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STATUTORY INSTRUMENTS

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**1995 No. 3275**

**FINANCIAL SERVICES**

**The Investment Services Regulations 1995**

<i>Made</i>	- - - -	<i>18th December 1995</i>
<i>Laid before Parliament</i>		<i>18th December 1995</i>
<i>Coming into force</i>		
<i>Regulations 27 and 31</i>		<i>1st January 1997</i>
<i>Remainder</i>		<i>1st January 1996</i>

Whereas the Treasury are a government department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to investment firms and to the provision of investment services and to the operation of regulated markets and clearing or settlement systems;

Now, therefore, the Treasury in exercise of the powers conferred on them by section 2(2) of that Act and of all other powers enabling them in that behalf hereby make the following Regulations:—

**PART I**  
**GENERAL**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Investment Services Regulations 1995.

(2) These Regulations, except regulations 27 and 31, shall come into force on 1st January 1996, and those regulations shall come into force on 1st January 1997.

**Interpretation: general**

2.—(1) In these Regulations—

“the Consumer Credit Act” means the Consumer Credit Act 1974<sup>(3)</sup>;

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(1) S.I. 1992/1315.

(2) 1972 c. 68.

(3) 1974 c. 39.

- “the Financial Services Act” means the Financial Services Act 1986(4);
- “another EEA State” means an EEA State other than the United Kingdom;
- “appointed representative” has the same meaning as in the Financial Services Act;
- “authorised”, in relation to the provision of a listed activity, shall be construed in accordance with regulation 4 or, as the case may be, regulation 19 below;
- “authorised person” has the same meaning as in the Financial Services Act;
- “the Bank” means the Bank of England;
- “the Board” means The Securities and Investments Board(5);
- “branch” means one or more places of business established or proposed to be established in the same EEA State for the purpose of providing listed services;
- “the Capital Adequacy Directive” means the Council Directive on the capital adequacy of investment firms and credit institutions (No.93/6/EEC)(6);
- “the commencement date” means 1st January 1996;
- “connected UK authority”, in relation to an investment firm providing or proposing to provide any listed service in the United Kingdom, means an authority in the United Kingdom which has regulatory functions in relation to that service;
- “Consumer Credit Act business” means consumer credit business, consumer hire business or ancillary credit business;
- “consumer credit business”, “consumer hire business” and “ancillary credit business” have the same meanings as in the Consumer Credit Act;
- “core investment service” means a service listed in Section A of the Annex to the Investment Services Directive, the text of which is set out in Schedule 1 to these Regulations together with the text of Section B of that Annex which is relevant to the interpretation of Section A;
- “credit institution” means a credit institution as defined in article 1 of the First Council Directive, that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;
- “designated agency” has the same meaning as in the Financial Services Act;
- “the Director” means the Director General of Fair Trading;
- “EEA State” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May 1992(7) as adjusted by the Protocol signed at Brussels on 17th March 1993(8);
- “establish”, in relation to a branch, means establish the place of business or, as the case may be, the first place of business which constitutes the branch;
- “European authorised institution” means a credit institution whose authorisation under the First Council Directive and the Second Council Directive covers one or more core investment services;
- “the European Commission” means the Commission of the Communities;

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(4) 1986 c. 60; various functions of the Secretary of State under the Financial Services Act 1986 have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

(5) Various functions under the Financial Services Act 1986 have been transferred to the Securities and Investments Board by the Financial Services Act 1986 (Delegation) Order 1987 (S.I. 1987/942), the Financial Services Act 1986 (Delegation) (No. 2) Order 1988 (S.I. 1988/738), the Companies Act 1989 (Commencement No. 3, Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990 (S.I. 1990/354), the Financial Services Act 1986 (Delegation) Order 1991 (S.I. 1991/200) and the Financial Services Act 1986 (Delegation) (No. 2) Order 1991 (S.I. 1991/1256).

(6) OJ No. L141, 15.3.93, p. 1.

(7) Cm 2073.

(8) Cm 2183.

“European investment firm” has the meaning given by regulation 3 below;

“European subsidiary” has the same meaning as in the Banking Coordination (Second Council Directive) Regulations 1992<sup>(9)</sup>, as those regulations have effect immediately before the commencement date;

“exempted person” has the same meaning as in the Financial Services Act;

“50 per cent. controller” has the same meaning as in regulation 46;

“firm” includes an individual and a body corporate;

“the First Council Directive” means the First Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (No. [77/780/EEC](#))<sup>(10)</sup>;

“home-regulated investment business”, in relation to a European investment firm, means investment business which consists in the provision of one or more listed services which its authorisation as an investment firm authorises it to provide;

“home State”, in relation to—

- (a) an investment firm which has no registered office, means the EEA State in which the firm’s head office is situated; and
- (b) an investment firm which has a registered office, means the EEA state in which that office is situated;

“investment business” has the same meaning as in the Financial Services Act;

“investment firm” has the meaning given in paragraph (2) below;

“the Investment Services Directive” means the Council Directive on investment services in the securities field (No. [93/22/EEC](#))<sup>(11)</sup>;

“listed service” means a service listed in Section A or C of the Annex to the Investment Services Directive;

“member” and “rules”, in relation to a recognised self-regulating organisation, have the same meanings as in the Financial Services Act;

“quasi-European investment firm” has the meaning given by regulation 3(2) below;

“recognised self-regulating organisation” has the same meaning as in the Financial Services Act;

“relevant supervisory authority”, in relation to another EEA State, means the authority in that State which has regulatory functions in relation to any core investment service, whether or not it also has such functions in relation to any non-core investment service;

“requisite details”, in relation to an investment firm means—

- (a) particulars of the programme of operations of the business to be carried on by the firm, including a description of the particular core investment services and non-core investment services to be provided; and
- (b) where a branch is established or proposed to be established—
  - (i) particulars of the structural organisation of the branch;
  - (ii) the address in the EEA State in which the branch is or is to be established from which information about the business may be obtained; and
  - (iii) the names of the managers of the business;

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<sup>(9)</sup> S.I. 1992 No. 3218.

<sup>(10)</sup> OJ No. L322, 17.12.77, p. 30, as amended by Council Directive [86/524/EEC](#) (OJ No. L309, 4.11.86, p. 15), and by Council Directive No. [89/646/EEC](#) (OJ No. L386, 30.12.89, p. 1.).

<sup>(11)</sup> OJ No. L141, 10.5.93, p. 27.

“the Second Council Directive” means the Second Council Directive on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending the First Council Directive (No. 89/646/EEC)(**12**);

“supervisory authority”, in relation to another EEA State, means an authority in that State which has regulatory functions in relation to one or more listed services;

“UK authorised institution” and “UK subsidiary” have the same meanings as in the Banking Coordination (Second Council Directive) Regulations 1992(**13**);

“UK investment firm” and “UK authorised investment firm” have the meaning given by regulation 18 below; and

“UK regulatory authority”, in relation to an investment firm providing or proposing to provide a core or non-core investment service in the United Kingdom, means an authority in the United Kingdom which has regulatory functions in relation to that service.

(2) In these Regulations, “investment firm” means any person, other than one within paragraph (3) below, whose regular occupation or business is the provision of any one or more core investment services to third parties on a professional basis.

(3) The persons within this paragraph are persons to whom the Investment Services Directive does not apply by virtue of the provisions of paragraph 2 of article 2 of that directive, the text of which is set out in Schedule 2 to these Regulations.

(4) For the purposes of paragraph (2) above, where a person (the first person) provides one of the services referred to in paragraph 1(a) of Section A of the Annex to the Investment Services Directive (reception and transmission of orders) solely for the account of and under the full and unconditional responsibility of another person (the second person), that service shall be regarded as a service provided not by the first person but by the second person.

(5) In these Regulations “parent undertaking”, “share”, “subsidiary undertaking” and “undertaking” have the same meanings as in Part VII of the Companies Act 1985(**14**) or Part VIII the Companies (Northern Ireland) Order 1986(**15**) except that—

(a) “subsidiary undertaking” also includes, in relation to an investment firm incorporated in or formed under the law of another EEA State, any undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with the implementation of the Seventh Company Law Directive based on article 54(3)(g) of the Treaty on consolidated accounts (No. 83/349/EEC)(**16**); and

(b) “parent undertaking” shall be construed accordingly.

(6) Any reference in these Regulations to the carrying on of home-regulated investment business in the United Kingdom—

(a) is a reference to the carrying on of such business in reliance on regulation 5(1)(a) below; and

(b) shall be construed in accordance with section 1(3) of the Financial Services Act.

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(12) OJ No. L386, 30.12.89, p. 1.

(13) S.I. 1992/3218.

(14) 1985 c. 6. Section 258 was inserted by the Companies Act 1989 (c. 40), section 21(1), and section 259 was inserted by section 22 of the Companies Act 1989.

(15) S.I. 1986/1032 (N.I.6). Article 266 was inserted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 23(1), and Article 267 was inserted by Article 24 of the Companies (Northern Ireland) Order 1990.

(16) OJ No. L193, 18.7.83, p. 1; the relevant amending instrument is Council Directive 90/605/EEC (OJ No. L316, 16.11.90, p. 60).

## PART II

### RECOGNITION IN UK OF EUROPEAN INVESTMENT FIRMS

#### *Preliminary*

#### **European investment firms**

3.—(1) An investment firm is a European investment firm for the purposes of these regulations if—

- (a) it is incorporated in or formed under the law of another EEA State;
- (b) its head office is in that State;
- (c) it is for the time being, either a European authorised institution or authorised to act as an investment firm by a relevant supervisory authority in that State; and
- (d) in the case of an investment firm which is not a European authorised institution and was not on the commencement date a European subsidiary, the requirements of paragraph 1 of Schedule 3 to these Regulations have been complied with in relation to its provision of a service or its establishment of a branch.

(2) In these Regulations “quasi-European investment firm” means an investment firm other than a European authorised institution—

- (a) which is not a European investment firm; but
- (b) which would be such an investment firm if the requirements of paragraph 1 of Schedule 3 to these Regulations had been complied with in relation to its provision of a service or its establishment of a branch.

(3) Schedule 3 to these Regulations (which contains requirements to be complied with by or in relation to European investment firms) shall have effect.

#### **Authorised services**

4. For the purposes of these Regulations a European investment firm is authorised to provide in its home State any listed service which its authorisation as an investment firm or as a credit institution authorises it to provide.

#### *Effect of recognition*

#### **Authorisations and licences not required**

5.—(1) Subject to paragraph (2) below, nothing in the following enactments, namely—

- (a) sections 3 and 4 of the Financial Services Act (restrictions on carrying on investment business); and
- (b) sections 21, 39(1) and 147(1) of the Consumer Credit Act (Consumer Credit Act businesses needing a licence),

shall prevent a European investment firm from providing in the United Kingdom any listed service which it is authorised to provide in its home State.

(2) In relation to a European investment firm in respect of which a prohibition under these Regulations is in force—

- (a) paragraph (1)(a) above shall not apply if the prohibition is under regulation 9 below; and
- (b) paragraph (1)(b) above shall not apply if the prohibition is under regulation 15 below.

### **Procedural requirements for carrying on listed services**

6.—(1) A European investment firm (other than a credit institution authorised in its home State to provide one or more core investment services) shall not—

- (a) provide in the United Kingdom by the provision of services any listed service; or
- (b) establish a branch in the United Kingdom for the purpose of providing such a service,

unless the requirements of paragraph 1 of Schedule 3 to these Regulations have been complied with in relation to its provision of the service or, as the case may be, its establishment of the branch.

(2) A European investment firm (other than a credit institution authorised in its home State to provide one or more core investment services) which does not have a branch in the United Kingdom shall not change the requisite details of its activities in the United Kingdom unless the requirements of paragraph 4 of Schedule 3 to these regulations have been complied with in relation to its making of the change.

(3) A European investment firm (other than a credit institution authorised in its home member state to provide one or more core investment services) shall not change the requisite details of a branch established by it in the United Kingdom unless the requirements of paragraph 5 of Schedule 3 to these Regulations have been complied with in relation to its making of the change.

(4) An investment firm which contravenes paragraph (1), (2) or (3) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but such a contravention shall not invalidate any transaction.

(5) In proceedings brought against an investment firm for an offence under paragraph (4) above it shall be a defence for the investment firm to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(6) Proceedings in respect of an offence under any provision of this regulation shall not be instituted—

- (a) in England and Wales, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

### *Effect of non-recognition*

### **Prohibition on carrying on certain listed services**

7.—(1) A quasi-European investment firm shall not—

- (a) provide in the United Kingdom by the provision of services any listed service; or
- (b) establish a branch in the United Kingdom for the purpose of providing such a service.

(2) An investment firm which contravenes paragraph (1) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but such a contravention shall not invalidate any transaction.

(3) In proceedings brought against an investment firm for an offence under paragraph (2) above it shall be a defence for the investment firm to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) Proceedings in respect of an offence under this regulation shall not be instituted—

- (a) in England and Wales, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions; or

- (b) in Northern Ireland, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

### *Functions of Board*

#### **Duty to prepare for supervision**

8.—(1) In any case where the Board receives from a relevant supervisory authority in an investment firm’s home State a notice given in accordance with paragraph 3 of Schedule 3 to these Regulations, the Board shall, before the expiry of the relevant period draw to the attention of the firm such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the services mentioned in the notice, the Board considers appropriate.

(2) In any case where the Board receives from the relevant supervisory authority in an investment firm’s home State such a notice as is mentioned in paragraph (1) above stating that the firm intends to establish a branch in the United Kingdom—

- (a) the Board shall also, before the expiry of the relevant period, consider whether the situation as respects the investment firm is such that the powers conferred by regulation 9(1) below are likely to become exercisable; and
- (b) if so, the Board may impose, as soon as the requirements of paragraph 1 of Schedule 3 to these Regulations have been complied with in relation to the firm, such restriction under regulation 10 below as appears to it desirable.

(3) In any case where the Bank receives from the relevant supervisory authority in an investment firm’s home State such a notice as is mentioned in regulation 13(1) below stating that the firm intends to establish a branch in the United Kingdom, the Bank may request the Board to exercise the powers conferred on it by regulation 10 below in relation to the firm and, if the Board is satisfied that the situation with respect to the firm is such that the powers conferred by regulation 9(1) below are likely to become exercisable, the Board may impose, as soon as the requirements of paragraph 1 of Schedule 3 to these Regulations have been complied with in relation to the firm, such restriction under regulation 10 as appears to it, after consulting the Bank, to be desirable.

(4) In any case where the Board receives from an investment firm a notice given in accordance with paragraph 4 or 5 of Schedule 3 to these Regulations, the Board shall draw to the attention of the firm such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the proposed change mentioned in the notice, the Board considers appropriate.

(5) In this regulation—

- (a) “the relevant Acts” means the Financial Services Act and the Consumer Credit Act; and
- (b) “the relevant period” means—

- (i) in relation to a notice given in accordance with paragraph 3 of Schedule 3 to these Regulations which states that the investment firm intends to establish a branch in the United Kingdom, the period of two months beginning with the day on which the Board received the notice;

- (ii) in any other case, the period of one month beginning with the day on which the Board received the notice.

#### **Power to prohibit the provision of listed services**

9.—(1) If it appears to the Board that a European investment firm—

- (a) has contravened or is likely to contravene any provision of the Financial Services Act or any rules or regulations made under it;

- (b) in purported compliance with any such provision, has furnished it with false, inaccurate or misleading information;
- (c) has contravened or is likely to contravene any prohibition or requirement imposed under that Act; or
- (d) has failed to comply with any statement of principle issued under that Act,

it may impose on the investment firm a prohibition under this regulation, that is to say, a prohibition on providing or purporting to provide in the United Kingdom any listed services.

- (2) Where the investment firm is a member of a recognised self-regulating organisation—
  - (a) the reference in paragraph (1) above to rules made under the Financial Services Act shall be taken to include a reference to the rules of that organisation; and
  - (b) the reference in that paragraph to any prohibition or requirement imposed under that Act shall be taken to include a reference to any prohibition or requirement imposed by virtue of the rules of that organisation.
- (3) A prohibition under this regulation—
  - (a) may be absolute; or
  - (b) may be limited, that is to say, imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with;

and any period, event or conditions specified in the case of a limited prohibition may be varied by the Board on the application of the investment firm concerned.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Board on the investment firm concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) Schedule 4 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation and restrictions imposed under regulation 10 below) shall have effect.

### **Power to restrict provision of listed services**

**10.**—(1) Where it appears to the Board that the situation as respects a European investment firm providing any listed service in the United Kingdom is such that the powers conferred by regulation 9(1) above are exercisable, the Board may, instead of or as well as imposing a prohibition, exercise—

- (a) in relation to the investment firm; or
- (b) except in the case of the power conferred by section 65 of the Financial Services Act, in relation to any appointed representative of the investment firm,

the powers conferred on the Board by Chapter VI of Part I of that Act (powers of intervention).

