
STATUTORY INSTRUMENTS

1992 No. 3218

**The Banking Coordination (Second
Council Directive) Regulations 1992**

PART V

AMENDMENTS OF FINANCIAL SERVICES ACT

Authorisation by membership of recognised self-regulating organisations

48.—(1) Section 7 of the Financial Services Act (authorisation by membership of recognised self-regulating organisation) shall have effect as if it included provision that an institution which—

- (a) is a European institution or quasi-European authorised institution; and
- (b) is a member of a recognised self-regulating organisation,

is not, by virtue of its membership of that organisation, an authorised person as respects any home-regulated investment business.

(2) Paragraph 2 of Schedule 2 to that Act⁽¹⁾ (requirements for recognition of self-regulating organisations) shall have effect as if it included provision that the rules and practices of the organisation must be such as to secure that where—

- (a) a UK authorised institution applies for admission as a member of the organisation; and
- (b) the institution states in its application that it proposes to carry on investment business which consists of or includes a listed activity,

the institution shall not be admitted as a member unless the UK authority has notified the organisation that, were the institution so admitted, the UK authority would not by reason of that proposal exercise any of its relevant powers.

(3) In this regulation “relevant powers” means—

- (a) in relation to the Bank, the powers conferred on it by section 11 or 12 of the Banking Act (power to revoke or restrict authorisations);
- (b) in relation to the Commission, the powers conferred on it by section 42 or 43 of the Building Societies Act (power to impose conditions on or revoke authorisations).

Applications for authorisation

49. Section 26 of the Financial Services Act (applications for authorisation) shall have effect as if it included provision that an application for authorisation in respect of any home-regulated investment business may not be made by—

- (a) a European authorised institution or quasi-European authorised institution; or
- (b) a European subsidiary which has not applied for a direction under paragraph 5 of Schedule 2 to these Regulations.

(1) 1986 c. 60; Schedule 2 has been amended by sections 203, 204 and 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

Grant and refusal of authorisation

50.—(1) Section 27 of the Financial Services Act (grant and refusal of authorisation) shall have effect as if it included provision that—

- (a) where a European institution or quasi-European authorised institution holds an authorisation granted under that section, the institution is not by virtue of that authorisation an authorised person as respects any home-regulated investment business;
- (b) where an application for authorisation in respect of any home-regulated investment business is made by a European subsidiary which has applied for a direction under paragraph 5 of Schedule 2 of these Regulations, the Secretary of State shall not grant the application unless he is satisfied that the institution will cease to be a European subsidiary on or before the date when the authorisation takes effect; and
- (c) for the purposes of determining whether to grant or refuse an application in respect of any other investment business made by a European subsidiary, the fact that the subsidiary is subject to supervision pursuant to article 18(2) of the Second Council Directive shall be taken into account.

(2) That section shall also have effect as if it included provision that where—

- (a) a UK authorised institution applies for authorisation; and
- (b) the institution states in its application that it proposes to carry on investment business which consists of or includes a listed activity,

the Board shall not grant the authorisation unless the UK authority has notified the Board that, were the authorisation granted, the UK authority would not by reason of that proposal exercise any of its relevant powers.

(3) In this regulation “relevant powers” has the same meaning as in regulation 48 above.

Authorisation in other member State

51. Section 31 of the Financial Services Act (authorisation in other member State) shall have effect as if it included provision that an institution to which that section applies and which is a European institution or quasi-European authorised institution is not, by virtue of that section, an authorised person as respects any home-regulated investment business.

Exempted persons

52.—(1) Section 43 of the Financial Services Act (listed money market institutions) shall have effect as if it included provision that an institution which—

- (a) is a European institution or quasi-European authorised institution; and
- (b) is for the time being included in a list maintained for the purposes of that section,

is not, by virtue of its inclusion in that list, an exempted person as respects any homeregulated investment business.

(2) That section shall also have effect as if it included provision that the conditions and arrangements referred to in subsection (2) must be such as to secure that no European institution, other than one on which an absolute prohibition has been imposed under regulation 15 of these Regulations, is refused admission to the list, or removed from it, for reasons relating to—

- (a) the fitness of the institution to be included in the list;
- (b) the financial standing of the institution; or
- (c) any other matter for which, under the Second Council Directive, responsibility is reserved to a supervisory authority in the institution’s home State.

Reciprocal facilities for banking business

53.—(1) No notice shall be served under section 183 of the Financial Services Act (reciprocal facilities for financial business) on a credit institution incorporated in or formed under the law of any part of the United Kingdom which—

- (a) appears to the Secretary of State or the Treasury to be a subsidiary undertaking of a person connected with a country outside the United Kingdom; and
- (b) is carrying on, or appears to the Secretary of State or the Treasury to intend to carry on, any investment, insurance or banking business in, or in relation to, the United Kingdom,

if the sole ground for giving that notice is the ground specified in paragraph (2) below.

(2) The ground referred to in paragraph (1) above is that it appears to the Secretary of State or the Treasury that by reason of—

- (a) the law of the country concerned; or
- (b) any action taken by, or the practices of, the government or any other authority or body in that country,

credit institutions connected with the United Kingdom are unable to carry on banking business in, or in relation to, that country on terms as favourable as those on which credit institutions connected with that country are able to carry on such business in, or in relation to, the United Kingdom.

The Board's functions under the Regulations

54. 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—

- (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).

Other amendments of Financial Services Act

55. The provisions of the Financial Services Act which are mentioned in Schedule 9 to these Regulations shall have effect subject to the amendments there specified.

Construction of Part V

56.—(1) In this Part of these Regulations “authorised person” has the same meaning as in the Financial Services Act.

(2) If and to the extent that a European institution is an authorised person, nothing in this Part of these Regulations, except regulations 48(1), 50(1) and 51 and paragraphs 5, 6, 11(2), 20 and 30 of Schedule 9, shall affect the operation of the Financial Services Act in relation to it.

(2) S.I.1992/1315.
(3) S.I. 1987/942.