discontinuance or suspension: procedure)—

(a) 2000 c.8.

- (a) in subsection (1), after “suspension” insert “by the competent authority on its own initiative”;
- (b) in subsection (2), after “If” insert “on its own initiative”;
- (c) in subsection (10), after “securities” , the first time it occurs, insert “on its own initiative”.

7. After section 78 insert—

“Discontinuance or suspension at the request of the issuer: procedure

78A.—(1) A discontinuance or suspension by the competent authority on the application of the issuer of the securities takes effect—

- (a) immediately, if the notice under subsection (2) states that this is the case;
- (b) in any other case, on such date as may be specified in that notice.

(2) If the competent authority discontinues or suspends the listing of securities on the application of the issuer of the securities it must give him written notice.

(3) The notice must—

- (a) give details of the discontinuance or suspension;
- (b) inform the issuer of the securities of the date on which the discontinuance or suspension took effect or will take effect; and
- (c) inform the issuer of his right to apply for the cancellation of the suspension.

(4) If the competent authority proposes to refuse an application by the issuer of the securities for the discontinuance or suspension of the listing of the securities, it must give him a warning notice.

(5) The competent authority must, having considered any representations made in response to the warning notice, if it decides to refuse the application, give the issuer of the securities a decision notice.

(6) If the competent authority decides to refuse an application by the issuer of the securities for the discontinuance or suspension of the listing of the securities, the issuer may refer the matter to the Tribunal.

(7) If the competent authority has suspended the listing of securities on the application of the issuer of the securities and proposes to refuse an application by the issuer for the cancellation of the suspension, it must give him a warning notice.

(8) The competent authority must, having considered any representations made in response to the warning notice—

- (a) if it decides to refuse the application for the cancellation of the suspension, give the issuer of the securities a decision notice;
- (b) if it grants the application, give him written notice of its decision.

(9) If the competent authority decides to refuse an application for the cancellation of the suspension of listed securities, the applicant may refer the matter to the Tribunal.

(10) “Discontinuance” means a discontinuance of listing under section 77(1).

(11) “Suspension” means a suspension of listing under section 77(2).”.

8. In section 395 (the Authority’s procedures)(a), in subsection (13) after paragraph (b) insert “(bza) 78A(2) or (8)(b);”.

Cancellation of approval at the request of a sponsor

9. In section 88 (sponsors), in subsection (4)(b) after “as a sponsor” insert “otherwise than at his request”.

(a) section 395 has been amended by S.I. 2005/381 and S.I. 2005/1435.

Modification or waiver of rules

10. In section 148 (modification or waiver of rules)—

- (a) omit subsection (1);
- (b) for subsection (2), substitute—

“(2) The Authority may, on the application or with the consent of a person who is subject to rules made by the Authority, direct that all or any of those rules (other than rules made under section 247 (trust scheme rules) or section 248 (scheme particulars rules))—

 - (a) are not to apply to that person; or
 - (b) are to apply to him with such modifications as may be specified in the direction.”;
- (c) in subsections (4)(a), (7)(b), (8) and (9)(b) omit “authorised”;
- (d) in subsection (11), for “an authorised person” substitute “a person”.

11. In section 250 (modification or waiver of rules)—

- (a) omit subsection (4)(a);
- (b) in subsection (4)(b), for “authorised person (except in subsection (4)(a))” substitute “person”;
- (c) in subsection (5)(a), (b), (d) and (e), omit “authorised”.

12. In regulation 7 (modification or waiver of FSA rules) of the Open-Ended Investment Companies Regulations 2001^(a)—

- (a) omit paragraph (3)(a);
- (b) in paragraph (3)(b), for “authorised person (except in subsection (4)(a))” substitute “person”;
- (c) in paragraph (4)(a),(b) and (d), omit “authorised”.

Guidance

13. In section 157 (guidance), in subsection (3) for “subsections (1), (2) and (4) to (10) of section 155 apply to the proposed guidance as they apply to proposed rules” substitute “subsections (1), (2)(d) and (4) of section 155 apply to the proposed guidance as they apply to proposed rules, unless the Authority considers that the delay in complying with them would be prejudicial to the interests of consumers”.

Arrangements for discharging functions

14. In Schedule 1, in paragraph 5 (arrangements for discharging functions), for sub-paragraph (2) substitute—

- “(2) But—
- (a) in exercising the legislative functions mentioned in paragraph 1(2)(a) to (d), the Authority must act through its governing body; and
 - (b) the legislative function mentioned in paragraph 1(2)(e) may not be discharged by an officer or member of staff of the Authority.”.

11th July 2007

Frank Roy
Alan Campbell
Two of the Lords Commissioners of Her Majesty's Treasury

(a) SI. 2001/1228.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 1 of the Regulatory Reform Act 2001. It reforms the law by amending various provisions of the Financial Services and Markets Act 2000 (FSMA).

Article 3 amends section 32 of FSMA, with the result that a firm or individual may succeed to the business of a predecessor firm without obtaining a new authorisation if they succeed to the whole or substantially the whole of the business of the former firm.

Article 4 amends section 49 of FSMA, with the result that the Financial Services Authority (FSA) is only required to consult the firm's home state regulator before giving a permission under Part 4 of FSMA to a person connected with a firm authorised in another Member State, or varying any permission where the effect is to grant permission for the purposes of a single market directive other than the one for the purposes of which the existing permission was granted.

Articles 5 to 7 amend Part 6 of FSMA (official listing) with the result that the procedural requirements at section 78 of FSMA will not apply where the FSA receives an application from the issuer to discontinue or suspend the listing of his securities. The lighter touch requirements at section 78A will apply instead. Article 8 makes a consequential change to the notification provisions at section 395 FSMA.

Article 9 amends section 88 of FSMA with the result that the procedural requirements at section 88 will not apply where a sponsor applies to cancel his approval as a sponsor.

Article 10 amends section 148 of FSMA with the result that all rules made by the FSA (except those made under section 247 or 248 of FSMA) may be waived or modified using the power at section 148. In addition, the amendment will enable any person to apply for, or consent to, the waiver or modification of rules applying to that person. Articles 11 and 12 make consequential amendments to section 250 of FSMA and to regulation 7 of the Open-Ended Investment Companies Regulations 2001 which result from the changes to section 148 of FSMA.

Article 13 amends section 157 of FSMA with the result that when it publishes a draft of proposed guidance for consultation, the FSA will no longer be required to produce a cost benefit analysis, an explanation of the purpose of the proposed guidance or an explanation of the FSA's reasons for believing that making the proposed guidance is compatible with its general duties under section 2 of FSMA. In addition, the amendment will mean that the FSA will not be required to follow the procedural provisions at section 155(5) to (9) as they apply to proposed guidance.

Article 14 amends paragraph 5 of Schedule 1 to FSMA to enable guidance to be issued by a committee or sub-committee of the FSA's governing body.

A full Regulatory Impact Assessment has been produced for this instrument and is available from the Financial Stability and Regulatory Policy Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ. The Regulatory Impact Assessment is also available on HM Treasury's website (www.hm-treasury.gov.uk).

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