



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVIII

#### RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES<sup>F1F1</sup>

#### [<sup>F1</sup>CHAPTER 1A

#### CONTROL OVER RECOGNISED INVESTMENT EXCHANGE

##### Textual Amendments

- F1** Pt. 18 Ch. 1A (ss. 301A-301G) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), regs. 1(2), 3(2), **Sch. 2 para. 10**

#### *Notice of control*

#### **301A** **Obligation to notify the Authority of acquisition of or increase in control**

- (1) If a step which a person proposes to take would result in his acquiring—
  - (a) control over a recognised investment exchange,
  - (b) an additional kind of control over an exchange, or
  - (c) an increase in a relevant kind of control which he already has over an exchange,he must notify the Authority of his proposal.
- (2) A person who, without himself taking any such step, acquires any such control or additional or increased control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.
- (3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give notice to the Authority on acquiring, or increasing, the control in question.

*Status: Point in time view as at 19/12/2007.*

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- (4) A notice under subsection (1) or (2) is referred to in this Chapter as a “notice of control”.
- (5) Section 182 applies to a notice of control under this Chapter as it applies to a notice of control under Part 12.
- (6) Nothing in this Chapter applies to an overseas investment exchange.

### *Acquiring and increasing control*

#### **301B Acquiring and increasing control**

- (1) For the purposes of this Chapter, a person (“the acquirer”) acquires control over a recognised investment exchange (“E”) on first falling within any of the cases in subsection (2).
- (2) The cases are where the acquirer—
  - (a) holds 20% or more of the shares in E;
  - (b) is able to exercise significant influence over the management of E by virtue of his shareholding in E;
  - (c) holds 20% or more shares in a parent undertaking (“P”) of E;
  - (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;
  - (e) is entitled to exercise, or control the exercise of, 20% or more of the voting power in E;
  - (f) is able to exercise significant influence over the management of E by virtue of his voting power in E;
  - (g) is entitled to exercise, or to control the exercise of, 20% or more of the voting power in P; or
  - (h) is able to exercise significant influence over the management of P by virtue of his voting power in P.
- (3) In subsection (2) “the acquirer” means—
  - (a) the acquirer,
  - (b) any of his associates, or
  - (c) the acquirer and any of his associates.
- (4) For the purposes of this Chapter, each of the following is to be regarded as a kind of control—
  - (a) control arising as a result of the holding of shares in E;
  - (b) control arising as a result of the holding of shares in P;
  - (c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in E;
  - (d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in P.
- (5) For the purposes of this Chapter, a controller of E increases his control over E if—
  - (a) the percentage of shares held by the controller in E increases by the step mentioned in subsection (6);
  - (b) the percentage of shares held by the controller in P increases by the step mentioned in subsection (6);

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- (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in E increases by the step mentioned in subsection (6);
  - (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P increases by the step mentioned in subsection (6);  
or
  - (e) the controller becomes a parent undertaking of E.
- (6) The step is from 20% or more (but less than 50%) to 50% or more.
- (7) In the rest of this Chapter “acquiring control” or “having control” includes—
- (a) acquiring or having an additional kind of control; or
  - (b) acquiring an increase in a relevant kind of control, or having increased control of a relevant kind.

*Acquiring or increasing control: procedure*

**301C Duty of Authority in relation to notice of control**

- (1) The Authority must, before the end of the period of three months beginning with the date on which it receives a notice of control, determine whether—
  - (a) to approve of the person concerned having the control to which the notice relates; or
  - (b) to give a warning notice under subsection (7).
- (2) If the Authority decides to approve of the person concerned having the control to which the notice relates it must notify that person of its approval in writing without delay.
- (3) If the Authority fails to comply with subsection (1) it is to be treated as having given its approval and notified the person concerned at the end of the period fixed by that subsection.
- (4) The Authority's approval remains effective only if the person to whom it relates acquires the control in question—
  - (a) before the end of such period as may be specified in the notice of approval under subsection (2); or
  - (b) if no period is specified, before the end of the period of one year beginning with the date—
    - (i) of the notice of approval under subsection (2);
    - (ii) on which the Authority is treated as having given approval under subsection (3); or
    - (iii) of a decision on a reference to the Tribunal which results in the person concerned receiving approval.
- (5) The Authority may give a decision notice under this subsection unless it is satisfied that the approval requirement is met.
- (6) The approval requirement is that the acquisition of control by the person who gave the notice of control does not pose a threat to the sound and prudent management of any financial market operated by the recognised investment exchange.
- (7) If the Authority proposes to give the person concerned a decision notice under subsection (5), it must give him a warning notice.

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- (8) A person to whom a decision notice is given under subsection (5) may refer the matter to the Tribunal.