(2) Except where they are required to be exercised by virtue of section 128C of that Act<sup>(17)</sup> (enforcement in support of overseas regulatory authority), the powers conferred by that Chapter shall not, subject to paragraph (3) below, be exercisable in relation to—

- (a) a European investment firm providing any listed service in the United Kingdom which is a member of a recognised self-regulating organisation and is subject to the rules of such an organisation in the provision of listed services provided by it in the United Kingdom; or
- (b) an appointed representative whose principal or, in the case of such a representative with more than one principal, each of whose principals is—
  - (i) a member of a recognised self-regulating organisation; and

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<sup>(17)</sup> Section 128C is amended by paragraph 34 of Schedule 7 to these Regulations.

(ii) subject to the rules of such an organisation in providing the listed service in respect of which it has accepted responsibility for the appointed representative's activities.

(3) The powers conferred by section 67(1)(b) of the Financial Services Act may on any of the grounds specified in regulation 9(1) above be exercised in relation to a person mentioned in paragraph (2) above at the request of any recognised self-regulating organisation of which he or, in the case of an appointed representative, any of his principals is a member.

(4) In this regulation, "principal" has the same meaning as in the Financial Services Act.

### **Limitations on Board's powers**

**11.**—(1) This regulation applies where it appears to the Board that the situation is such that its power—

- (a) to impose a prohibition on a European investment firm under regulation 9 above;
- (b) to publish a statement with respect to such a firm under section 60 (public statement as to person's misconduct) of the Financial Services Act;
- (c) to make an application with respect to such a firm under section 61(1) (injunctions) of that Act;
- (d) to impose a prohibition or requirement on such an investment firm under Chapter VI of Part I of that Act (powers of intervention);
- (e) to vary a prohibition or requirement imposed on such an investment firm under that Chapter; or
- (f) to refuse an application for the variation or rescission of a prohibition or requirement so imposed,

is exercisable by virtue of any contravention of any provision which is made pursuant to a provision of the Investment Services Directive that confers power on the host States and which is conferred under that Act.

(2) The Board shall require the investment firm in writing to remedy the situation.

(3) If the investment firm fails to comply with the requirement under paragraph (2) above within a reasonable time, the Board shall give a notice to that effect to the relevant supervisory authority in the investment firm's home State requesting that authority—

- (a) to take all appropriate measures for the purpose of ensuring that the investment firm concerned remedies the situation which has given rise to the issue of the notice; and
- (b) to inform the Board of the measures it proposes to take or has taken or the reasons for not taking such measures.

(4) Subject to paragraph (5) below, the Board shall not take any such action as is mentioned in sub-paragraph (a) to (f) of paragraph (1) above with respect to a European investment firm unless it is satisfied—

- (a) that the relevant supervisory authority has failed or refused to take measures for the purpose mentioned in paragraph (3)(a) above; or
- (b) that the measures taken by that authority have proved inadequate for that purpose.

(5) Where the Board decides that it should take action as mentioned in any of sub-paragraphs (a) to (e) of paragraph (1) above with respect to a European investment firm as a matter of urgency in order to protect the interests of investors, it may take that action—

- (a) before complying with paragraphs (2) and (3) above; or
- (b) where it has complied with those requirements, before it is satisfied as mentioned in paragraph (4) above;

but in such a case it shall, at the earliest opportunity, inform the relevant supervisory authority in the investment firm's home State and the European Commission of the action taken.

(6) In any case where—

- (a) by virtue of paragraph (5) above, the Board has taken action as mentioned in any of sub-paragraphs (a) to (e) of paragraph (1) above before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above; and
- (b) the European Commission decides under the Investment Services Directive that the Board must withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement,

the Board shall in accordance with the decision withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement.

(7) For the purposes of paragraph (6)(b) above the Board shall be taken to withdraw or amend a statement if it publishes a further statement retracting or, as the case may be, correcting it; and the Board shall after publication of the further statement send a copy of it to any person to whom a copy of the previous statement was sent under section 60(5) of the Financial Services Act.

(8) In any case where—

- (a) the Board has, by virtue of sub-paragraph (5) above, given notice to a European investment firm under section 60(2) of the Financial Services Act before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above;
- (b) the statement to which the notice relates has not been published; and
- (c) the European Commission decides under the Investment Services Directive that the Board must not publish the statement, or must publish a different statement under that section,

the Board shall in accordance with the decision withdraw the notice or give a different notice in substitution.

#### **Obligation of Board where investment firm ceases to be a European investment firm etc.**

12. Where the Board is informed that—

- (a) a person has ceased to be a European investment firm; or
- (b) a European investment firm has ceased to provide any particular listed service in the United Kingdom,

the Board shall inform every other authority which it knows is a connected UK authority of that fact.

### *Functions of the Bank*

#### **Duty to prepare for supervision**

13.—(1) In any case where the Bank receives from the relevant supervisory authority in an investment firm's home State a notice given in accordance with paragraph 3 of Schedule 3 to these Regulations, the Bank shall, before the expiry of the relevant period, draw to the attention of the firm such provisions of these Regulations, the relevant Acts or regulations or rules made under those Acts as, having regard to the services mentioned in the notice, the Bank considers appropriate.

(2) In any case where the Bank receives from an investment firm a notice given in accordance with paragraph 4 or 5 of Schedule 3 to these Regulations, the Bank shall draw to the attention of the firm such provisions of these Regulations, the relevant Acts or regulations or rules made under

those Acts as, having regard to the proposed change mentioned in the notice, the Bank considers appropriate.

(3) In this regulation, “the relevant Acts” and “the relevant period” have the same meanings as in regulation 8 above.

#### **Obligation of Bank where investment firm ceases to be a European investment firm etc.**

14. Where the Bank is informed that—

- (a) a person in respect of whom it has received a notice in accordance with paragraph 3 of Schedule 3 to these Regulations has ceased to be a European investment firm; or
- (b) a European investment firm in respect of whom it has received such a notice has ceased to provide any particular listed service in the United Kingdom,

the Bank shall inform every other authority which it knows is a connected UK authority of that fact.

#### *Functions of Director*

#### **Power to prohibit the carrying on of Consumer Credit Act business**

15.—(1) If it appears to the Director that paragraph (2) below has been or is likely to be contravened as respects a European investment firm, he may impose on the investment firm a prohibition under this regulation, that it to say, a prohibition on carrying on, or purporting to carry on, in the United Kingdom any Consumer Credit Act business which consists of or includes provision of any one or more listed service.

(2) This paragraph is contravened as respects a European investment firm if—

- (a) the investment firm or any of the investment firm’s employees, agents or associates (whether past or present); or
- (b) where the investment firm is a body corporate, any controller of the firm or an associate of any such controller,

does any of the things specified in paragraphs (a) to (d) of section 25(2) of the Consumer Credit Act(18).

(3) A prohibition under this regulation may be absolute or may be imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and any period, event or conditions specified in the case of a prohibition may be varied by the Director on the application of the investment firm concerned.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Director on the investment firm concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) In this regulation “associate” has the same meaning as in section 25(2) of the Consumer Credit Act and “controller” has the meaning given by section 189(1) of that Act.

(6) Schedule 5 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation and restrictions imposed under regulation 16 below) shall have effect.

### **Power to restrict the carrying on of Consumer Credit Act business**

16.—(1) In this regulation “restriction” means a direction that a European investment firm may not provide in the United Kingdom, otherwise than in accordance with such condition or conditions as may be specified in the direction, any Consumer Credit Act business which—

- (a) consists of or includes the provision of any listed service; and
- (b) is specified in the direction.

(2) Where it appears to the Director that the situation as respects a European investment firm is such that the powers conferred by regulation 15(1) above are exercisable, the Director may, instead of imposing a prohibition, impose such restriction as appears to him desirable.

(3) Any restriction imposed under this regulation—

- (a) may be withdrawn; or
- (b) may be varied with the agreement of the investment firm concerned,

by written notice served by the Director on the investment firm; and any such notice shall take effect on such date as is specified in the notice.

(4) An investment firm which contravenes or fails to comply with a restriction shall be guilty of an offence and liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(5) The fact that a restriction has not been complied with (whether or not constituting an offence under paragraph (4) above) shall be a ground for the imposition of a prohibition under regulation 15 above.

## **PART III**

### **RELATIONS WITH THIRD COUNTRIES**

#### **Treasury directions for implementing certain EC decisions**

17.—(1) In this regulation “relevant decision” means any decision of the Council or the Commission of the Communities under article 7.5 of the Investment Services Directive (relations with third countries, limitation or suspension of decisions regarding applications for authorisations).

(2) For the purpose of implementing a relevant decision the Treasury may issue a direction within any of paragraphs (3), (4) or (5) below.

(3) A direction is within this paragraph if it is a direction to the Board—

- (a) to refuse an application for authorisation made by an investment firm incorporated in or formed under the law of any part of the United Kingdom, other than a UK authorised institution;
- (b) to defer its decision on such an application either indefinitely or for such period as may be specified in the direction; or
- (c) to serve a notice of objection on a person—
  - (i) who has given notice under regulation 41 below of his intention to become a 50 per cent. controller of any description of such a firm; or
  - (ii) who has become such a controller without giving the required notice under that regulation.

(4) A direction is within this paragraph if it is a direction to the Bank—

- (a) to refuse an application for admission to the list maintained for the purposes of section 43 of the Financial Services Act (listed money market institutions) made by an investment firm incorporated in or formed under the law of any part of the United Kingdom, other than a UK authorised institution;
  - (b) to defer its decision on such an application either indefinitely or for such period as may be specified in the direction; or
  - (c) to serve a notice of objection on a person—
    - (i) who has given notice under regulation 41 below of his intention to become a 50 per cent. controller of any description of such a firm; or
    - (ii) who has become such a controller without giving the required notice under that regulation.
- (5) A direction is within this paragraph if it is a direction to a recognised self-regulating organisation—
- (a) to refuse an application for admission to membership of the organisation concerned made by an investment firm incorporated in or formed under the law of any part of the United Kingdom other than a UK authorised institution;
  - (b) to defer its decision on such an application either indefinitely or for such period as may be specified in the direction; or
  - (c) to serve a notice of objection on a person—
    - (i) who has given notice under regulation 41 below of his intention to become a 50 per cent. controller of any description of such a firm; or
    - (ii) who has become such a controller without giving the required notice under that regulation.
- (6) A direction may relate to a particular firm or class of firm and may be given before the application in question or, as the case may be, any notice under regulation 41 below is received.
- (7) Any notice of objection served by virtue of a direction falling within paragraph (3)(c), (4)(c) or (5)(c) above shall state the grounds upon which it is served.
- (8) A direction under this regulation may be revoked at any time by the Treasury, but such revocation shall not affect anything done in accordance with the direction before it was revoked.
- (9) In consequence of the provision made by this regulation—
- (a) section 29(1) of the Financial Services Act (particulars of notice) shall have effect as if the Board were not required to serve a notice of its intention to refuse an application in a case in which the application is to be refused in pursuance of a direction given under this regulation but were required instead to give a notice refusing the application, stating the reasons for the refusal;
  - (b) section 29(4) of the Financial Services Act (notice of proposed refusal, withdrawal or suspension) shall have effect as if a notice given in pursuance of this regulation refusing authorisation were not required to give particulars of the rights mentioned in that section; and
  - (c) section 97(1) of the Financial Services Act (references to Financial Services Tribunal) shall have effect as if it did not confer any right on a person to whom a notice is given in pursuance of this regulation refusing authorisation to require that the matter be referred to the Financial Services Tribunal.

## PART IV

### RECOGNITION IN OTHER EEA STATES OF UK INVESTMENT FIRMS

#### *Preliminary*

#### **UK investment firms**

**18.**—(1) An investment firm is a UK investment firm for the purposes of these Regulations if it is incorporated in or formed under the law of any part of the United Kingdom or, being an individual, has his head office in the United Kingdom.

(2) A UK investment firm is a UK authorised investment firm for the purposes of these Regulations if it is for the time being an authorised person under the Financial Services Act(19) or is for the time being an exempted person under that Act by virtue of being included in the list maintained by the Bank for the purposes of section 43.

#### **Authorised services**

**19.** For the purposes of these Regulations a UK authorised investment firm is authorised to provide in the United Kingdom any listed service which it is lawful for it to carry on in the United Kingdom.

#### *Procedural requirements*

#### **Procedural requirements for carrying on certain listed services**

**20.**—(1) Subject to paragraph (2) below, a UK authorised investment firm other than a UK authorised institution shall not—

- (a) provide in another EEA State by the provision of services any listed service which it is authorised to carry on in the United Kingdom; or
- (b) establish a branch in another EEA State for the purpose of providing such a service,

unless the requirements of paragraph 1 of Schedule 6 to these Regulations have been complied with in relation to its provision of the service or, as the case may be, its establishment of the branch.

(2) Paragraph (1) above shall not require a UK subsidiary which, immediately before the commencement date, complies with the requirements of paragraph 1 of Schedule 6 to the Banking Coordination (Second Council Directive) Regulations 1992(20) to give further notice of any matter of which it has given notice under that Schedule.

(3) A UK authorised investment firm (other than a UK authorised institution) shall not change the requisite details it has given of the services it provides in another EEA State in which it has no branch unless the requirements of paragraph 5 of Schedule 6 to these Regulations have been complied with in relation to its making of the change.

(4) A UK authorised investment firm (other than a UK authorised institution) shall not change the requisite details of a branch established by it in another EEA State unless the requirements of paragraph 6 of Schedule 6 to these Regulations have been complied with in relation to its making of the change.

(5) In paragraphs (3) and (4) above “requisite details” in relation to a UK authorised investment firm which, immediately before the commencement date, is a UK subsidiary shall include any details

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(19) 1986 c. 60.

(20) S.I. 1992/3218.

it has furnished pursuant to the provisions of the Banking Coordination (Second Council Directive) Regulations 1992 with respect to any listed service it provides by the provision of services or with respect to any branch it has established in another EEA State from which it provides any listed service.

(6) An investment firm which contravenes paragraph (1), (3) or (4) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) In proceedings brought against an investment firm for an offence under paragraph (6) above it shall be a defence for the firm to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(8) Proceedings in respect of an offence under any provision of this regulation shall not be instituted—

- (a) in England and Wales, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by the Board or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(9) Schedule 6 to these Regulations (which contains requirements to be complied with by or in relation to UK authorised investment firms) shall have effect.

## PART V

### AMENDMENTS OF FINANCIAL SERVICES ACT

#### **Authorisation by membership of recognised self-regulating organisations**

**21.**—(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 a person who—

- (a) is a European investment firm or quasi-European investment firm; 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 1 of Schedule 2 to that Act(**21**) (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—

- (a) that the requirements of paragraph (3) below are met with respect to each member which is a UK investment firm and is not a UK authorised institution; and
  - (b) that a UK investment firm (other than a UK authorised institution) is admitted to membership only if the requirements of paragraph (4) below are met with respect to the firm.
- (3) The requirements of this paragraph are that—
- (a) the head office of the firm, and, if the firm has a registered office, its registered office, must be situated in the United Kingdom;
  - (b) in the case of a firm which is neither a body corporate nor a partnership constituted under the law of Scotland, the firm must carry on business in the United Kingdom;
  - (c) the firm must have adequate capital to meet the requirements of any rules applicable to it requiring the maintenance of financial resources; and

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

- (d) except in the case of a firm which is subject to rules of the organisation making provision with respect to the matters dealt with in section 48(2)(l) of the Financial Services Act (protection of investors on death etc. of natural person), its business is effectively directed by two or more persons.
- (4) The requirements of this paragraph are that—
  - (a) the firm has submitted to the organisation concerned a programme of operations containing at least the following information—
    - (i) a description of the listed services that the firm proposes to provide; and
    - (ii) a description of the firm’s structure; and
  - (b) in a case in which the firm is—
    - (i) a subsidiary undertaking;
    - (ii) a subsidiary undertaking of the parent undertaking; or
    - (iii) controlled by the 50 per cent. controller,  
of an investment firm or credit institution which is for the time being authorised to act as such a firm or institution by the relevant supervisory authority in another EEA State, the organisation concerned has consulted that authority.
- (5) Paragraph 2 of Schedule 2 to the Financial Services Act shall have effect as if it included provision that the rules and practices of the organisation relating to the admission of members must be such as to secure that each applicant for membership that is a UK investment firm is informed of the organisation’s decision on the application not later than six months after the date on which the application was received.

### **Applications for authorisation**

**22.** 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 European investment firm or quasi-European investment firm.

### **Grant and refusal of authorisation**

**23.—(1)** Section 27 of the Financial Services Act (grant and refusal of authorisation) shall have effect as if it included provision that where a European investment firm or a quasi-European investment firm holds an authorisation granted under that section, the firm is not by virtue of that authorisation an authorised person as respects any home-regulated investment business.

