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# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVIII

#### RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES<sup>F1</sup>

#### [<sup>F1</sup>CHAPTER 3A

#### PASSPORT RIGHTS

##### Textual Amendments

- F1** Pt. 18 Ch. 3A (ss. 312A-312D) 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. 15](#) (with reg. 5)

##### Modifications etc. (not altering text)

- C1** Pt. 18 Ch. 3A applied (with modifications) (12.12.2011) by [The Recognised Auction Platforms Regulations 2011](#) (S.I. 2011/2699), [reg. 8](#), [Sch. 3](#) (as amended (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017](#) (S.I. 2017/701), reg. 1(2)(3)(4)(6), [Sch. 5 para. 14\(1\)](#) (with reg. 7))

#### *EEA market operators in United Kingdom*

#### **312A Exercise of passport rights by EEA market operator**

- (1) An EEA market operator may, in pursuance of the right under the applicable provision, make arrangements in the United Kingdom to facilitate access to, or use of, a specified regulated market or specified multilateral trading facility operated by it if—
- the operator has given its home state regulator notice of its intention to make such arrangements; and

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- (b) the home state regulator has given the Authority notice of the operator's intention.
- (2) In making arrangements under subsection (1), the operator is exempt from the general prohibition as respects any regulated activity which is carried on as a part of its business of operating the market or facility in question, or in connection with, or for the purposes of, that business.
- (3) "Specified" means specified in the notice referred to in subsection (1)(a).
- (4) This section does not apply to an overseas investment exchange.

### **312B Removal of passport rights from EEA market operator**

- (1) The Authority may prohibit an EEA market operator from making or, as the case may be, continuing arrangements in the United Kingdom, in pursuance of the applicable provision, to facilitate access to, or use of, a regulated market or multilateral trading facility operated by the operator if—
  - (a) the Authority has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
  - (b) the Authority has first complied with subsections (3) to (9).
- (2) A requirement is relevant if it is imposed—
  - (a) by the operator's home state regulator in the implementation of the markets in financial instruments directive or any Community legislation made under that directive;
  - (b) by provision implementing that directive, or any Community legislation made under it, in the operator's home state; or
  - (c) by any directly applicable Community regulation made under that directive.
- (3) The Authority must notify the operator and its home state regulator of its finding under subsection (1)(a).
- (4) The notice to the home state regulator under subsection (3) must—
  - (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the operator puts an end to the contravention; and
  - (b) state that the Authority proposes to exercise the power under subsection (1) if the operator continues the contravention.
- (5) The Authority may not exercise the power under subsection (1) unless satisfied—
  - (a) either—
    - (i) that the home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
    - (ii) that the measures taken by the home state regulator have proved inadequate for that purpose; and
  - (b) that the operator is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the financial markets.
- (6) If the Authority is satisfied as mentioned in subsection (5), it must give written notice to—
  - (a) the operator, and
  - (b) the home state regulator,

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of its intention to exercise the power under subsection (1).

- (7) A notice under subsection (6) must—
  - (a) state why the Authority intends to exercise its power under subsection (1), and
  - (b) in the case of the notice to the operator, inform the operator that it may make representations to the Authority before the end of the representation period.
- (8) The representation period is—
  - (a) the period of two months beginning with the date on which the notice is given to the operator; or
  - (b) such longer period as the Authority may allow in a particular case.
- (9) If, having considered any representations made by the operator, the Authority decides to exercise the power under subsection (1), it must—
  - (a) notify the operator in writing that it will be prohibited from making or, as the case may be, continuing the arrangements mentioned in that subsection from the date specified in the notice; and
  - (b) notify the home state regulator of the action to be taken in relation to the operator.
- (10) If the Authority exercises the power under subsection (1) it must at the earliest opportunity notify the Commission of the action taken in relation to the operator.
- (11) The exemption conferred on an operator by section 312A(2) ceases to apply if the Authority exercises the power under subsection (1) in relation to the operator.
- (12) The right to make the arrangements mentioned in subsection (1) may be reinstated in relation to the operator (together with the exemption mentioned in subsection (11)) if the Authority is satisfied that the contravention which led to the Authority exercising the power under subsection (1) has been remedied.

*Recognised investment exchanges operating in EEA States (other than the United Kingdom)*

### **312C Exercise of passport rights by recognised investment exchange**

- (1) Subject to subsection (4), a recognised investment exchange may, in pursuance of the right under the applicable provision, make arrangements in an EEA State (other than the United Kingdom) to facilitate access to, or use of, a regulated market or multilateral trading facility operated by the exchange (“the relevant arrangements”).
- (2) The exchange must give the Authority written notice of its intention to make the relevant arrangements which—
  - (a) describes the arrangements, and
  - (b) identifies the EEA State in which it intends to make them.
- (3) The Authority must, within one month of receiving a notice under subsection (2), send a copy of it to the host state regulator.
- (4) The exchange may not make the relevant arrangements until the Authority has complied with subsection (3).
- (5) Subsection (6) applies if the Authority receives a request for information—

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- (a) under the second sub-paragraph of Article 31.6 of the markets in financial instruments directive (in the case of relevant arrangements relating to a multilateral trading facility), or
  - (b) under the third sub-paragraph of Article 42.6 of that directive (in the case of relevant arrangements relating to a regulated market),
- from the host state regulator.
- (6) The Authority must, as soon as reasonably practicable, comply with the request.
- (7) "Host state regulator" means the competent authority (within the meaning of Article 4.1.22 of the markets in financial instruments directive) of the EEA State in which the exchange intends to make, or has made, the relevant arrangements.
- (8) This section does not apply to an overseas investment exchange.

### *Interpretation*

#### **312D Interpretation of Chapter 3A**

In this Chapter—

“the applicable provision” means—

- (a) in the case of arrangements relating to a multilateral trading facility, Article 31.5 of the markets in financial instruments directive; and
- (b) in the case of arrangements relating to a regulated market, the first sub-paragraph of Article 42.6 of that directive;

“EEA market operator” means a person who is a market operator (within the meaning of Article 4.1.13 of the markets in financial instruments directive) whose home state is an EEA State other than the United Kingdom;

“home state”, in relation to an EEA market operator, means the EEA State in which it has its registered office, or if it has no registered office, its head office;

“home state regulator” means the competent authority (within the meaning of Article 4.1.22 of the markets in financial instruments directive) of the EEA State which is the home state in relation to the EEA market operator concerned.]

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