These notes refer to the Investment Exchanges and Clearing Houses Act 2006 (c.55) which received Royal Assent on 19 December 2006

INVESTMENT EXCHANGES AND CLEARING HOUSES ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Investment Exchanges and Clearing Houses Act which achieved Royal Assent on 19 December 2006. They have been prepared by HM Treasury in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act:

- enables the Financial Services Authority (FSA) to prevent UK recognised investment exchanges (RIEs) and clearing houses (RCHs) (together referred to as recognised bodies) from making changes to their regulatory provisions (defined as their rules, guidance, arrangements, policy or practice) which are disproportionate to the end they are intended to achieve or which do not pursue a reasonable regulatory objective;
- applies this restriction on disproportionate regulatory provision to persons applying to the FSA for recognition as an investment exchange or clearing house;
- makes provision for the necessary processes to enable the FSA to carry out this role, such as the notification to the FSA of proposed changes, the calling in by the FSA of some proposals for detailed examination, and, if the proposal is called in, the making of representations to the FSA about the proposal, and for rules or directions to be made by the FSA to identify proposed changes or types of change in respect of which the notification obligation will not apply.

BACKGROUND

4. The Act is intended to meet concerns that UK recognised bodies might introduce regulatory provision (rules, guidance and similar material) which imposes an excessive regulatory burden on the issuers of securities admitted to trading on the markets they provide or support, or on their members or other users of those markets. A regulatory provision will be excessive if it is not required by UK or Community law and either it is out of proportion to the end to be achieved, or it pursues some end which could not be considered to be a reasonable regulatory objective.

5. Part 18 of the Financial Services and Markets Act 2000 provides for the recognition of UK investment exchanges and clearing houses which meet recognition requirements set out in that Act and in regulations made by the Treasury under powers conferred in

that Act [1]. (The current recognition requirements will be amended shortly as part of the steps necessary to implement the EC Markets in Financial Instruments Directive (2004/39/EC)).

6. The FSA has no power under existing legislation to prevent a recognised body from changing its rules or guidance, provided that the body continues to meet the recognition requirements. In particular, the FSA cannot currently prevent a UK recognised body from making excessive regulatory provision.

7. The recognition requirements for UK recognised bodies are currently framed in terms of the objective to be achieved or the minimum standards which the body has to meet. It would be difficult to reformulate the recognition requirements in ways which set both minimum and maximum standards (i.e. the standards beyond which any regulatory provision might be considered to be excessive) without making the recognition requirements much more detailed and specific. Such an approach might be unduly restrictive on the ability of UK recognised bodies to devise regulatory provision appropriate for the markets they serve and which meets the needs of their own customers. In addition, if it were a recognition requirement that a body did not adopt excessive regulatory provision, the only remedies available to the FSA would be withdrawal of the recognition or the making of a direction to the recognised body to take specified steps to secure its compliance with the recognition requirements, whereas the scheme provided for in the Bill allows the FSA to veto excessive provision without a body's recognition status being affected.

TERRITORIAL EXTENT

8. The Act has the same extent as Part 18 of the Financial Services and Markets Act 2000 (which it amends).

COMMENTARY ON SECTIONS

Section 1: Power of FSA to disallow excessive regulatory provision

9. This section inserts new section 300A into the Financial Services and Markets Act 2000.

10. Section 300A confers the new power on the FSA to disallow excessive regulatory provision of recognised bodies and provides that any regulatory provision made by a recognised body when the FSA has directed it not to do so cannot be enforced.

Section 2: Procedural and other supplementary provisions

11. This section inserts new sections 300B, 300C, 300D and 300E into the Financial Services and Markets Act 2000.

12. Section 300B imposes a duty on recognised bodies to notify the FSA when they propose to make new regulatory provision. It also extends the FSA's existing power under section 293 of the Financial Services and Markets Act 2000 (power to make rules requiring recognised bodies to notify the FSA of certain events and information) to include a power to specify types of proposed new regulatory provision or circumstances in which proposed new regulatory provision does not need to be notified, and to make procedural provision in relation to the notification of proposed new regulatory provision.

13. Section 300C provides for an initial period in which the FSA can consider whether to call in a proposal for further scrutiny. A recognised body may not make a change to its regulatory provision before it has notified it to the FSA, or during the initial period (unless the FSA notifies it before the end of the period that it that it is not calling in the

---

1 The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (S.I.2001/995).

proposal). If the FSA decides not to call in the proposal during the initial period, the body may make the change to its regulatory provision.

14. Section 300D sets out what is to happen if the FSA calls in a proposed change to regulatory provision for examination. It provides that the FSA must publish a notice, giving details of the proposal that it has called in and setting a period for making representations; it sets a period within which the FSA must take a decision about a proposal it has called in; and it provides that the proposed change to a body's regulatory provision cannot be made while any legal proceedings are pending.

15. Section 300E contains supplementary provision.

Section 3: Interim power to give directions about notification

16. This section gives the FSA a power to give directions to recognised bodies that the obligation to notify proposed new regulatory provision in section 300B(1) is not to apply to specified provisions, provisions of a specified description or provisions made in specified circumstances. This power will cease to have effect 12 months after Royal Assent. Its purpose is to ensure that recognised bodies can be relieved of the notification obligation in appropriate circumstances from the passing of the Act until the FSA is able to make rules under section 300B.

Section 4: Consequential amendment of grounds for refusing recognition

17. This section inserts new section 290A into the Financial Services and Markets Act 2000. This section ensures that an applicant for recognition as a UK recognised body is subject to the same requirement not to have excessive regulatory provision.

Section 5: Short title and commencement

18. This section provides for the Act to come into force on the day after Royal Assent and for transitional provisions in respect of sections 300A to 300E of the Financial Services and Markets Act 2000.

COMMENCEMENT

19. The provisions of the Act (including the amendments made to the Financial Services and Markets Act 2000) came into force on the day after it received Royal Assent.

20. The new provisions will not apply to any regulatory provision which has been made by a UK recognised body at the time the legislation comes into force. Where a recognised body has proposed but not made any changes to its regulatory provision at that time, the new provisions will apply to the proposals and the new procedures will apply.

HANSARD REFERENCES

21. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	*Date*	*Hansard Reference*
House of Commons		
Introduction	16 November 2006	Vol. 453 No. 2 Col. 143 - 144
Second Reading	28 November 2006	Vol. 453 No. 8 Col. 988 - 1027
Committee	28 November 2006	Vol. 453 No. 8 Col. 1027 - 1045

Stage	***Date***	***Hansard Reference***
Report and Third Reading	28 November 2006	Vol. 453 No. 8 Col. 1045 - 1049
House of Lords		
Introduction	29 November 2006	Vol. 687 No. 9 Col. 754
Second Reading	11 December 2006	Vol. 687 No. 15 Col. 1405 - 1424
Committee and Report	18 December 2006	Vol. 687 No. 20 Col. 1829 - 1835
Third Reading	19 December 2006	Vol. 687 No. 21 Col. 1896

Royal Assent – 19 December 2006	House of Lords Hansard Vol. 687 No. 21 Col. 1959
	House of Commons Hansard Vol. 454 No.20 Col 1298