(2) That section shall also have effect in relation to a relevant firm, that is to say, a UK investment firm which is not a UK authorised institution, as if it included provision—

- (a) that the Board may not grant authorisation to a relevant firm unless the Board is satisfied that the requirements of paragraph (3) below are met;
- (b) that the Board may not grant authorisation to a relevant firm where it is—
  - (i) a subsidiary undertaking;
  - (ii) a subsidiary undertaking of the parent undertaking; or
  - (iii) controlled by the 50 per cent. controller,  
of an investment firm or credit institution which is for the time being authorised to act as such a firm or institution by the relevant supervisory authority in another EEA State, unless the Board has consulted that authority;

- (c) that the Board is required to specify, in a notice given under section 27(8) of the Financial Services Act to a relevant firm, that the date on which authorisation takes effect is the date upon which the notice is given; and
  - (d) that the Board is under an obligation to notify each applicant who is a relevant firm of the Board's decision on the application not later than six months after the date on which the application was received.
- (3) The requirements of this paragraph are that—
- (a) the head office of the firm, and, if the firm has a registered office, its registered office, must be situated in the United Kingdom;
  - (b) in the case of a firm which is neither a body corporate nor a partnership constituted under the law of Scotland, the firm must carry on business in the United Kingdom;
  - (c) the firm must have adequate capital to meet the requirements of any rules applicable to it requiring the maintenance of financial resources; and
  - (d) except in the case of a firm which is subject to rules of the organisation making provision with respect to the matters dealt with in section 48(2)(1) of the Financial Services Act (protection of investors on death etc. of natural person), its business is effectively directed by two or more persons.

#### **Authorisation in other EEA State**

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

#### **Certain EEA regulated markets**

- 25.** A person who provides the trading facilities constituting a market which—
- (a) appears on the list drawn up by another EEA State pursuant to Article 16 of the Investment Services Directive; and
  - (b) operates without any requirement that a person dealing on the market should have a physical presence in the EEA State from which the trading facilities are provided or on any trading floor that the market may have,

shall not be an exempted person by virtue of section 36 of the Financial Services Act as respects anything done in connection with or for the purposes of the provision of those trading facilities which constitutes investment business.

#### **Exempted persons**

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

- (a) is a European investment firm or quasi-European investment firm; 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 home-regulated 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—

- (a) no European investment firm, other than one on which an absolute prohibition has been imposed under regulation 9 of these Regulations or under regulation 15 of the Banking Coordination (Second Council Directive) Regulations, is refused admission to the list, or removed from it, for reasons relating to—
    - (i) the fitness of the firm to provide listed services;
    - (ii) the financial standing of the firm; or
    - (iii) any other matter for which, under the Investment Services Directive, responsibility is reserved to a supervisory authority in the firm's home State;
  - (b) where any power that the Bank has by virtue of those conditions and arrangements is exercisable by virtue of a European investment firm's contravention of any provision made by the Bank pursuant to any provision of the Investment Services Directive that confers power on host States, the exercise of the power is subject to such restrictions as are necessary for the purposes of complying with article 19 of the Investment Services Directive;
  - (c) the Bank is under an obligation—
    - (i) upon admitting a UK investment firm which is neither an authorised person nor a UK authorised institution to the list, to issue the firm with a written statement specifying the core investment services which that firm is permitted to provide by virtue of its inclusion in the list;
    - (ii) upon becoming aware of the occurrence of any change in the range of core investment services which such a firm is permitted to provide by virtue of its inclusion in the list, to withdraw the previous statement and to issue the firm in question with a further written statement reflecting the change;
    - (iii) upon becoming aware that such a firm has become an authorised person or a UK authorised institution, to withdraw from the firm the written statement specifying the core investment services which the firm is permitted to provide by virtue of its inclusion in the list; and
    - (iv) to inform each applicant for admission to the list who is a UK investment firm but who is neither an authorised person nor a UK authorised institution of the Bank's decision on the application not later than six months after the date on which the application was received; and
  - (d) no UK investment firm which is neither an authorised person nor a UK authorised institution is admitted to the list unless the requirements of paragraph (3) below are met.
- (3) The requirements of this paragraph are that—
- (a) the head office of the firm, and if the firm has a registered office, its registered office, must be situated in the United Kingdom;
  - (b) the firm must be a fit and proper person to carry on listed services;
  - (c) in the case of a firm which is neither a body corporate nor a partnership constituted under the law of Scotland, the firm must carry on business in the United Kingdom;
  - (d) the firm must have adequate capital to meet the requirements of any rules applicable to it requiring the maintenance of financial resources;
  - (e) either the firm will, if admitted to the list, be subject to conditions making provision with respect to the matters mentioned in section 48(2)(1) of the Financial Services Act (protection of investor on death etc. of natural person) or its business will be effectively directed by two or more persons of sufficiently good repute and experience to provide listed services;

- (f) the firm must have submitted to the Bank a programme of operations of the business to be carried on by the firm containing at least the following information—
  - (i) a description of the particular listed services that the firm proposes to provide; and
  - (ii) particulars of the firm’s structure; and
- (g) in the case of a firm which is not and is not seeking to become, an authorised person but which is—
  - (i) a subsidiary undertaking;
  - (ii) a subsidiary undertaking of the parent undertaking; or
  - (iii) controlled by the 50 per cent. controller,  
of an investment firm or credit institution which is for the time being authorised to act as such a firm or institution by a relevant supervisory authority in another EEA State, the Bank has consulted that authority.

(4) That section shall also have effect as if it enabled the Bank to regard itself as satisfied with respect to any matter relevant for the purposes of its supervision of a person admitted to the list maintained for the purposes of section 43 of that Act who is a UK investment firm or a European authorised investment firm if—

- (a) any relevant regulatory authority informs the Bank that it is satisfied with respect to the matter; and
  - (b) the Bank is satisfied as to the nature and scope of the supervision exercised by that regulatory authority.
- (5) In paragraph (4) above, “relevant regulatory authority”—
- (a) in relation to a UK investment firm means any UK regulatory authority; and
  - (b) in relation to a European investment firm means a supervisory authority in the firm’s home State.

### **Appointed representatives**

**27.** Section 44 of the Financial Services Act (appointed representatives) shall have effect as if it included provision that a UK investment firm is not, by virtue of that section, an exempted person as respects a service specified in paragraph 1(a) of Section A of the Annex to the Investment Services Directive (reception and transmission of orders) unless that activity is carried out solely for the account of an investment firm.

### **Statement of services covered by authorisation**

**28.—**(1) Section 102 of the Financial Services Act (register of authorised persons and recognised organisations etc.) shall have effect as if it required the Board—

- (a) upon it first appearing to it that a UK investment firm is a UK authorised investment firm to which this regulation applies, to issue the firm with a written statement specifying the core investment services which that firm is permitted to provide;
- (b) upon becoming aware of the occurrence of any change in the range of core investment services which such a UK authorised investment firm is permitted to provide, to withdraw the previous statement and issue the firm in question with a further written statement reflecting the change; and
- (c) upon a UK authorised investment firm ceasing to be a UK authorised investment firm to which this regulation applies, to withdraw from the firm the statement specifying the core investment services it was permitted to provide.

(2) This regulation applies to a UK authorised investment firm which is an authorised person.

### **Reciprocal facilities for investment business**

**29.**—(1) No notice shall be served under section 183 of the Financial Services Act (reciprocal facilities for financial business) on a UK investment firm 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,

investment firms connected with the United Kingdom are unable to provide core investment services in, or in relation to, that country on terms as favourable as those on which investment firms connected with that country are able to provide such services in, or in relation to, the United Kingdom.

### **Exemption from liability for damages**

**30.** No recognised self-regulating organisation which is a competent authority designated by the United Kingdom for the purposes of Article 22 of the Investment Services Directive or for the purposes of Article 9 of the Capital Adequacy Directive and none of the officers, servants or members of the governing body of such an organisation shall be liable in damages for anything done or omitted in the discharge or purported discharge of its functions as such an authority unless the act or omission is shown to have been in bad faith.

### **Recognised professional bodies**

**31.** Paragraph 2 of Schedule 3 to the Financial Services Act (requirements for recognition of recognised professional bodies) shall have effect as if it included provision that the rules, practices and arrangements of a recognised professional body must be such as to secure that no UK investment firm can be certified by the body for the purposes of Part I of the Financial Services Act if it appears to the body that any core investment services provided by the firm are provided by it otherwise than in an incidental manner in the course of a professional activity.

### **Other amendments of Financial Services Act**

**32.** The provisions of the Financial Services Act which are mentioned in Schedule 7 to these Regulations shall have effect subject to the amendments there specified.

### **Construction of Part V**

**33.** If and to the extent that a European investment firm is an authorised person, nothing in this Part of these Regulations, except regulations 21(1), 23(1) and 24 and paragraphs 5, 6, 11(2), 20 and 28 of Schedule 7, shall affect the operation of the Financial Services Act in relation to it.

## PART VI

### AMENDMENTS OF CONSUMER CREDIT ACT

#### Effect of standard licence

**34.**—(1) Section 22 of the Consumer Credit Act<sup>(22)</sup> (standard and group licences) shall have effect as if it included provision that a standard licence held by a European investment firm or quasi-European investment firm does not cover the provision by that firm of any listed services.

(2) In this regulation and regulation 35 below “standard licence” has the meaning given by section 22(1)(a) of the Consumer Credit Act.

#### Grant of standard licence

**35.** Section 25 of the Consumer Credit Act (licensee to be a fit person) shall have effect as if—

- (a) it included provision that a standard licence shall not be issued to a European investment firm or quasi-European investment firm in respect of any listed services; and
- (b) the reference in subsection (2)(b) to any provision made by or under that Act, or by or under any enactment regulating the provision of credit to individuals or other transactions with individuals, included a reference to any corresponding provision in force in another EEA State.

#### Conduct of business

**36.**—(1) Section 26 of the Consumer Credit Act (conduct of business), and any existing regulations made otherwise than by virtue of section 54 of that Act, shall have effect as if any reference to a licensee included a reference to a European investment firm carrying on any Consumer Credit Act business where that business consists of the provision of a listed service.

(2) Section 54 of that Act (conduct of business regulations), and any existing regulations made by virtue of that section, shall have effect as if any reference to a licensee who carries on a consumer credit business included a reference to a European investment firm which carries on such a business.

(3) In this regulation “existing regulations” means regulations made under section 26 of that Act before the commencement date.

#### The register

**37.** Section 35 of the Consumer Credit Act (the register) shall have effect as if the particulars to be included in the register included—

- (a) particulars of information received by the Director under regulation 12 or 14 above;
- (b) particulars of prohibitions and restrictions imposed by him under regulation 15 or 16 above;
- (c) such particulars of documents received by him under paragraph 3(2), 4(3) or 5(3) of Schedule 3 to these Regulations as he thinks fit; and
- (d) particulars of such other matters (if any) arising under these Regulations as he thinks fit.

#### Enforcement of agreements

**38.**—(1) Section 40 of the Consumer Credit Act (enforcement of agreements by unlicensed trader) shall have effect as if the reference in subsection (1) to a regulated agreement, other than

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(22) 1974 c. 39.

a non-commercial agreement, made when the creditor or owner was unlicensed did not include a reference to such an agreement made when the creditor or owner was a relevant firm.

(2) Section 148 of that Act (enforcement of agreement for services of unlicensed trader) shall have effect as if the reference in subsection (1) to an agreement for the services of a person carrying on an ancillary credit business made when that person was unlicensed did not include a reference to such an agreement made when that person was a relevant firm.

(3) Section 149 of that Act (enforcement of regulated agreements made on the introduction of an unlicensed credit-broker) shall have effect as if references in subsections (1) and (2) to introductions by an unlicensed credit-broker did not include references to introductions by a credit-broker who was a relevant firm.

(4) In this regulation “relevant firm” means a European investment firm—

- (a) to which paragraph (1) of regulation 5 above applies by virtue of sub-paragraph (b) of that paragraph; and
- (b) which is not precluded from making the agreement or introductions in question by a restriction imposed under regulation 16 above.

### **Restrictions on disclosure of information**

**39.** Section 174 of the Consumer Credit Act(23) (restrictions on disclosure of information) shall have effect as if in subsection (3A) the reference to the Director’s functions under the Consumer Credit Act included a reference to his functions under these Regulations.

### **Power to modify subordinate legislation in relation to European investment firms**

**40.**—(1) If the Secretary of State is satisfied that it is necessary to do so for the purpose of implementing the Investment Services Directive so far as relating to any particular European investment firm, he may, on the application or with the consent of the firm, by order direct that all or any of the provisions of—

- (a) any regulations made under section 26 of the Consumer Credit Act(24); or
- (b) any regulations or orders made under Parts IV to VIII of that Act(25),

shall not apply to the firm or shall apply to it with such modifications as may be specified in the order.

(2) An order under this regulation may be subject to conditions.

(3) An order under this regulation may be revoked at any time by the Secretary of State; and the Secretary of State may at any time vary any such order on the application or with the consent of the European investment firm to which it applies.

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(23) Section 174(3A) was inserted by section 87(1) of the Banking Act 1987 (c. 22).

(24) 1974 c. 39; regulations made to date are the Consumer Credit (Conduct of Business) (Credit References) Regulations 1977 (S.I. 1977/330) and the Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983 (S.I. 1983/1565).

(25) The principal regulations and orders (some of which have been amended) are: the Consumer Credit (Total Charge for Credit) Regulations 1980 (S.I. 1980/51); the Consumer Credit (Agreements) Regulations 1983 (S.I. 1983/1553); the Consumer Credit (Prescribed Periods for Giving Information) Regulations 1983 (S.I. 1983/1569); the Consumer Credit (Increase of Monetary Limits) Order 1983 (S.I. 1983/1878); the Consumer Credit (Advertisements) Regulations 1989 (S.I. 1989/1125); and the Consumer Credit (Quotations) Regulations 1989 (S.I. 1989/1126). A complete and up to date list of relevant regulations and orders can be obtained from the Department of Trade and Industry or the Director General of Fair Trading.

## PART VII

### NOTIFICATION OF CONTROLLERS

#### Notification of new or increased control

**41.**—(1) No person shall become a minority, 10 per cent., 20 per cent., 33 per cent. or 50 per cent. controller of a UK authorised investment firm which is not a UK authorised institution unless—

- (a) he has served on each relevant regulator written notice that he intends to become such a controller of the firm; and
- (b) each relevant regulator has done one of the following, that is to say—
  - (i) has notified him in writing before the end of the period of three months beginning with the date of service of that notice on the regulator that there is no objection to his becoming such a controller of the firm; or
  - (ii) has allowed that period to elapse without serving on him under regulation 42 below a written notice of objection to his becoming such a controller.

(2) Paragraph (1) above applies also in relation to a person becoming a partner in a UK authorised investment firm which is not a UK authorised institution but is a partnership formed under the law of any part of the United Kingdom.

(3) A relevant regulator may, after receiving a notice under paragraph (1)(a) above from any person, by notice in writing require him to provide such additional information or documents as the regulator concerned may reasonably require for deciding whether to serve a notice of objection.

(4) Where additional information or documents are required from any person by a notice under paragraph (3) above the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in paragraph (1)(b) above.

(5) A notice given by a person under paragraph (1)(a) above shall not be regarded as compliance with that paragraph except as respects his becoming a controller of the firm in question within the period of one year beginning—

- (a) in a case where a person has become a controller without his having been served with a notice of objection, with the date on which he became such a controller; and
- (b) in a case in which he has been served with one or more notices of objection and the notice or, as the case may be, each of them, has been quashed, with the date upon which the notice is quashed or, if more than one notice was served, with the date of the quashing of the last such notice to be quashed.

#### Objection to new or increased control

**42.**—(1) A relevant regulator may serve a notice of objection on a person who has given a notice under regulation 41 above unless the regulator concerned is satisfied, having regard to the need to ensure the sound and prudent management of the firm, that the person in question is a fit and proper person to become a controller of the description in question.

(2) Before deciding whether to serve a notice of objection under this regulation in any case where—

- (a) the person concerned is, or is a 50 per cent. controller of, an investment firm which is for the time being authorised to act as such by the relevant supervisory authority in another EEA State; and
- (b) the notice under regulation 41 above stated the intention to become a 50 per cent. controller,

each relevant regulator shall consult the relevant supervisory authority in the investment firm's home State.

(3) Before serving a notice of objection under this regulation, a relevant regulator shall serve the person concerned with a preliminary written notice stating that the regulator is considering the service on that person of a notice of objection; and that preliminary notice—

- (a) shall specify the reasons why the regulator is not satisfied as mentioned in paragraph (1) above; and
- (b) shall give particulars of the rights conferred by paragraph (4) below.

(4) A person served with a notice under paragraph (3) above may, within the period of one month beginning with the day on which the notice is served, make written representations to the regulator who served the notice; and where such representations are made, that regulator shall take them into account in deciding whether to serve a notice of objection.

(5) Where a person required to give notice under regulation 41 above in relation to his becoming a controller of any description becomes a controller of that description without having given notice as required by that regulation, any regulator to whom the person concerned failed to give notice may serve him with a notice of objection under this regulation at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such notice, require him by notice in writing to provide such information or documents as the regulator concerned may reasonably require.

(6) The period mentioned in regulation 41(1)(b) above (with any extension under paragraph (4) of that regulation) and the period mentioned in paragraph (5) above shall not expire, if it would otherwise do so, until fourteen days after the end of the period within which representations can be made under paragraph (4) above.

(7) Where the reasons stated in a notice of objection under this regulation relate specifically to matters which—

- (a) refer to a person identified in the notice other than the person seeking to become a controller of the relevant description; and
- (b) are in the opinion of the regulator serving the notice prejudicial to that person in relation to any office or employment,

the regulator concerned shall, unless it considers it impracticable to do so, serve a copy of the notice on that person.

