



Financial Services Act 1986

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

CHAPTER XIV

PREVENTION OF RESTRICTIVE PRACTICES

Examination of rules and practices

119 Recognised self-regulating organisations, investment exchanges and clearing houses

- (1) The Secretary of State shall not make a recognition order in respect of a self-regulating organisation, investment exchange or clearing house unless he is satisfied that—
 - (a) the rules and any guidance of which copies are furnished with the application for the order; and
 - (b) in the case of an investment exchange, any arrangements of which particulars are furnished with the application,do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.
- (2) The powers conferred by subsection (3) below shall be exercisable by the Secretary of State if at any time it appears to him that—
 - (a) any rules made or guidance issued by a recognised self regulating organisation, investment exchange or clearing house or any clearing arrangements made by a recognised clearing house;
 - (b) any practices of any such organisation, exchange or clearing house; or

Status: This is the original version (as it was originally enacted).

- (c) any practices of persons who are members of, or otherwise subject to the rules made by, any such organisation, exchange or clearing house, have, or are intended or likely to have, to a significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.
- (3) The powers exercisable under this subsection are—
- (a) to revoke the recognition order of the organisation, exchange or clearing house;
 - (b) to direct it to take specified steps for the purpose of securing that the rules, guidance, arrangements or practices in question do not have the effect mentioned in subsection (2) above;
 - (c) to make alterations in the rules for that purpose ;
- and subsections (2) to (5), (7) and (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.
- (4) Subsection (3)(c) above does not apply to an overseas investment exchange or overseas clearing house.
- (5) The practices referred to in paragraph (b) of subsection (2) above are practices of the organisation, exchange or clearing house in its capacity as such, being, in the case of a clearing house, practices in respect of its clearing arrangements; and the practices referred to in paragraph (c) of that subsection are practices in relation to business in respect of which the persons in question are subject to the rules of the organisation, exchange or clearing house and which are required or contemplated by its rules or guidance or otherwise attributable to its conduct in its capacity as such.

120 Modification of s. 119 where recognition function is transferred

- (1) This section applies instead of section 119 above where the function of making or revoking a recognition order in respect of a self-regulating organisation, investment exchange or clearing house is exercisable by a designated agency.
- (2) The designated agency—
- (a) shall send to the Secretary of State a copy of the rules and of any guidance or arrangements of which copies or particulars are furnished with any application made to the agency for a recognition order together with any other information supplied with or in connection with the application; and
 - (b) shall not make the recognition order without the leave of the Secretary of State ;
- and he shall not give leave in any case in which he would (apart from the delegation order) have been precluded by section 119(1) above from making the recognition order.
- (3) A designated agency shall send the Secretary of State a copy of any notice received by it under section 14(6) or 41(5) or (6) above.
- (4) If at any time it appears to the Secretary of State in the case of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house that there are circumstances such that (apart from the delegation order) he would have been able to exercise any of the powers conferred by subsection (3) of section 119 above he may, notwithstanding the delegation order, himself exercise the power

conferred by paragraph (a) of that subsection or direct the designated agency to exercise the power conferred by paragraph (b) or (c) of that subsection in such manner as he may specify.

121 Designated agencies

- (1) The Secretary of State shall not make a delegation order transferring any function to a designated agency unless he is satisfied that any rules, regulations and guidance of which copies are furnished to him under section 114(9) or (10) above do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.
- (2) The powers conferred by subsection (3) below shall be exercisable by the Secretary of State if at any time it appears to him that—
 - (a) any rules or regulations made by a designated agency in the exercise of functions transferred to it by a delegation order or any guidance issued by a designated agency;
 - (b) any practices of a designated agency; or
 - (c) any practices of persons who are subject to rules or regulations made by it in the exercise of those functions,have, or are intended or are likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.
- (3) The powers exercisable under this subsection are—
 - (a) to make an order in respect of the agency under section 115(2) above as if the circumstances were such as are there mentioned; or
 - (b) to direct the agency to take specified steps for the purpose of securing that the rules, regulations, guidance or practices in question do not have the effect mentioned in subsection (2) above.
- (4) The practices referred to in paragraph (b) of subsection (2) above are practices of the designated agency in its capacity as such; and the practices referred to in paragraph (c) of that subsection are practices in relation to business in respect of which the persons in question are subject to any such rules or regulations as are mentioned in paragraph (a) of that subsection and which are required or contemplated by those rules or regulations or by any such guidance as is there mentioned or are otherwise attributable to the conduct of the agency in its capacity as such.