### **301D Objection to existing control**

- (1) If the Authority is not satisfied that the approval requirement is met, it may give a decision notice under this section to a person if he has failed to comply with a duty to notify imposed by section 301A.
- (2) If the failure relates to subsection (1) or (2) of that section, the Authority may (instead of giving a notice under subsection (1)) approve the acquisition of control in question by the person concerned as if he had given it a notice of control.
- (3) The Authority may also give a decision notice under this section to a person who is a controller of a recognised investment exchange if the Authority becomes aware of matters as a result of which it is satisfied that the approval requirement is not met with respect to the controller.
- (4) If the Authority proposes to give a decision notice under subsection (1) or (3) to a person, it must give him a warning notice before the end of the period of three months beginning—
- (a) in the case of a notice to be given under subsection (1), with the date on which it became aware of the failure to comply with the duty in question;
  - (b) in the case of a notice to be given under subsection (3), with the date on which it became aware of the matters in question.
- (5) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.
- (6) "Approval requirement" has the same meaning as in section 301C.

### *Improperly acquired shares*

### **301E Improperly acquired shares**

- (1) The powers conferred by this section are exercisable if a person has acquired, or has continued to hold, any shares in contravention of a decision notice given under section 301C(5) or 301D(1) or (3).
- (2) The Authority may by notice in writing given to the person concerned ("a restriction notice") direct that any such shares which are specified in the notice are, until further notice, subject to one or more of the following restrictions—
- (a) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares any transfer of (or agreement to transfer) the right to be issued with them, is void;
  - (b) no voting rights are to be exercisable in respect of the shares;
  - (c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;
  - (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.

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- (3) The court may, on the application of the Authority, order the sale of any shares to which this section applies and, if they are for the time being subject to any restriction under subsection (2), that they are to cease to be subject to that restriction.
- (4) No order may be made under subsection (3)—
  - (a) until the end of the period within which a reference may be made to the Tribunal in respect of the decision notice in question; and
  - (b) if a reference is made, until the matter has been determined or the reference withdrawn.
- (5) If an order has been made under subsection (3), the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.
- (7) This section applies—
  - (a) in the case of an acquirer falling within section 301A(1), to all the shares—
    - (i) in the recognised investment exchange which the acquirer has acquired,
    - (ii) which are held by him or an associate of his, and
    - (iii) which were not so held immediately before he became a person having control over the exchange;
  - (b) in the case of an acquirer falling within section 301A(2), to all the shares held by him or an associate of his at the time when he first became aware that he had acquired control over the exchange; and
  - (c) to all the shares in an undertaking (“C”)—
    - (i) which are held by the acquirer or an associate of his, and
    - (ii) which were not so held before he became a person with control in relation to the exchange,where C is the undertaking in which shares were acquired by the acquirer (or an associate of his) and, as a result, he became a person with control in relation to that exchange.
- (8) A copy of the restriction notice must be given to—
  - (a) the recognised investment exchange to whose shares it relates; and
  - (b) if it relates to shares held by an associate of that exchange, that associate.
- (9) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

### *Offences*

#### **301F Offences in relation to acquisition of control**

- (1) A person who fails to comply with the duty to notify the Authority imposed on him by section 301A(1) is guilty of an offence.

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- (2) A person who fails to comply with the duty to notify the Authority imposed on him by section 301A(2) is guilty of an offence.
- (3) If a person who has given a notice of control to the Authority carries out the proposal to which the notice relates, he is guilty of an offence if—
  - (a) the period of three months beginning with the date on which the Authority received the notice is still running; and
  - (b) the Authority has not responded to the notice by either giving its approval or giving him a warning notice under section 301C(7).
- (4) A person to whom the Authority has given a warning notice under subsection (7) of section 301C is guilty of an offence if he carries out the proposal to which the notice relates before the Authority has decided whether to give him a decision notice under subsection (5) of that section.
- (5) A person to whom a decision notice under section 301C(5) or 301D(1) or (3) has been given is guilty of an offence if he acquires or retains the control to which the notice applies at a time when the notice is still in force.
- (6) A person guilty of an offence under subsection (1), (2), (3) or (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A person guilty of an offence under subsection (5) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both.
- (8) It is a defence for a person charged with an offence under subsection (1) to show that he had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.
- (9) If a person—
  - (a) was under the duty to notify the Authority imposed by section 301A(1) but had no knowledge of the act or circumstances by virtue of which that duty arose, but
  - (b) subsequently becomes aware of that act or those circumstances,
 he must notify the Authority before the end of the period of 14 days beginning with the day on which he first became so aware.
- (10) A person who fails to comply with the duty to notify the Authority imposed by subsection (9) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### *Interpretation*

#### **301G Interpretation of Chapter 1A**

In this Chapter—

“associate”, “shares” and “voting power” have the same meaning as in section 422;

“controller”, in relation to a recognised investment exchange, means a person who falls within any of the cases in section 301B(2);

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“notice of control” has the meaning given in section 301A(4).]

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