(8) A notice of objection under this regulation shall—

- (a) specify the reasons why the regulator concerned is not satisfied as mentioned in paragraph (1) above; and
- (b) given particulars of the right to require the matter to be referred to the Financial Services Tribunal under the provisions of section 97 of the Financial Services Act or, as the case may be, of any right that the person concerned may have to appeal against the notice under any rules or arrangements made by the regulator concerned.

(9) Where a case is not required by the person on whom a notice of objection has been served to be referred to the Financial Services Tribunal or, as the case may be, an appeal is not made by him against the notice, the regulator concerned may give public notice that he has objected to that person becoming a controller of the relevant description and the reasons for the objection.

(10) Section 97 of the Financial Services Act (references to the Tribunal) shall have effect as if any reference to a notice served under section 59(4) of that Act included a reference to a notice of objection served by the Board under this regulation.

### **Contraventions of regulation 41**

**43.**—(1) Subject to paragraph (2) below, any person who contravenes regulation 41 above by—

- (a) failing to give the notice required by sub-paragraph (a) of paragraph (1) of that regulation; or
- (b) becoming a controller of any description to which that regulation applies before the end of the period mentioned in sub-paragraph (b) of that paragraph in a case in which no relevant regulator has served him with the preliminary notice under regulation 42(3) above,

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under paragraph (1) above if he shows that he did not know the acts or circumstances by virtue of which he became a controller of the relevant description; but where a person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives each relevant regulator written notice of the fact that he has become such a controller within fourteen days of becoming aware of that fact.

(3) Any person who—

- (a) before the end of the period mentioned in paragraph (1)(b) of regulation 41 above becomes a controller of any description to which that paragraph applies after being served with a preliminary notice under regulation 42(3) above;
- (b) contravenes regulation 41 above by becoming a controller of any description after having been served with a notice of objection to his becoming a controller of that description; or
- (c) having become a controller of any description in contravention of that regulation (whether before or after being served with such a notice of objection) continues to be such a controller after such a notice has been served on him,

shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (1) or (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person guilty of an offence under paragraph (3) above shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to a fine not exceeding level 5 on the standard scale and, in respect of an offence under sub-paragraph (c) of that paragraph, to a fine not exceeding £100 for each day on which the offence has continued.

### **Restrictions on voting rights**

**44.**—(1) The powers conferred by this regulation shall be exercisable where a person—

- (a) has contravened regulation 41 above by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
- (b) having become a controller of any description in contravention of that regulation continues to be one after such a notice has been served on him.

(2) The Board or, in a case in which the person concerned is a controller of a UK authorised investment firm which is an exempted person by virtue of being admitted to the list maintained by the Bank for the purposes of section 43 of the Financial Services Act and is not an authorised person, the Bank, may, by notice in writing served on the person concerned direct that any specified shares to which this regulation applies shall, until further notice, be subject to the restriction that no voting rights shall be exercisable in respect of the shares.

(3) This regulation applies—

- (a) to all the shares in the firm of which the person in question is a controller of the relevant description which are held by him or any associate of his and which were not so held immediately before he became such a controller of the firm; and
- (b) where the person in question became a controller of the relevant description of a firm as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and which were not so held before he became such a controller of that firm.

(4) A copy of any notice served on the person concerned under paragraph (2) above shall be served on the firm or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

#### **Prior notification of ceasing to be a relevant controller**

45.—(1) A person shall not cease to be a minority, 10 per cent., 20 per cent., 33 per cent. or 50 per cent. controller of a UK authorised investment firm which is not a UK authorised institution unless he has first given to each relevant regulator written notice of his intention to cease to be such a controller of the firm.

(2) If, after ceasing to be such a controller of such a firm, a person will, either alone or with any associate or associates—

- (a) still hold 10 per cent. or more of the shares in the firm or another person of whom it is a subsidiary undertaking;
- (b) still be entitled to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the firm or of another person of whom it is such an undertaking; or
- (c) still be able to exercise a significant influence over the management of the firm or another person of whom it is such an undertaking by virtue of—
  - (i) a holding of shares in; or
  - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,

the firm or, as the case may be, the other person concerned,

his notice under paragraph (1) above shall state the percentage of the shares or voting power which he will (alone or with any associate or associates) hold or be entitled to exercise or control.

(3) Subject to paragraph (4) below, any person who contravenes paragraph (1) or (2) above shall be guilty of an offence.

(4) Subject to paragraph (5) below, a person shall not be guilty of an offence under paragraph (3) above if he shows that he did not know of the acts or circumstances by virtue of which he ceased to be a controller of the relevant description in sufficient time to enable him to comply with paragraph (1) above.

(5) Notwithstanding anything in paragraph (4) above, a person who ceases to be a controller of a relevant description without having complied with paragraph (1) above shall be guilty of an offence if, within fourteen days of becoming aware of the fact that he has ceased to be such a controller—

- (a) he fails to give each relevant regulator written notice of that fact; or
- (b) he gives each relevant regulator such a notice but any such notice fails to comply with paragraph (2) above.

(6) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## Construction of Part VII

46.—(1) In this Part of these Regulations—

- (a) a “minority controller” means a controller not falling within sub-paragraph (a) or (b) of paragraph (2) below;
- (b) a “10 per cent. controller” means a controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;
- (c) a “20 per cent. controller” means a controller in whose case the percentage referred to in the relevant paragraph is 20 or more but less than 33;
- (d) a “33 per cent. controller” means a controller in whose case the percentage referred to in the relevant paragraph is 33 or more but less than 50; and
- (e) a “50 per cent. controller” means a controller in whose case the percentage referred to in the relevant paragraph is 50 or more,

and for these purposes “controller” has the meaning given in paragraph (2) below and “the relevant paragraph”, in relation to a controller, means whichever one of sub-paragraph (a) or (b) of paragraph (2) below gives the greater percentage of his case.

(2) A “controller”, in relation to an investment firm, means a person who, either alone or with any associate or associates—

- (a) holds 10 per cent. or more of the shares in the firm or another person of whom the firm is a subsidiary undertaking;
- (b) is entitled to exercise, or control the exercise of, 10 per cent. or more of the voting power at any general meeting of the firm or another person of whom the firm is such an undertaking; or
- (c) is able to exercise a significant influence over the management of the firm or another person of whom the firm is such an undertaking by virtue of—
  - (i) a holding of shares in; or
  - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,the firm or, as the case may be, the other person concerned.

(3) In this Part of these Regulations “associate”, in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking, means—

- (a) the wife or husband or son or daughter of that person;
- (b) the trustees of any settlement under which that person has a life interest in possession or, in Scotland, a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company—
  - (i) any director of that company;
  - (ii) any subsidiary undertaking of that company;
  - (iii) any director or employee of any such subsidiary undertaking; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that undertaking or body corporate or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(4) For the purposes of paragraph (3) above—

“son” includes stepson and “daughter” includes stepdaughter; and

“settlement” includes any disposition or arrangement under which property is held on trust.

(5) References in this Part of these Regulations to a “relevant regulator”, in relation to an investment firm, are references to—

- (a) any recognised self-regulating organisation to whose rules the firm is subject in providing core investment services;
- (b) the Board, in a case in which the firm in question is subject, in providing core services, to rules made by the Board; and
- (c) the Bank, in a case in which the firm in question is not an authorised person and is an exempted person by virtue of being admitted to the list maintained for the purposes of section 43 of the Financial Services Act.

(6) References in this Part of these Regulations to “voting rights”, in relation to an undertaking, shall be construed in accordance with paragraph 2 of Schedule 10A to the Companies Act 1985<sup>(26)</sup> or paragraph 2 of Schedule 10A to the Companies (Northern Ireland) Order 1986<sup>(27)</sup>.

(7) Nothing in this Part of these Regulations shall require a person to give notice of his intention to become or to cease to be a controller of any description pursuant to an agreement entered into before the commencement date to acquire or dispose of a holding of shares or an entitlement to exercise or control the exercise of voting power.

#### **Prosecution of offences under Part VII**

**47.** Proceedings in respect of an offence under any provision of this Part of these Regulations shall not be instituted—

- (a) in England and Wales, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

## **PART VIII**

### **MISCELLANEOUS**

#### **Restrictions on disclosure of information**

**48.**—(1) This paragraph applies to any confidential information which—

- (a) any person who works or has worked for any person designated by the United Kingdom as a competent authority for the purposes of Article 22 of the Investment Services Directive or Article 9 of the Capital Adequacy Directive; or
- (b) any auditor or expert instructed by such an authority,

has received in the course of discharging his duties as such a person, auditor or expert in relation to an investment firm having its head or registered office in an EEA State.

(2) Section 179 of the Financial Services Act shall not apply to information to which paragraph (1) above applies.

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<sup>(26)</sup> 1985 c. 6; Schedule 10A was inserted by the Companies Act 1989 (c. 40), section 21(2).

<sup>(27)</sup> S.I. 1986/1032 (N.I.6); Schedule 10A was inserted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 23(2).

(3) Information to, which paragraph (1) above applies shall not be disclosed by any person referred to in sub-paragraph (a) or (b) of that paragraph, or by any person receiving it directly or indirectly from such a person, except in any of the circumstances specified in Article 25 of the Investment Services Directive, the text of which is set out in Schedule 8 to these Regulations; and for these purposes such information—

- (a) may, subject to the provisions of paragraph (5) below, be disclosed in the circumstances described in Article 25.8 of the Investment Services Directive; and
- (b) may, until 2nd July 1996, be disclosed in the circumstances described in Article 25.9 of that Directive.

(4) Information received under Article 25.2 of the Investment Services Directive may not be communicated in the circumstances referred to in Article 25.7 of that Directive without the express consent of the supervisory authority from whom it was obtained.

(5) Information of the kind described in the third paragraph of Article 25.8 of the Investment Services Directive may not be disclosed in the cases referred to in Article 25.8 except with the express consent of whichever is relevant of the authorities mentioned in the third paragraph of Article 25.8.

(6) Information which is obtained from the supervisory authorities of another EEA State may not be disclosed for any of the purposes mentioned in the first paragraph of Article 25.9 of the Investment Services Directive without the express consent of the authorities that disclosed the information; and such information may be used only for the purposes that caused those authorities to agree to disclose it.

(7) Any person who contravenes any provision of this regulation shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(8) Proceedings in respect of an offence under this Regulation shall not be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(9) In proceedings brought against any person for an offence under this regulation, it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

### **Regulated markets**

**49.**—(1) The Board shall keep a list upon which it shall enter the name of each market of which the United Kingdom is the home State and which appears to the Board to satisfy the conditions set out in paragraph (2) below,

(2) The conditions referred to in paragraph (1) above are that the market in question—

- (a) is a market for instruments of a kind listed in section B of the Annex to the Investment Services Directive (the text of which is set out in Schedule 1 to these Regulations);
- (b) functions regularly;
- (c) is subject to rules made or approved by a UK regulatory authority that define—
  - (i) the conditions for the operation of the market;
  - (ii) the conditions for access to the market;

- (iii) where the Council Directive coordinating the conditions for the admission of securities to official stock exchange listing (No. 79/279/EEC)(28) is applicable, the conditions governing admission to listing imposed in that directive; and
  - (iv) where that directive is not applicable, the conditions that must be satisfied by an instrument before it can effectively be dealt in on the market; and
- (d) has rules that give effect to the provisions of articles 20 and 21 of the Investment Services Directive.
- (3) If it appears to the Board that a market the name of which the Board has entered on the list kept by it by virtue of this regulation has ceased to comply with any of the conditions set out in paragraph (2) above, the Board shall forthwith remove the name of the market in question from the list.
- (4) In this Regulation—
- (a) “home State”, in relation to a market, means the EEA State in which the registered office of the person providing trading facilities is situated or, if that person has no registered office, the EEA State in which his head office is situated; and
  - (b) “UK regulatory authority”, in relation to a regulated market, means an authority in the United Kingdom which has regulatory functions in relation to that market.

#### **Power of Board to give directions**

**50.**—(1) If, on the application of a UK authorised investment firm other than a UK authorised institution, it appears to the Board that—

- (a) compliance by that firm with any provision of any rules made by the Board under section 49 of the Financial Services Act (financial resources rules) is, on any particular occasion, not required by any provisions of the Capital Adequacy Directive; and
- (b) the Board may, consistently with the provisions of that Directive, exempt the firm from complying with the relevant provision,

it may direct that the firm need not, on the occasion in question, comply with such requirements as it may specify in writing.

(2) The power conferred by paragraph (1) above may be exercised unconditionally or subject to conditions.

(3) If it appears to the Board that, having regard to any change in the circumstances of a UK authorised investment firm other than a UK authorised institution since the end of the period for which the firm last prepared annual accounts, the firm requires financial resources additional to those which it is required to maintain by virtue of rules made under section 49 of the Financial Services Act that give effect to the provisions of Annex IV to the Capital Adequacy Directive, it may direct the firm to increase the amount of its financial resources so that they are equivalent to such proportion of its fixed overheads for the twelve months preceding the date of the direction as the Board considers appropriate.

(4) Any failure by a firm to comply with any condition imposed under paragraph (2) above or with any direction given under paragraph (3) above shall be treated as a failure by the firm to comply with an obligation imposed on it under the Financial Services Act or, in the case of a firm which is a member of a recognised self-regulating organisation, with the rules of that organisation.

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(28) OJ No. L66, 5.3.1979, p. 21.

### **Board’s power to obtain information from group members**

**51.**—(1) Subject to paragraph (2) below, the Board may require a UK authorised investment firm (other than a UK authorised institution) which is a member of a group to supply it, or, in a case in which the requirement is imposed at the request of a recognised self-regulating organisation, the organisation concerned, with such information as the Board may reasonably require in order to assess, or enable the assessment of, the adequacy of the financial resources available to a group of which the firm concerned is a member.

(2) The powers conferred by this regulation shall not be exercisable in relation to an investment firm which is a member of a recognised self-regulating organisation and is subject to the rules of such an organisation in carrying on all the investment business carried on by it unless such an organisation has requested the exercise of the powers.

(3) If it appears to the Board to be necessary to do so for the purpose of assessing, or enabling the assessment of, the adequacy of the financial resources available to a group which includes amongst its members a UK authorised investment firm which is not a UK authorised institution, it may also exercise the powers conferred by paragraph (1) above in relation to any of the persons mentioned in paragraph (4) below.

(4) The persons referred to in paragraph (3) above are any person who is or has at any relevant time been—

- (a) a partnership of which the investment firm in question is or was a member;
- (b) a parent undertaking, subsidiary undertaking or related company of that firm;
- (c) a subsidiary undertaking of a parent undertaking of that firm;
- (d) a parent undertaking of a subsidiary undertaking of that firm; or
- (e) any undertaking which is a 50 per cent. controller of that firm.

(5) The Board may exercise the powers conferred by this regulation at the request of the relevant supervisory authority in the home State of a European investment firm for the purpose of assisting that authority to assess the adequacy of the financial resources available to a group of which the firm is a member or to enable such an assessment to be made.

(6) In this Regulation, “related company” means any body corporate in which a member of a group of which an investment firm is a member has a qualifying interest; and for these purposes what constitutes a qualifying interest shall be determined in accordance with sub-paragraphs (2) to (4) of paragraph 30 of Schedule 1 to the Financial Services Act(29).

### **Powers of entry**

**52.** Any officer, servant or agent of the Board may, on producing (if required to do so) evidence of his authority, enter upon any premises occupied by a person on whom a requirement has been imposed under regulation 51 above for any of the following purposes—

- (a) obtaining any information that the person has been required to give under that regulation;
- (b) verifying the accuracy of any information that the person has given in pursuance of such a requirement;
- (c) verifying that the person is able to give any information that he may reasonably be required to give under that regulation.

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(29) Paragraph 30 of Schedule 1 to the Financial Services Act 1986 was substituted by section 23 of, and Schedule 10 to, the Companies Act 1989 (c. 40).

### **Contravention of regulation 51 or 52**

**53.**—(1) Any authorised person who fails to comply with a requirement imposed on it under regulation 51 above or who intentionally obstructs a person exercising rights conferred by regulation 52 above shall be treated as having failed to comply with a requirement imposed on it under the Financial Services Act, or, in the case of a person who is a member of a recognised self-regulating organisation, the rules of that organisation.

(2) Any person, other than an authorised person, who, without reasonable excuse, fails to comply with a requirement imposed on him under regulation 51 above or intentionally obstructs a person exercising rights under regulation 52 above shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(3) Proceedings in respect of an offence under this regulation shall not be instituted—

- (a) in England and Wales, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

### **Directions to the Bank**

**54.**—(1) If it appears to the Treasury—

- (a) that any action proposed to be taken by the Bank would be incompatible with the provisions of the Investment Services Directive or the Capital Adequacy Directive; or
- (b) that any action which the Bank has power to take is required for the purpose of implementing any provision of those Directives,

they may direct the Bank not to take or, as the case may be, to take the action in question.

(2) A direction under this regulation may contain such supplementary or incidental requirements as the Treasury think necessary or expedient.

(3) A direction under this regulation is enforceable by injunction or, in Scotland, by an order under section 45 of the Courts of Session Act 1988<sup>(30)</sup>.

### **Position of European subsidiaries**

**55.** The provisions of Schedule 9 to these Regulations (which makes provision with respect to certain European subsidiaries) shall have effect.

## **PART IX SUPPLEMENTAL**

### **The Board's functions under the Regulations**

**56.**—(1) The functions of the Board under these Regulations, except its function of instituting proceedings, shall be treated for the purposes of the Financial Services Act and the Transfer of Functions (Financial Services) Order 1992<sup>(31)</sup> 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

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<sup>(30)</sup> 1988 c. 36.

<sup>(31)</sup> S.I. 1992/315.

(b) had been transferred to the Board by the Financial Services Act 1986 (Delegation) Order 1987(32).

(2) The function of the Board of instituting proceedings under these Regulations shall be treated for the purposes of the Financial Services Act and the Transfer of Functions (Financial Services) Order 1992 as if it were a function to which section 114 of the Financial Services Act applies by virtue of the provisions of section 201(4) of that Act which had been transferred to the Board by the Financial Services Act 1986 (Delegation) Order 1987 so as to be exercisable concurrently with the Secretary of State.

#### **Minor and consequential amendments**

**57.**—(1) The provisions mentioned in Schedule 10 to these Regulations shall have effect subject to the amendments there specified, being minor amendments or amendments consequential on the provisions of these Regulations.

(2) Any deed, contract or other instrument made before the commencement date shall have effect, unless the context otherwise requires, as if any reference to a person authorised under the Financial Services Act (however expressed) included a reference to a European investment firm.

#### **Transitional provisions and savings**

**58.** Schedule 11 to these Regulations shall have effect with respect to the transitional and other matters there mentioned.

18th December 1995

*Derek Conway*  
*Simon Burns*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

SCHEDULE 1

Regulation 2(1).

ANNEX TO THE INVESTMENT SERVICES DIRECTIVE

“ANNEX

*SECTION A*

*Services*

- (a) Reception and transmission, on behalf of investors, of orders in relation to one or more of the instruments listed in section B.
- (b) Execution of such orders other than for own account.
2. Dealing in any of the instruments listed in Section B for own account.
3. Managing portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis where such portfolios include one or more of the instruments listed in section B.
4. Underwriting in respect of issues of any of the instruments listed in section B and/or the placing of such issues.

*SECTION B*

*Instruments*

- (a) Transferable securities.
- (b) Units in collective investment undertakings.
2. Money market instruments.
3. Financial-futures contracts, including equivalent cash-settled instruments.
4. Forward interest-rate agreements (FRAs).
5. Interest-rate, currency and equity swaps.
6. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

*SECTION C*

*Non-core services*

1. Safekeeping and administration in relation to one or more of the instruments listed in Section B.
2. Safe custody services.
3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction.
4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings.
5. Services related to underwriting.

6. Investment advice concerning one or more of the instruments listed in Section B.
7. Foreign-exchange service where these are connected with the provision of investment services.”

## SCHEDULE 2

Regulation 2(3).

### ARTICLE 2.2 OF THE INVESTMENT SERVICES DIRECTIVE

“This Directive shall not apply to:

- (a) insurance undertakings as defined in article 1 of Directive [73/239/EEC](#)(**33**) or Article 1 of Directive [79/267/EEC](#)(**34**) or undertakings carrying on the reinsurance and retrocession activities referred to in Directive [64/225/EEC](#)(**35**);
- (b) firms which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;
- (c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;
- (d) firms that provide investment services consisting exclusively in the administration of employee-participation schemes;
- (e) firms that provide investment services that consist in providing both the services referred to in (b) and those referred to in (d);
- (f) the central banks of Member States and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;
- (g) firms
  - which may not hold clients' funds or securities and which for that reason may not at any time place themselves in debit with their clients, and
  - which may not provide any investment service except the reception and transmission of orders in transferable securities and units in collective investment undertakings, and
  - which in the course of providing that service may transmit orders only to
    - (i) investment firms authorized in accordance with this Directive;
    - (ii) credit institutions authorised in accordance with Directives [77/780/EEC](#) and [89/646/EEC](#);
    - (iii) branches of investment firms or of credit institutions which are authorized in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive, in Directive [89/646/EEC](#) or in Directive [93/6/EEC](#);
    - (iv) collective investment undertakings authorized under the law of a Member State to market units to the public and to the managers of such undertakings;

(33) OJ No. L228, 16.8.1973, p. 3. Directive last amended by Directive [90/619/EEC](#) (OJ No L330, 29.11.1990, p. 50).

(34) OJ No. L63, 13.3.1979, p. 1. Directive last amended by Directive [90/618/EEC](#) (OJ No L330, 29.11.1990, p. 44).

(35) OJ No 56, 4.4.1964, p. 878/64.

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- (v) investment companies with fixed capital, as defined in article 15(4) of Directive 79/91/EEC<sup>(36)</sup>, the securities of which are listed or dealt in on a regulated market in a Member State;
  - the activities of which are governed at national level by rules or by a code of ethics;
- (h) collective investment undertakings whether coordinated at Community level or not and the depositaries and managers of such undertakings;
- (i) persons whose main business is trading in commodities amongst themselves or with producers or professional users of such products and who provide investment services only for such producers and professional users to the extent necessary for their main business;
- (j) firms that provide investment services consisting exclusively in dealing for their own account on financial-futures or options markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets. Responsibility for ensuring the performance of contracts entered into by such firms must be assumed by clearing members of the same markets;
- (k) associations set up by Danish funds with the sole aim of managing the assets of pension funds that are members of those associations;
- (l) “agenti di cambio” whose activities and functions are governed by Italian Royal Decree No. 222 of 7 March 1925 and subsequent provisions amending it, and who are authorized to carry on their activities under Article 19 of Italian Law No 1 of 2 January 1991.”

### SCHEDULE 3

Regulation 3(3).

#### REQUIREMENTS AS RESPECTS EUROPEAN INVESTMENT FIRMS

##### *Requirements for providing services etc.*

- 1.—(1) In relation to the provision by the provision of services of any listed service, the requirements of this paragraph are—
- (a) that the firm has given to the relevant supervisory authority in its home State a notice in accordance with paragraph 2 below; and
  - (b) that the Board, or, in the case of a listed firm, the Bank, has received from that authority a notice in accordance with paragraph 3 below.
- (2) In relation to the establishment of a branch, the requirements of this paragraph are—
- (a) that the firm has given to the relevant supervisory authority in its home State a notice in accordance with paragraph 2 below;
  - (b) that the Board, or, in the case of a listed firm, the Bank, has received from that authority a notice in accordance with paragraph 3 below; and
  - (c) that either—
    - (i) the Board or, as the case may be, the Bank has informed the firm that it may establish the branch; or
    - (ii) the period of two months beginning with the day on which the Board or, as the case may be, the Bank, received the notice mentioned in paragraph (b) above has elapsed.

<sup>(36)</sup> OJ No L26, 30.1.1977, p. 1. Directive last amended by the Act of Accession of Spain and Portugal.

2. A notice given by a firm to the relevant supervisory authority in its home State is given in accordance with this paragraph if it states—

- (a) the United Kingdom to be an EEA State in which the firm proposes to provide listed services;
- (b) whether the firm intends to establish a branch in the United Kingdom; and
- (c) the requisite details.

3.—(1) A notice given in respect of a European investment firm or quasi-European investment firm by the relevant supervisory authority in its home State is in accordance with this paragraph if it—

- (a) certifies that the firm is an investment firm which is for the time being authorised to act as such a firm by the authority;
- (b) contains the information stated in the firm's notice; and
- (c) if the firm intends to establish a branch in the United Kingdom, contains details of any compensation scheme which is intended to protect the branch's investors.

(2) The Board or, as the case may be, the Bank shall as soon as practicable send a copy of any notice received by it in accordance with this paragraph, and a note of the date of its receipt, to every other authority which it knows is a connected UK authority.

*Requirements for changing requisite details where services are provided*

4.—(1) Subject to sub-paragraph (2) below, the requirements of this paragraph are that the firm has given a notice to the Board, or, in the case of a listed firm, to the Bank, and to the relevant supervisory authority in its home State, stating the details of the proposed change.

(2) In the case of a change occasioned by circumstances beyond the firm's control, the requirements of this paragraph are that the firm has, as soon as practicable (whether before or after the change), given a notice to the Board or, as the case may be to the Bank, and to the relevant supervisory authority in its home State, stating the details of the change.

(3) The Board or, as the case may be, the Bank shall as soon as practicable send a copy of any notice received by it in accordance with this paragraph, and a note of the date of its receipt, to every other authority which it knows is a connected UK authority.

*Requirements for changing requisite details of branch*

5.—(1) Subject to sub-paragraph (2) below, the requirements of this paragraph are—

- (a) that the firm has given a notice to the Board or, in the case of a listed firm, to the Bank, and to the relevant supervisory authority in its home State, stating the details of the proposed change;
- (b) that the Board or, as the case may be, the Bank has received from that authority a notice stating those details; and
- (c) that either the Board or, as the case may be, the Bank has informed the firm that it may make the change, or the period of one month beginning with the day on which it gave the Board or, as the case may be, the Bank the notice mentioned in paragraph (a) above has elapsed.

(2) In the case of a change occasioned by circumstances beyond the firm's control, the requirements of this paragraph are that the firm has, as soon as practicable (whether before or after

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the change), given a notice to the Board or, as the case may be to the Bank, and to the relevant supervisory authority in its home State, stating the details of the change.

(3) The Board or, as the case may be, the Bank shall as soon as practicable send a copy of any notice received by it in accordance with this paragraph, and a note of the date of its receipt, to every other authority which it knows is a connected UK authority.

### **Meaning of “listed firm”**

6. In this Schedule, references to a “listed firm” are references to a European investment firm which is admitted, or is seeking admission, to the list maintained by the Bank for the purposes of section 43 of the Financial Services Act and is not carrying on, or proposing to carry on home-regulated investment business in the United Kingdom otherwise than by means of transactions or arrangements to which Schedule 5 to that Act applies.

## SCHEDULE 4

Regulation 9(5).

### PROHIBITIONS BY THE BOARD

#### *Notice of prohibition*

1.—(1) Where the Board proposes—

- (a) to impose a prohibition on a European investment firm under regulation 9 of these Regulations; or
- (b) to refuse an application made by a European investment firm under paragraph (3) of that regulation,

it shall give the firm on which it proposes to impose the prohibition, or whose application it proposes to refuse, written notice of its intention to do so, stating the reasons for which it proposes to act.

(2) In the case of a proposed prohibition the notice shall state the date on which it is proposed that the prohibition should take effect and, in the case of a limited prohibition, its proposed duration.

(3) Where the reasons stated in a notice under this paragraph relate specifically to matters which—

- (a) refer to a person identified in the notice other than the firm concerned; and
- (b) are in the opinion of the Board prejudicial to that person in relation to any office or employment,

the Board shall, unless it considers it impracticable to do so, serve a copy of the notice on that person.

(4) A notice under this paragraph shall give particulars of the right to require the case to be referred to the Financial Services Tribunal under section 97 of the Financial Services Act.

(5) Where a case is not required to be referred to that Tribunal by a person on whom a notice is served under this paragraph, the Board shall, at the expiration of the period within which such a requirement can be made—

- (a) give that person written notice of the prohibition or refusal; or
- (b) give that person written notice that the prohibition is not to be imposed or, as the case may be, written notice of the grant of the application;

and the Board may give public notice of any decision notified by it under paragraph (a) or (b) above and the reasons for the decision, except that it shall not do so in the case of a decision notified under paragraph (b) unless the person concerned consents to its doing so.

(6) Where the Board gives a notice under sub-paragraph (1) or (5)(a) or (b) above, it shall serve a copy of the notice on the relevant supervisory authority in the firm's home State.

*References to the Financial Services Tribunal*

2. Section 97 of the Financial Services Act(37) (references to the Tribunal) shall have effect as if—

- (a) any reference to a notice served under section 29 of that Act included a reference to a notice served under paragraph 1 above;
- (b) any reference to a copy of a notice served under that section included a reference to a copy of a notice served under sub-paragraph (3) of that paragraph;
- (c) any reference to the withdrawal of an authorisation included a reference to the imposition of an absolute prohibition under regulation 9 of these Regulations; and
- (d) any reference to the suspension of an authorisation included a reference to the imposition of a limited prohibition under regulation 9 of these Regulations;

and any reference in that section to a decision not to withdraw or suspend an authorisation shall be construed accordingly.

(1) (1) Section 98 of the Financial Services Act (decisions on references by applicant or authorised person etc.) shall have effect as if—

- (a) the applications mentioned in paragraph (a) of subsection (2) included an application for the variation of a limited prohibition imposed under regulation 9 of these Regulations; but
- (b) the applications mentioned in paragraph (b) of that subsection did not include an application for the rescission of any prohibition imposed under that regulation.

(2) Subsection (3)(b) of that section shall have effect as if the provisions there referred to included regulation 9 of these Regulations.

(3) That section shall have effect as if it included provision that paragraph 1 above shall not apply to any action taken by the Board in accordance with the Tribunal's report.

4.—(1) Section 100(2) of the Financial Services Act (withdrawal of references) shall have effect as if the reference to the provisions mentioned in section 97(1)(a) of that Act included a reference to paragraph 1 above.

(2) Section 100 of the Financial Services Act shall also have effect as if it included provision that where a person on whom a notice was served under paragraph 1 above withdraws a case from the Tribunal, sub-paragraph (5) of that paragraph shall apply to him as if he had not required the case to be referred.

SCHEDULE 5

Regulation 15(6).

PROHIBITIONS AND RESTRICTIONS BY THE DIRECTOR

*Preliminary*

1. In this Schedule—

“appeal period” has the same meaning as in the Consumer Credit Act(38);

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(37) 1986 c. 60

(38) 1974 c. 39.

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“prohibition” means a prohibition under regulation 15 of these Regulations;  
“restriction” means a restriction under regulation 16 of these Regulations.

#### *Notice of prohibition or restriction*

**2.—**(1) This paragraph applies where the Director proposes, in relation to a European investment firm—

- (a) to impose a prohibition;
- (b) to impose a restriction; or
- (c) to vary a restriction otherwise than with the agreement of the firm.

(2) The Director shall, by notice—

- (a) inform the firm that, as the case may be, the Director proposes to impose the prohibition or restriction or vary the the restriction, stating his reasons; and
- (b) invite the firm to submit representation as to the proposal in accordance with paragraph 4 below.

(3) If he imposes the prohibition or restriction or varies the restriction, the Director may give directions authorising the firm to carry into effect agreements made before the coming into force of the prohibition, restriction or variation.

(4) A prohibition, restriction or variation shall not come into force before the end of the appeal period.

(5) Where the Director imposes a prohibition or restriction or varies a restriction, he shall serve a copy of the prohibition, restriction or variation—

- (a) on the Board; and
- (b) on the relevant supervisory authority in the firm’s home State.

#### *Application to revoke prohibition or restriction*

**3.—**(1) This paragraph applies where the Director proposes to refuse an application made by a European investment firm for the revocation of a prohibition or restriction.

(2) The Director shall, by notice—

- (a) inform the firm that the Director proposes to refuse the application, stating his reasons; and
- (b) invite the firm to submit representations in support of the application in accordance with paragraph 4 below.

#### *Representations to Director*

**4.—**(1) Where this paragraph applies to an invitation by the Director to a firm to submit representations, the Director shall invite the firm, within 21 days after the notice containing the invitation is given to it, or such longer period as the Director may allow—

- (a) to submit its representations in writing to the Director; and
- (b) to give notice to the Director, if it thinks fit, that it wishes to make representations orally;

and where notice is given under paragraph (b) above the Director shall arrange for the oral representations to be heard.

(2) In reaching his determination the Director shall take into account any representations submitted or made under this paragraph.

- (3) The Director shall give notice of his determination to the firm.

### *Appeals*

5. Section 41 of the Consumer Credit Act(39) (appeals to the Secretary of State) shall have effect as if—

- (a) the following determinations were mentioned in column 1 of the table set out at the end of that section, namely—
- (i) imposition of a prohibition or restriction or the variation of a restriction; and
  - (ii) refusal of an application for the revocation of a prohibition or restriction; and
- (b) the European investment firm concerned were mentioned in column 2 of that table in relation to those determinations.

## SCHEDULE 6

Regulation 20.

### REQUIREMENTS AS RESPECTS UK AUTHORISED INVESTMENT FIRMS

#### *Requirements for providing listed services etc.*

1.—(1) In relation to the provision by the provision of services of any listed service, the requirements of this paragraph are that the firm has given to the Board, or, in the case of a listed person, to the Bank, a notice in accordance with paragraph 2 below.

- (2) In relation to the establishment of a branch, the requirements of this paragraph are—
- (a) that the firm has given to the Board, or, in the case of a listed firm, to the Bank, a notice in accordance with paragraph 2 below;
- (b) that the Board or, as the case may be, the Bank has given to the relevant supervisory authority in the EEA State concerned the notice which, subject to paragraph 4(2) below, it is required by paragraph 3 below to give; and
- (c) that either—
- (i) the relevant supervisory authority has informed the firm that it may establish the branch; or
  - (ii) the period of two months beginning with the day on which the Board or, as the case may be, the Bank gave the relevant supervisory authority the notice mentioned in paragraph (b) above has elapsed.

2. A notice given by a firm to the Board or, as the case may be, to the Bank is given in accordance with this paragraph if it states—

- (a) the EEA State in which the firm proposes to carry on listed services;
- (b) whether the firm intends to establish a branch in that EEA State; and
- (c) in either case, the requisite details.

3. The notice which, subject to paragraph 4(2) below, the Board or, as the case may be, the Bank, is required to give in respect of a UK authorised investment firm is a notice which is addressed to the relevant supervisory authority in the EEA State identified in the firm's notice under paragraph 2 above and which—

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(39) 1974 c. 39.

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- (a) certifies that the firm is an authorised person, or, as the case may be, an exempted person, under the Financial Services Act;
- (b) contains the information stated in the firm's notice; and
- (c) if the firm intends to establish a branch in the EEA State, contains details of any compensation scheme which is intended to protect the branch's investors.

4.—(1) Where the firm's notice under paragraph 2 above states that the firm does not intend to establish a branch in the EEA State, the notice referred to in paragraph 3 above shall be given within the period of one month beginning with the date on which the firm's notice was received by the Board or, as the case may be, the Bank.

(2) Where the firm's notice under paragraph 2 above states that the firm intends to establish a branch in the EEA State, the Board or, as the case may be, the Bank shall, within the period of three months beginning with the date on which the firm's notice was received—

- (a) give the notice referred to in paragraph 3 above; or
- (b) refuse to give such a notice.

(3) The Board or, as the case may be, the Bank may not refuse to give such a notice unless, having regard to the listed services proposed to be provided, the Board or, as the case may be, the Bank doubts the adequacy of the administrative structure or the financial situation of the firm.

(4) Before determining to give or to refuse to give such a notice, the Board or, as the case may be, the Bank—

- (a) shall seek and take into account the views of every other authority which it knows is a connected UK authority in relation to any of the listed services proposed to be provided; and
- (b) may regard itself as satisfied in relation to any matter relating to those services which is relevant to the decision if any such authority informs the Board or, as the case may be, the Bank that it is so satisfied.

(5) In reaching a determination as to the adequacy of the administrative structure, the Board or, as the case may be, the Bank may have regard to the adequacy of management, systems and controls and the presence of relevant skills needed for the services proposed to be provided.

(6) Where the firm's notice under paragraph 2 above states that the firm proposes to establish a branch, the Board or, as the case may be, the Bank, shall, within the period of three months referred to in sub-paragraph (2) above, notify the firm—

- (a) that it has given the notice referred to in paragraph 3 above, stating the date on which it did so; or
- (b) that it has refused to give the notice, stating the reasons for the refusal and giving particulars of the right to refer the case to the Financial Services Tribunal under section 97 of the Financial Services Act or, as the case may be, of any relevant arrangements made by the Bank for a review of its decision.

*Requirements for changing requisite details where services are provided*

5.—(1) Subject to sub-paragraph (2) below, the requirements of this paragraph are that the firm has given a notice to the Board, or, in a case in which the firm is a listed person, to the Bank, and to the relevant supervisory authority in the relevant EEA State, stating the details of the proposed change.

(2) In the case of a change occasioned by circumstances beyond the firm's control, the requirements of this paragraph are that the firm has, as soon as practicable (whether before or after the change), given a notice to the Board or, in the case of a firm which is a listed person, the Bank,

and to the relevant supervisory authority in the EEA State in which the services are provided by the branch, stating the details of the change.

*Requirements for changing requisite details of branch*

6.—(1) Subject to sub-paragraph (2) below, the requirements of this paragraph are—

- (a) that the firm has given a notice to the Board or, in the case of a firm which is a listed person, to the Bank and to the relevant supervisory authority in the EEA State in which it has established the branch, stating the details of the proposed change;
- (b) that that authority has received from the Board or, as the case may be, the Bank a notice under paragraph 7(1) below; and
- (c) that either that authority has informed the firm that it may make the change, or the period of one month beginning with the day on which it gave that authority the notice mentioned in paragraph (a) above has elapsed.

(2) In the case of a change occasioned by circumstances beyond the firm's control, the requirements of this paragraph are that the firm has, as soon as practicable (whether before or after the change), given a notice to the Board or, in the case of a firm which is a listed person, to the Bank, and to the relevant supervisory authority in the EEA State in which it has established the branch, stating the details of the change.

7.—(1) The Board or, as the case may be, the Bank shall, within the period of one month beginning with the date on which the notice under paragraph 6(1) above was received—

- (a) give a notice to the relevant supervisory authority informing it of the details of the proposed change; or
- (b) refuse to give such a notice.

(2) The Board or, as the case may be, the Bank may not refuse to give a notice under sub-paragraph (1) above unless, having regard to the changes and to the listed services proposed to be provided, it doubts the adequacy of the administrative structure or the financial situation of the firm.

(3) Before determining to give or to refuse to give such a notice, the Board or, as the case may be, the Bank—

- (a) shall seek and take into account the views of any UK authority which it knows is a connected UK authority in relation to any changes to the listed services proposed to be provided; and
- (b) may regard itself as satisfied in relation to any matter relating to those services which is relevant to the decision if any such authority informs the Board or, as the case may be, the Bank that it is so satisfied.

(4) In reaching a determination as to the adequacy of the administrative structure, the Board or, as the case may be, the Bank may have regard to the adequacy of management, systems and controls and the presence of relevant skills needed for the services proposed to be provided.

(5) The Board or, as the case may be, the Bank shall, within the period of one month referred to in sub-paragraph (1) above, notify the firm—

- (a) that it has given the notice referred to in that sub-paragraph, stating the date on which it did so; or
- (b) that it refused to give the notice, stating the reasons for the refusal and giving particulars of the right to refer the case to the Financial Services Tribunal under section 97 of the Financial Services Act or, as the case may be, of any relevant arrangements made by the Bank for a review of its decision.

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### *References to the Financial Services Tribunal*

8. Section 97 of the Financial Services Act (references to the Tribunal) shall have effect as if the decisions mentioned in subsection (1) included a decision of the Board to refuse to give a notice under paragraph 3 or 7(1) above.

### *References to “listed person”*

9. In this Schedule, references to a listed person are references to a UK authorised investment firm which is an exempted person by virtue of its inclusion in the list maintained by the Bank for the purposes of section 43 of the Financial Services Act and which is not an authorised person.

## SCHEDULE 7

Regulation 32.

### OTHER AMENDMENTS OF FINANCIAL SERVICES ACT

#### *Preliminary*

1. In this Schedule—

“the Act” means the Financial Services Act(40);

“investment agreement” has the same meaning as in the Act.

#### *Restriction on carrying on business*

2. Section 5 of the Act (agreements made by or through unauthorised persons) shall have effect as if the persons mentioned in subsection (1)(b)(i) included a European investment firm acting in the course of home-regulated investment business carried on by it in the United Kingdom.

#### *Authorised persons*

3. Section 10 of the Act (grant and refusal of recognition of self-regulating organisations) shall have effect as if the excepted cases mentioned in subsection (3) included the case where the member is a European investment firm and the business is home-regulated investment business.

4. Section 13 of the Act(41) (alteration of rules of recognised self-regulating organisation for protection of investors) shall have effect as if the excepted cases mentioned in subsection (2) (both as amended and as originally enacted) included the case where the member is a European investment firm and the business is home-regulated investment business.

5. Section 28 of the Act (withdrawal and suspension of authorisation) shall have effect in relation to an authorisation granted to a European investment firm as if the reference in subsection (1)(a) to the investment business which the holder of the authorisation is carrying on or proposing to carry on did not include a reference to any home-regulated investment business.

6. Section 32 of the Act (notice of commencement of business) shall have effect in relation to a notice given under subsection (1) by a European investment firm or quasi-European investment firm as if the reference in subsection (2)(a) to the investment business which is proposed to be carried on did not include a reference to any home-regulated investment business.

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(40) 1986 c. 60.

(41) Section 13 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989 (c. 40) subject to the savings provided for in the Companies Act 1989 (Commencement, Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990 (S.I. 1990/354).

### *Exempted persons*

7. Section 44 of the Act (appointed representatives) shall have effect as if any reference to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

8. Section 45 of the Act (miscellaneous exemptions) shall have effect as if the reference in subsection (2) to a partnership which is an authorised person included a reference to a partnership which is or was a European investment firm carrying on home-regulated investment business in the United Kingdom.

### *Conduct of business*

9.—(1) Section 47A of the Act(**42**) (statements of principle) shall have effect as if—

- (a) the reference in subsection (1) to the conduct expected of persons authorised to carry on investment business included a reference to the conduct expected of European investment firms carrying on home-regulated investment business in the United Kingdom; and
- (b) the reference in subsection (4) to the withdrawal or suspension of authorisation under section 28 of the Act included a reference to the imposition of a prohibition under regulation 9 of these Regulations.

(2) That section shall also have effect as if it included provision that a statement of principle issued under that section shall not include, as respects any European investment firm—

- (a) provision as to the fitness of the firm to carry on any home-regulated investment business; or
- (b) provision as to any other matter for which, under the Investment Services Directive, responsibility is reserved to the relevant supervisory authority in the firm's home State.

10.—(1) Section 48 of the Act(**43**) (conduct of business rules) shall have effect as if—

- (a) the reference in subsection (1) to the conduct of investment business by authorised persons included a reference to the conduct of home-regulated investment business carried on in the United Kingdom by European investment firms; and
- (b) the reference in subsection (2) to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

(2) That section shall have effect as if it included provision that rules under that section shall not include, as respects any European investment firm—

- (a) provision prohibiting the firm from carrying on, or holding itself out as carrying on, any home-regulated investment business; or
- (b) provision as to any matter for which, under the Investment Services Directive, responsibility is reserved to the relevant supervisory authority in the firm's home State.

11.—(1) Section 49 of the Act(**44**) (financial resources rules) shall have effect as if it included provision that rules under that section shall not include, as respects any European investment firm which is a member of a recognised self-regulating organisation, provision requiring the firm to have and maintain financial resources in respect of any home-regulated investment business carried on by it.

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**(42)** Section 47A was inserted by section 192 of the Companies Act 1989 (c. 40).

**(43)** Section 48 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989.

**(44)** Section 49 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

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(2) Subsection (2) of that section shall also have effect in relation to an authorised person who is a European investment firm as if the reference in paragraph (b) to any business (whether or not investment business) carried on by the person concerned did not include a reference to any home-regulated investment business.

**12.—**(1) Section 51 of the Act (cancellation rules) shall have effect as if the reference in subsection (1) to a person who has entered or offered to enter into an investment agreement with an authorised person included a reference to a person who has entered or offered to enter into an investment agreement to which sub-paragraph (2) below applies.

(2) This sub-paragraph applies to an investment agreement which is made by a European investment firm in the course of the carrying on by it of home-regulated investment business in the United Kingdom.

**13.—**(1) Section 52 of the Act(**45**) (notification regulations) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European investment firms, or a European investment firm, carrying on home-regulated investment business in the United Kingdom.

(2) That section shall also have effect as if it included provision that regulations under that section shall not require European investment firms to furnish information which is not reasonably required for purposes connected with the exercise of functions under the Act or these Regulations.

**14.** Section 53 of the Act (indemnity rules) shall have effect as if the reference in subsection (1) to civil liability incurred by an authorised person in connection with his investment business included a reference to civil liability incurred by a European investment firm in connection with home-regulated investment business carried on by it in the United Kingdom.

**15.** Section 54 of the Act(**46**) (compensation fund) shall have effect as if—

- (a) it included provision that rules establishing a scheme under that section may include in the scheme provision for compensating investors in cases where persons who are or have been European investment firms are unable, or likely to be unable, to satisfy claims in respect of any civil liability incurred by them in connection with home-regulated investment business carried on by them in the United Kingdom; and
- (b) any reference in subsection (2) to authorised persons included a reference to European investment firms carrying on home-regulated investment business in the United Kingdom.

**16.** Section 55 of the Act(**47**) (clients' money) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European investment firms, or a European investment firm, carrying on home-regulated investment business in the United Kingdom.

**17.** Section 57 of the Act (restrictions on advertising) shall have effect as if any reference to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

**18.** Section 59 of the Act (employment of prohibited persons) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European investment firms, or a European investment firm, carrying on home-regulated investment business in the United Kingdom.

**19.** Section 60 of the Act (public statement as to a person's misconduct) shall have effect as if—

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(45) Section 52 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

(46) Section 54 has been amended by article 389 of, and Schedule 9 to, the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)).

(47) Section 55 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

- (a) the reference in subsection (1) to a person who is or was an authorised person by virtue of section 25 of that Act included a reference to a person who is or was a European investment firm carrying on home-regulated investment business in the United Kingdom; and
- (b) the reference in subsection (3) to the authorised person included a reference to the European investment firm.

**20.** Section 64 of the Act (scope of powers of intervention) shall have effect in relation to an authorised person who is a European investment firm as if the reference in subsection (1) to investment business of a particular kind did not include a reference to any home-regulated investment business which the authorised person is carrying on or proposing to carry on.

**21.** Section 65 of the Act (restriction of business) shall have effect as if the reference in subsection (1) to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

#### *Collective investment schemes*

**22.** Section 75 of the Act **(48)** (collective investment schemes: interpretation) shall have effect as if the reference in subsection (6) to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

**23.** Section 76 of the Act (restrictions on promotion) shall have effect as if and reference to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

**24.** Section 93 of the Act (applications to the court) shall have effect as if the reference in subsection (1) to an authorised person included a reference to a European investment firm.

#### *Information*

**25.** Section 102 of the Act (register of authorised persons etc) shall have effect as if it included provision that—

- (a) the register kept under that section shall contain an entry in respect of each firm which appears to the Board to be a European investment firm carrying on home-regulated investment business in the United Kingdom;
- (b) the entry in respect of each such firm shall consist of—
  - (i) information as to the services which the firm holds itself out as able to provide; and
  - (ii) such other information as the Board may determine;
- (c) where it appears to the Board that any person in respect of whom there is an entry in the register by virtue of paragraph (a) above has ceased to be a European investment firm carrying on home-regulated investment business in the United Kingdom, the Board shall make a note to that effect in the entry together with the reason why the person in question is no longer such a firm; and
- (d) an entry in respect of which a note is made by virtue of paragraph (c) above may be removed from the register at the end of such period as the Board thinks fit.

**26.** Section 104 of the Act (power to call for information) shall have effect as if—

- (a) the reference in subsection (1) to a person who is authorised to carry on investment business by virtue of any of the provisions there mentioned included a reference to a

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**(48)** Section 75 has been amended by the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1990 (S.I. 1990/349).

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European investment firm carrying on home-related investment business in the United Kingdom; and

- (b) references to functions under the Act included references to functions under these Regulations.

**27.** Section 106 of the Act(**49**) (exercise of investigation powers by officer etc.) shall have effect as if it included provision that—

- (a) where the Secretary of State or the Board authorises a person other than one of his or its officers to exercise any powers under section 105 of the Act (investigation powers) in relation to any home-regulated investment business of a European investment firm, the Secretary of State or, as the case may be, the Board may determine that subsection (3) of section 106 shall not apply; and
- (b) where such a determination is made, the person authorised to exercise the powers shall make a report to the relevant supervisory authority in the firm’s home State, in such manner as that authority may require, on the exercise of those powers and the results of exercising them.

#### *Auditors*

**28.** Subsection (3) of section 107 of the Act(**50**) (appointment of auditors) shall have effect in relation to an auditor appointed by an authorised person which is a European investment firm as if the reference to the accounts of the authorised person did not include a reference to any accounts relating to home-regulated investment business.

**29.** Section 109 of the Act (communication by auditor with supervisory authorities) shall have effect as if in subsection (1)—

- (a) the reference to an authorised person included a reference to a European investment firm; and
- (b) the reference to functions under the Act included a reference to functions under these Regulations.

**30.** Subsection (3) of section 110 of the Act (overseas business) shall have effect in relation to a European investment firm as if any reference to investment business did not include a reference to home-regulated investment business; and the reference in paragraph (b) of that subsection to the powers and duties of an auditor shall be construed accordingly.

#### *Fees*

**31.** Section 113 of the Act (periodical fees) shall have effect as if it included provision that a European investment firm carrying on home-regulated investment business in the United Kingdom shall pay such periodical fees to the Board as may be prescribed by regulations made under that section.

#### *Prevention of restrictive practices*

**32.** Section 119 of the Act(**51**) (recognised self-regulating organisations, investment exchanges and clearing houses) shall have effect as if any reference in subsections (1) and (2) to the protection of investors included a reference to compliance with the Investment Services Directive.

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(49) Section 106 has been amended by section 73 of the Companies Act 1989 (c. 40).

(50) Section 107 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

(51) Section 119 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989.

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**33.** Section 121 of the Act<sup>(52)</sup> (designated agencies) shall have effect as if any reference in subsections (1) and (2) to the protection of investors included a reference to compliance with the Investment Services Directive.

*Relations with other regulatory authorities*

**34.—**(1) Section 128C of the Act<sup>(53)</sup> (enforcement in support of overseas regulatory authority) shall have effect as if it—

- (a) required the powers mentioned in subsection (1) to be exercised at the request of the relevant supervisory authority in another EEA State if their exercise is necessary for the purposes of complying with the Investment Services Directive; and
- (b) included provision that, in relation to the exercise of those powers in such a case, subsections (4) and (5) shall not apply and the Board shall notify the action taken by it to that authority.

(2) That section shall also have effect as if the reference in subsection (2) to the power to withdraw or suspend authorisation under section 28 of the Act included a reference to the power to impose a prohibition under regulation 9 of these Regulations.

*Official listing of securities*

**35.** Section 142 of the Act (official listing) shall have effect as if—

- (a) transferable shares in a body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies; and
- (b) bills of exchange accepted by a banker,

were not investments to which that section applies<sup>(54)</sup>.

**36.** Section 154 of the Act (advertisements etc. in connection with listing applications) shall have effect as if—

- (a) it included provision that, where a European investment firm carrying on home-regulated investment business in the United Kingdom contravenes that section, it shall be treated as having contravened rules made under Chapter V of Part I of the Act, or in the case of a firm which is a member of a recognised self-regulating organisation, the rules of that organisation; and
- (b) the reference in subsection (3) to a person other than an authorised person did not include a reference to such a firm.

*Insider dealing*

**37.—**(1) Section 178 of the Act (penalty for failure to co-operate with section 177 investigations) shall have effect as if—

- (a) the reference in subsection (3) to an authorised person included a reference to a European investment firm; and

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<sup>(52)</sup> Section 121 has been amended by section 206, of, and Schedule 23 to, the Companies Act 1989.

<sup>(53)</sup> Section 128C was inserted by section 196 of the Companies Act 1989 (c. 40).

<sup>(54)</sup> The shares and bills of exchange in question fall within paragraphs 1 and 2 respectively of Schedule 1 to the Financial Services Act 1986 by virtue of articles 3 and 4 of the Financial Services Act 1986 (Investment Services) (Extension of Scope of Act) Order 1995 (SI 1995/3271). As such, they would be investments to which section 142 of the Financial Services Act applied unless excluded from the scope of that section.

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- (b) the notices which may be served on a European investment firm under that subsection included a notice—
    - (i) directing that regulation 5(1)(a) of these Regulations shall not apply in relation to the firm after the expiry of a specified period after the service of the notice; or
    - (ii) directing that during a specified period that provision shall apply in relation to the firm only as respects the performance of contracts entered into before the notice comes into force;
  - (c) the reference in subsection (4) to the period mentioned in paragraphs (a) and (c) of subsection (3) included a reference to the period mentioned in paragraph (b)(i) and (ii) above;
  - (d) any reference in subsection (5) to an unauthorised person did not include a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom; and
  - (e) the reference in that subsection to any authorised person included a reference to such a European investment firm.
- (2) That section shall also have effect as if it included provision that, if it appears to the Secretary of State—
- (a) that a person on whom he serves a notice under subsection (3) is a European investment firm carrying on home-regulated investment business in the United Kingdom; or
  - (b) that a person on whom he serves a revocation notice under subsection (7) was such a firm at the time when the notice which is being revoked was served,
- he shall serve a copy of the notice on the Board or, in the case of a firm which is a member of a recognised self-regulating organisation, that organisation.

#### *Restrictions on disclosure of information*

- 38.** Section 180 of the Act(**55**) (exceptions from restriction on disclosure of information) shall have effect as if—
- (a) the reference in section 180(1)(e) to functions under the Act included functions under these Regulations; and
  - (b) the reference in section 180(1) to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

#### *Miscellaneous and supplementary*

**39.** Section 191 of the Act (occupational pension schemes) shall have effect as if any reference to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

**40.** Section 206 of the Act(**56**) (publication of information and advice) shall have effect as if the reference in subsection (1) to authorised persons included a reference to European investment firms.

**41.** Section 207(5) of the Act (interpretation: definition of controller) as it has effect in relation to a UK investment firm shall have effect as if the reference in section 207(5)(a) to 15 per cent were a reference to 10 per cent.

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(55) Section 180 has been amended by section 108 of, and paragraph 27(3) of Schedule 6 to, the Banking Act 1987 (c. 22) and by sections 75 and 212 of, and Schedule 24 to, the Companies Act 1989 (c. 40).

(56) Section 206 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

### *Activities constituting investment business*

**42.**—(1) Paragraph 17 of Schedule 1 to the Act(**57**) (investments and investment business) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European investment firms, or a European investment firm, carrying on home-regulated investment business in the United Kingdom.

(2) Paragraph 18 of that Schedule shall have effect as if the reference in sub-paragraph (2) to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

(3) Paragraph 26 of that Schedule shall have effect as if any reference to an authorised person, or authorised persons, included a reference to a European investment firm, or European investment firms, carrying on home-regulated investment business in the United Kingdom.

### *Requirements for recognition of self-regulating organisation*

**43.**—(1) Paragraph 2 of Schedule 2 to the Act (requirements for recognition of self-regulating organisation) shall have effect as if it included provision that the rules and practices of the organisation must be such as to secure that no European investment firm, other than one on which an absolute prohibition has been imposed under regulation 9 of these Regulations, is refused admission to the organisation, or expelled from it, for reasons relating to the firm's fitness to carry on any home-regulated investment business.

(2) Paragraph 3 of that Schedule(**58**) shall have effect as if it included provision that the rules of the organisation must not include, as respects any European investment firm—

- (a) provision requiring the firm to have and maintain financial resources in respect of any home-regulated investment business carried on by it; or
- (b) provision as to any other matter for which, under the Investment Services Directive, responsibility is reserved to a supervisory authority in the firm's home State.

(3) That paragraph shall also have effect as if—

- (a) the reference in sub-paragraph (3) to Chapter VI of Part I of the Act included a reference to regulation 10 of these Regulations; and
- (b) it included provision that the rules of the organisation must be such as to secure that, where a power falling within that sub-paragraph is exercisable by virtue of a European investment firm's contravention of a requirement of any provision made pursuant to any provision of the Investment Services Directive that confers power on host States, the exercise of the power shall be subject to such restrictions as are necessary for the purposes of complying with article 19 of the Investment Services Directive.

(4) Paragraph 7 of that Schedule shall have effect as if it included provision that, for the purposes of complying with the Investment Services Directive, the organisation must be able and willing to co-operate, by the sharing of information and otherwise, with supervisory authorities in other EEA States.

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(57) Paragraph 17 has been amended by section 206 of, and Schedule 23 to, Companies Act 1989 and by the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1990 (S.I. 1990/349).

(58) Paragraph 3 has been amended by section 203 of the Companies Act 1989 (c. 40).

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### *Qualifications of designated agency*

**44.**—(1) Paragraph 4 of Schedule 7 to the Act(**59**) (qualifications of designated agency) shall have effect as if any reference to authorised persons included a reference to European investment firms carrying on home-regulated investment business in the United Kingdom.

(2) Paragraph 5 of that Schedule shall have effect as if it included provision that, for the purposes of complying with the Investment Services Directive, the agency must be able and willing to cooperate, by the sharing of information and otherwise, with supervisory authorities in other EEA States.

### *Principles applicable to designated agency's legislative provisions*

**45.** Schedule 8 to the Act(**60**) (principles applicable to designated agency's legislative provisions) shall have effect as if any reference to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

## SCHEDULE 8

Regulation 48(3).

### ARTICLE 25 OF THE INVESTMENT SERVICES DIRECTIVE

#### *“Article 25*

**1.** Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Accordingly, no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that individual investment firms cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that investment firm may be divulged in civil or commercial proceedings.

**2.** Paragraph 1 shall not prevent the competent authorities of different Member States from exchanging information in accordance with this Directive or other Directives applicable to investment firms. That information shall be subject to the conditions of professional secrecy imposed in paragraph 1.

**3.** Member States may conclude cooperation agreements providing for exchanges of information with the competent authorities of third countries only if the information disclosed is covered by guarantees of professional secrecy at least equivalent to those provided for in this Article.

**4.** Competent authorities receiving confidential information under paragraph 1 or 2 may use it only in the course of their duties:

- to check that the conditions governing the taking up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements

(59) Schedule 7 has been amended by sections 204 and 206 of, and Schedule 23 to, the Companies Act 1989.

(60) Schedule 8 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

imposed in Directive 93/6/EEC, administrative and accounting procedures and internal-control mechanisms,

- to impose sanctions,
- in administrative appeals against decisions by the competent authorities, or
- in court proceedings initiated under article 26.

5. Paragraphs 1 and 4 shall not preclude the exchange of information:

- (a) within a Member State, where there are two or more competent authorities, or
- (b) within a Member State or between Member States, between competent authorities and
  - authorities responsible for the supervision of credit institutions, other financial organizations and insurance undertakings and the authorities responsible for the supervision of financial markets,
  - bodies responsible for the liquidation and bankruptcy of investment firms and other similar procedures; and
  - persons responsible for carrying out statutory audits of the accounts of investment firms and other financial institutions,

in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 1.

6. This Article shall not prevent a competent authority from disclosing to those central banks which do not supervise credit institutions or investment firms individually such information as they may need to act as monetary authorities. Information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1.

7. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received shall be subject to the conditions of professional secrecy imposed in paragraph 1. The Member States shall, however, ensure that information received under paragraph 2 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

8. In addition, notwithstanding the provisions referred to in paragraphs 1 and 4, Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment firms and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verifications referred to in Article 24 may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which the on-the-spot verification was carried out.

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9. If, at the time of adoption of this Directive, a Member State provides for the exchange of information between authorities in order to check compliance with the laws on prudential supervision, on the organization, operation and conduct of commercial companies and on the regulation of financial markets, that Member State may continue to authorize the forwarding of such information pending coordination of all the provisions governing the exchange of information between authorities for the entire financial sector but not in any case after 1 July 1996.

Member States shall, however, ensure that, where information comes from another Member State, it may not be disclosed in the circumstances referred to in the first sub-paragraph without the express consent of the competent authorities which disclosed it and it may be used only for the purpose for which those authorities gave their agreement.

The Council shall effect the coordination referred to in the first sub-paragraph on the basis of a Commission proposal. The Council notes the Commission's statement to the effect that it will submit proposals by 31 July 1993 at the latest. The Council will act on those proposals within the shortest possible time with the intention of bringing the rules proposed into effect on the same date as this Directive."

## SCHEDULE 9

Regulation 55.

### POSITION OF EUROPEAN SUBSIDIARIES

#### 1. In this Schedule—

“the Banking Regulations” means the Banking Coordination (Second Council Directive) Regulations 1992(61);

“financial institution” has the same meaning as in the Banking Regulations;

“listed activity” has the same meaning as in the Banking Regulations;

“non-ISD activity” means any listed activity other than a listed service.

#### *Modifications of the Banking Regulations*

2. Regulation 3(3) of the Banking Regulations (requirements for being European subsidiary) shall cease to have effect except in so far as it relates to any financial institution—

(a) which immediately before the commencement date, is a European subsidiary and which, after that date, carries on in the United Kingdom (by whatever means and whether or not in conjunction with the provision by it of any listed service) any non-ISD activity in relation to which the requirements of paragraph 1 of Schedule 2 to those Regulations continue to be complied with; or

(b) which after the commencement date satisfies (and continues to satisfy) the requirements of regulation 3(3) in relation to the carrying on by it (by whatever means and whether or not in conjunction with the provision by it of any listed service) of any non-ISD activity;

and the meaning of “European institution” given by regulation 3(1) of those Regulations shall be modified accordingly.

3. The following provisions of the Banking Regulations, that is to say—

(a) the definitions of “authorised or permitted”, “connected UK authority” and “home-regulated investment business” in regulation 2(1) (interpretation: general);

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(61) S.I. 1192/3218.

- (b) regulation 3(7) (meaning of home-regulated activity);
- (c) regulation 4(2) (permitted activities);
- (d) regulation 5(1) (authorisations and licences not required);
- (e) regulation 65 (application of Part II of the Insurance Companies Act 1982);
- (f) regulation 66 (meaning of insurance business),

shall have effect, in relation to any financial institution falling within paragraph (a) or (b) of paragraph 2 above, as if any reference to a listed activity were a reference to any non-ISD activity.

*Procedural requirements for existing European subsidiaries carrying on listed services*

4. Nothing in regulation 6(1) of these Regulations shall require a European investment firm which, immediately before the commencement date, is a European subsidiary to give further notice of any matter of which it has already given notice under paragraph 1 of Schedule 2 to the Banking Regulations.

5. In respect of any listed service (whether or not provided in conjunction with the carrying on of any listed activity), regulation 6(3) of these Regulations (and not regulation 6(2) of the Banking Regulations) applies in respect of changes to the requisite details of any branch established in the United Kingdom by a European investment firm which, immediately before the commencement date, is a European subsidiary.

SCHEDULE 10

Regulation 57.

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

PRIMARY LEGISLATION

*Superannuation Act 1972 (c. 11)*

1. Sections 1, 9 and 10 of the Superannuation Act 1972(62) (superannuation of civil servants etc.) shall each have effect as if the reference in subsection (2A) to any authorised provider included a reference to any European investment firm acting in the course of home-regulated investment business carried on by it in the United Kingdom.

*Superannuation (Northern Ireland) Order 1972 (S.I. 1972/1073 (N.I. 10))*

2. Articles 3, 11 and 12 of the Superannuation (Northern Ireland) Order 1972 (superannuation of civil servants etc.) shall each have effect as if the reference in paragraph (1A) or, as the case may be, paragraph (2A) to any authorised provider included a reference to any European investment firm acting in the course of home-regulated investment business carried on by it in the United Kingdom.

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(62) Sections 1(2A), 9(2A) and 10(2A) were inserted by sections 8(1), 8(3) and 8(5) respectively of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7); other amendments not relevant to these Regulations were also made to sections 1, 9 and 10 of the Superannuation Act 1972 (c. 11) by the Pensions (Miscellaneous Provisions) Act 1990.

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*Data Protection Act 1984 (c. 35)*

3. Section 30 of the Data Protection Act 1984 (exemption for regulation of financial services etc.) shall have effect as if—

- (a) the reference in subsection (1) to prejudicing the proper discharge of statutory functions to which that section applies included a reference to contravening regulation 48 of these Regulations; and
- (b) the reference in subsection (2) to any enactment included a reference to these Regulations.

*Companies Act 1985 (c. 6)*

4. Section 446 of the Companies Act 1985(63) (investigation of share dealings) shall have effect as if the references in subsection (4)(c) to (e) to an authorised person within the meaning of the Financial Services Act included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

*Building Societies Act 1986 (c. 53)*

6. Section 43 of the Building Societies Act 1986(64) (revocation of authorisation) shall have effect as if the reference in sub-paragraph (f) of subsection (1A) to any rule of law in force in another member State for purposes connected with the implementation of the Second Council Directive included a reference to any rule of law in force in another EEA State for purposes connected with the implementation of the Investment Services Directive.

7. Section 45A of the Building Societies Act 1986(65) (exercise of powers on information from supervisory authority) shall have effect as if the reference in subsection (1) to any rule of law in force in another member State for purposes connected with the implementation of the Second Council Directive included a reference to any rule of law in force in another EEA State for purposes connected with the implementation of the Investment Services Directive.

*Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I.6))*

8. Article 439 of Companies (Northern Ireland) Order 1986(66) (investigation of share dealings) shall have effect as if the references in paragraph (4)(c) to (e) to an authorised person within the meaning of the Financial Services Act included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

*Banking Act 1987 (c. 22)*

9. Section 11 of the Banking Act 1987(67) (revocation of authorisation) shall have effect as if the reference in sub-paragraph (f) of subsection (1A) to any rule of law in force in another member State for purposes connected with the implementation of the Second Council Directive included a reference to any rule of law in another EEA State for purposes connected with the implementation of the Investment Services Directive.

10. Section 12A of the Banking Act 1987(68) (revocation and restriction on information from supervisory authority) shall have effect as if the reference in subsection (i) to any rule of law in

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(63) Section 446(4) was substituted by section 212 of, and paragraph 21 of Schedule 16 to, the Financial Services Act 1986 (c. 60).

(64) Section 43(1A) was inserted by regulation 71 of the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218).

(65) Section 45A was inserted by regulation 74 of the Banking Co-ordination (Second Council Directive) Regulations 1992.

(66) Article 439 has been amended by paragraph 38 of Schedule 16 to the Financial Services Act 1986.

(67) Section 11(1A) was inserted by regulation 28 of the Banking Co-ordination (Second Council Directive) Regulations 1992.

(68) Section 12A was inserted by regulation 29 of the Banking Co-ordination (Second Council Directive) Regulations 1992.

force for purposes connected with the implementation of the Second Council Directive included a reference to any rule of law in force in another EEA State for purposes connected with the implementation of the Investment Services Directive.

**11.** Section 82 of the Banking Act 1987<sup>(69)</sup> shall have effect as if amongst the functions specified in the second column of the Table set out in that section—

- (a) in relation to a designated agency (within the meaning of the Financial Services Act); and
- (b) in relation to a recognised self-regulating organisation (within the meaning of the Financial Services Act),

were any functions of such an agency or such an organisation as a competent authority designated by the United Kingdom for the purposes of Article 22 of the Investment Services Directive or for the purposes of Article 9 of the Capital Adequacy Directive.

*Consumer Protection Act 1987 (c. 43)*

**12.** Section 22 of the Consumer Protection Act 1987 (application to provision of services and facilities) shall have effect as if it included provision that references in Part III of that Act to services or facilities shall not include references to services or facilities which are provided by a European investment firm in the course of carrying on home-regulated investment business in the United Kingdom.

*Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I.20))*

**13.** Article 15 of the Consumer Protection (Northern Ireland) Order 1987 (application to provision of services and facilities) shall have effect as if it included provision that references in Part III of that Order to services or facilities shall not include references to services or facilities which are provided by a European investment firm in the course of carrying on home-regulated investment business in the United Kingdom.

*Companies Act 1989 (c. 40)*

**14.** Section 176 of the Companies Act 1989 (power to make provision about certain charges) shall have effect as if the reference in subsection (2) to an authorised person within the meaning of the Financial Services Act included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

*Companies (No.2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I.10))*

**15.** Article 98 of the Companies (No. 2) (Northern Ireland) Order 1990 (power to make provision about certain charges) shall have effect as if the reference in paragraph (2) to an authorised person within the meaning of the Financial Services Act included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

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<sup>(69)</sup> 1987 c. 22, Section 82 of the Banking Act 1987 has been amended by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218).

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## PART II

### SUBORDINATE LEGISLATION

*Data Protection (Regulation of Financial Services etc.)  
(Subject Access Exemption) Order 1987 (S.I. 1987/1905)*

**16.**—(1) Schedule 1 to the Data Protection (Regulation of Financial Services etc.) (Subject Access Exemption) Order 1987(70) (functions designated for purposes of section 30 of Data Protection Act 1984) shall have effect as if the reference in the last but one entry relating to the Financial Services Act to any person authorised under that Act included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

(2) That Schedule shall also have effect as if at the end there were inserted the following entry—

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“Investment Services Regulations 1995

Functions of the Securities and Investments Board  
under Regulations.”

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*Banking Act 1987 (Advertisements) Regulations 1988 (S.I. 1988/645)*

**17.** Regulation 2 of the Banking Act 1987 (Advertisements) Regulations 1988 (application of Regulations) shall have effect as if the reference in paragraph (7) to a person authorised under Chapter III of Part I of the Financial Services Act included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

*Banking Act 1987 (Exempt Transactions) Regulations 1988 (S.I. 1988/646)*

**18.** Regulation 14 of the Banking Act 1987 (Exempt Transactions) Regulations 1988(71) shall have effect as if—

- (a) the reference in subsection (1) to a person who is an authorised person under the Financial Services Act included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom; and
- (b) the reference in paragraph (2) to such an authorised person included a reference to a European investment firm.

*Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915)*

**19.** Regulation 3 of the Control of Misleading Advertisements Regulations 1988 (application) shall have effect as if—

- (a) the reference in paragraph (a) to an authorised person (within the meaning of the Financial Services Act) included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom; and
- (b) the reference in that paragraph to the authorised person in question included a reference to the European investment firm in question.

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(70) There are amendments not relevant to these Regulations.

(71) There are amendments not relevant to these Regulations.

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*Financial Services Act 1986 (Investment Advertisements)  
(Exemptions) Order 1995 (S.I. 1995/1266)*

**20.** Article 11 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1995 (advertisements issued to persons sufficiently expert to understand the risks involved) shall have effect as if any reference to an authorised person (within the meaning of the Financial Services Act) included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

*Financial Services Act 1986 (Investment Advertisements)  
(Exemptions) (No. 2) Order 1995 (S.I. 1995/1536)*

**21.** Article 7 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) (No. 2) Order 1995 (advertisements issued to persons of particular kinds) shall have effect as if the reference in paragraph (1) to an authorised person (within the meaning of the Financial Services Act) included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

*The Public Offers of Securities Regulations 1995 (S.I. 1995/1537)*

**22.** Regulation 3 of the Public Offers of Securities Regulations 1995 (investments to which Part II of the Regulations apply) shall have effect as if—

- (a) transferable shares in a body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies; and
- (b) bills of exchange accepted by a banker,

were not investments to which Part II of those Regulations are applied<sup>(72)</sup>.

SCHEDULE 11

Regulation 58.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

RECOGNITION OF INVESTMENT FIRMS

*European investment firms*

**1.—(1)** This paragraph applies to an investment firm (other than a European authorised institution) incorporated in or formed under the law of another EEA State which before the commencement date—

- (a) has commenced providing any listed service in the United Kingdom by the provision of services; or
- (b) has established in the United Kingdom for the purpose of providing any such service a branch which immediately before that date is in existence.

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(72) The shares and bills of exchange in question fall within paragraphs 1 and 2 respectively of Schedule 1 to the Financial Services Act 1986 by virtue of articles 3 and 4 of the Financial Services Act 1986 (Investment Services) (Extension of Scope of Act) Order 1995 (S.I. 1995/3271). As such, they would be investments to which Part II of the Public Offers of Securities Regulations applied unless excluded from the scope of regulation 3 of those Regulations.

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(2) An investment firm to which this paragraph applies and which appears on the list communicated by the supervisory authorities of its home State in accordance with article 30.3 of the Investment Services Directive shall be treated for all purposes of these Regulations as if the requirements of paragraph 1 of Schedule 3 to these Regulations had been complied with in relation to its provision of the service or, as the case may be, its establishment of the branch.

(3) An investment firm to which this paragraph applies and which does not appear on the list communicated by the supervisory authorities of its home State in accordance with the provisions of article 30.3 of the Investment Services Directive shall if it is an authorised person or an exempted person, cease, with effect from whichever first occurs of 1st January 1997 or the firm becoming authorised in its home State in accordance with the provisions of the Investment Services Directive, to be such a person as respects listed services, and any standard licence granted to the firm under the Consumer Credit Act shall cease to cover any consumer credit business falling within the Annex to the Investment Services Directive.

(4) An investment firm to which this paragraph applies and which does not appear on the list communicated to the Board by the supervisory authorities of its home State in accordance with the provisions of article 30.3 of the Investment Services Directive shall (upon its becoming authorised in its home State in accordance with the provisions of the Investment Services Directive before 1st January 1997) be treated for the purposes of these Regulations as if the requirements of paragraph 1 of Schedule 3 to these Regulations had been complied with in relation to its provision of the service or, as the case may be, its establishment of the branch.

#### *UK authorised investment firms*

2.—(1) This paragraph applies to an investment firm incorporated in or formed under the law of any part of the United Kingdom which immediately before the commencement date is an authorised person under the Financial Services Act or is an exempted person by reason of its inclusion in the list maintained by the Bank for the purposes of section 43 of that Act.

(2) If an investment firm to which this paragraph applies—

- (a) has, before the commencement date, commenced providing any listed service in another EEA State by the provision of services; or
- (b) has established in another EEA State for the purpose of providing any such service a branch which immediately before that date is in existence,

it shall be treated for all purposes of these Regulations as if the requirements of paragraph 1 of Schedule 6 to these Regulations had been complied with in relation to its provision of the service or, as the case may be, its establishment of the branch.

## PART II

### AMENDMENTS OF FINANCIAL SERVICES ACT

#### *Preliminary*

3.—(1) Any reference in this Part of this Schedule to a statement of principle or to rules or regulations is a reference to a statement of principle issued, or to rules or regulations made, before the commencement date.

(2) Expressions used in this Part of this Schedule which are also used in Schedule 7 to these Regulations have the same meanings as in that Schedule.

### *Statements of principle*

4.—(1) A statement of principle issued under section 47A of the Financial Services Act(73) (statements of principle with respect to conduct and financial standing) shall, unless the contrary intention appears, apply to a European investment firm carrying on home-regulated investment business in the United Kingdom to the same extent as it would apply if the investment firm were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Investment Services Directive or the Capital Adequacy Directive so far as relating to any particular European investment firm, the Board may, on the application or with the consent of the firm, by order direct that all or any of the provisions of such a statement—

- (a) shall not apply to the firm; or
- (b) shall apply to it with such modifications as may be specified in the order.

### *Conduct of business rules*

5.—(1) Rules made under section 48 of the Financial Services Act(74) (conduct of business rules) shall, unless the contrary intention appears, apply in relation to the conduct of home-regulated investment business carried on by a European investment firm in the United Kingdom to the same extent as they would apply if the investment firm were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Investment Services Directive so far as relating to any particular European investment firm, the Board may, on the application or with the consent of the firm, by order direct that all or any of the provisions of such rules—

- (a) shall not apply in relation to the conduct of home-regulated investment business carried on by the firm; or
- (b) shall apply in relation to the conduct of such business with such modifications as may be specified in the order.

(3) A member of a recognised self-regulating organisation who contravenes a rule applying to him by virtue of this paragraph shall be treated as having contravened the rules of the organisation.

### *Financial resources rules*

6. If the Board is satisfied that it is necessary to do so for the purpose of implementing the Capital Adequacy Directive so far as relating to any particular firm which is a European investment firm and an authorised person, the Board may, on the application or with the consent of the firm, by order direct that all or any of the provisions of rules under section 49 of the Financial Services Act(75) (financial resources rules)—

- (a) shall not apply to the firm; or
- (b) shall apply to it with such modifications as may be specified in the order.

### *Cancellation rules*

7.—(1) Rules made under section 51 of the Financial Services Act (cancellation rules) shall, unless the contrary intention appears, apply in relation to a person who has entered or offered to enter

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(73) Section 47A was inserted by section 192 of the Companies Act 1989 (c. 40).

(74) Section 48 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989 (c. 40).

(75) Section 49 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

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into an investment agreement to which sub-paragraph (2) below applies as they apply in relation to a person mentioned in that section.

(2) This sub-paragraph applies to an investment agreement which is made by a European investment firm in the course of the carrying on by it of home-regulated investment business in the United Kingdom.

#### *Notification regulations*

**8.—**(1) Regulations made under section 52 of the Financial Services Act<sup>(76)</sup> (notification regulations) shall, unless the contrary intention appears, apply in relation to a European investment firm carrying on home-regulated investment business in the United Kingdom to the same extent as they would apply if the investment firm were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Investment Services Directive or the Capital Adequacy Directive so far as relating to any particular European investment firm, the Board may, on the application or with the consent of the firm, by order direct that all or any of the provisions of such regulations—

- (a) shall not apply to the firm; or
- (b) shall apply to it with such modifications as may be specified in the order.

#### *Compensation fund*

**9.—**(1) Rules under section 54 of the Financial Services Act (compensation fund) shall, unless the contrary intention appears, apply in cases where a person who is or has been a European investment firm is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by it in connection with home-regulated investment business carried on by it in the United Kingdom to the same extent as they would apply if the investment firm were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Investment Services Directive so far as relating to any particular person who is or has been a European investment firm, the Board may, on the application or with the consent of that person, by order direct that all or any of the provisions of such rules—

- (a) shall not apply in relation to cases where that person is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by it in connection with home-regulated investment business carried on by it; or
- (b) shall apply in relation to such cases with such modifications as may be specified in the order.

#### *Unsolicited calls*

**10.—**(1) Regulations under section 56 of the Financial Services Act<sup>(77)</sup> (unsolicited calls) shall, unless the contrary intention appears, apply in relation to a European investment firm carrying on home-regulated investment business in the United Kingdom to the same extent as they would apply if the investment firm were an authorised person.

(2) A member of a recognised self-regulating organisation who contravenes a regulation applying to him by virtue of this paragraph shall be treated as having contravened the rules of the organisation.

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<sup>(76)</sup> Section 52 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

<sup>(77)</sup> Section 56 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

### *Supplemental*

**11.—**(1) An order under this Part of this Schedule may be subject to conditions.

(2) Such an order may be revoked at any time by the Board; and the Board may at any time vary any such order on the application or with the consent of the European investment firm to which it applies.

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## **EXPLANATORY NOTE**

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

The Regulations give effect to provisions of Council Directive [93/22/EEC](#) on investment services in the securities field (OJ No. L141, 10.5.93, p.27) (“the Investment Services Directive”). They also give effect to provisions of Council Directive [93/6/EEC](#) on the capital adequacy of investment firms and credit institutions (OJ No. L141, 15.3.93, p.1). Most of the Regulations come into force on 1st January 1996. Two of them (one relating to the position of appointed representatives under the Financial Services Act 1986 and the other relating to the position of recognised professional bodies under that Act) come into force of 1st January 1997.

Part I of the Regulations defines various words and expressions for the purposes of the Regulations. Schedules 1 and 2 to the Regulations are relevant to the construction of Part I.

Part II of the Regulations makes provision for the recognition of certain investment firms authorised in other EEA States for the purposes of providing listed services in the United Kingdom. “Listed services” are the services which are set out in Schedule 1. Subject to compliance with the notification requirements contained in Schedule 3, nothing in certain specified provisions of the Financial Services Act [1986 \(c. 60\)](#) and the Consumer Credit Act [1974 \(c. 39\)](#) is to prevent a “European investment firm” (regulation 3) from providing in the United Kingdom, whether by the provision of services or the establishment of a branch, any listed service which its authorisation as an investment firm in its “home state” authorises it to provide (regulation 5). Certain offences in connection with provision of listed services and the establishment of branches are created by regulations 6 and 7. There are requirements concerning changes to the “requisite details” of a European investment firm (regulation 6(2) and (3)). Prohibitions and restrictions on a European investment firm in relation to the provision of listed services may be imposed by the Securities and Investments Board (regulations 9 to 11) and the Director General of Fair Trading (regulations 15 and 16), in the circumstances and in accordance with the conditions set out in the Regulations. Schedules 4 and 5 make supplemental provision in connection with such prohibitions and restrictions imposed by the Board and the Director General respectively. The Board (regulation 8) and the Bank (regulation 13) also have certain duties to prepare for supervision when a European investment firm is proposing to commence activities in the United Kingdom pursuant to the Regulations.

Part III of the Regulations makes provision for the implementation of certain decisions by the Council or the Commission.

Part IV of the Regulations makes provision for the carrying on of listed activities in other member States by “UK authorised investment firms”, which means certain persons who are authorised under the Financial Services Act 1986 or exempted under that Act by virtue of being admitted to the list maintained by the Bank of England for the purposes of section 43 (regulation 18). A UK authorised investment firm is not to provide any listed service by the provision of services nor establish a

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branch in another EEA State in order to provide such a service unless the notification requirements of Schedule 6 have been complied with (regulation 20). There are also requirements concerning changes to the “requisite details” of a UK authorised investment firm.

Part V of the Regulations amends the Financial Services Act 1986. The principal changes relate to membership of self-regulating organisations (regulation 21), applications for, and grant and refusal of, authorisation by the Securities and Investments Board under that Act (regulations 22 and 23), the granting of exemption to certain EEA markets (regulation 25), the conditions for admission to and removal from the list maintained by the Bank of England for the purposes of section 43 of that Act (regulation 26), appointed representatives (regulation 27), reciprocal facilities for investment business (regulation 29) and certification by recognised professional bodies (regulation 31). Other amendments to the Financial Services Act 1986 are made by Schedule 7, in particular in relation to European investment firms.

Part VI of the Regulations amends the Consumer Credit Act 1974. The principal changes relate to the effect of standard licences (regulation 34), the grant of standard licences (regulation 35), conduct of business (regulation 36), disclosure of information (regulation 39), and modification of subordinate legislation in relation to European investment firms (regulation 40).

Part VII of the Regulations introduces new requirements obliging persons who wish to acquire or increase holdings in UK authorised investment firms in excess of certain specified sizes to notify the relevant regulators before doing so. The regulators concerned are given power to object to the proposed acquisition. Certain offences in connection with notification are created by regulation 43. The Part contains transitional provisions relating to agreements entered into before the date on which the requirements of the Part come into force.

Part VIII of the Regulations makes provision as to certain miscellaneous matters. It contains provisions restricting the disclosure of confidential information relating to investment firms (regulation 48 and Schedule 8). It also contains provisions requiring the Securities and Investments Board to maintain a list of UK markets which meet certain requirements (regulation 49). It confers powers on the Board relating to the maintenance of financial resources by investment firms (regulation 50) and for the purpose of facilitating the assessment of the financial resources available to a group the members of which include an investment firm (regulations 51 to 53). The Part also confers powers on the Treasury to give directions to the Bank of England if such directions are necessary to ensure compliance with Investment Services Directive or the Capital Adequacy Directive (regulation 54). Finally, Part VIII (regulation 55 and Schedule 9) contains provisions relating to the position of certain EEA subsidiaries of EEA credit institutions. Prior to the coming into force of the Regulations, the ability of those subsidiaries to provide listed services in the United Kingdom was dealt with by the provisions of the Banking Coordination (Second Council Directive) Regulations 1992 ([S.I. 1992/3218](#)). From 1st January 1996, the ability of such subsidiaries to provide such services will be dealt with under the Regulations.

Part IX (including Schedules 10 and 11) makes provision in relation to the functions conferred on the Securities and Investments Board by the Regulations and contains minor and consequential amendments to primary and secondary legislation as well as transitional provisions and savings.