Investment Exchanges and Clearing Houses Act 2006

2006 CHAPTER 55

An Act to confer power on the Financial Services Authority to disallow excessive regulatory provision by recognised investment exchanges and clearing houses; and for connected purposes. [19th December 2006]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Power of FSA to disallow excessive regulatory provision

In Part 18 of the Financial Services and Markets Act 2000 (c. 8) (recognised investment exchanges and clearing houses), after section 300 insert—

"Power to disallow excessive regulatory provision

300A Power of Authority to disallow excessive regulatory provision

(1) This section applies where a recognised body proposes to make any regulatory provision in connection with its business as an investment exchange or the provision by it of clearing services.

(2) If it appears to the Authority—

(a) that the proposed provision will impose a requirement on persons affected (directly or indirectly) by it, and

(b) that the requirement is excessive,

the Authority may direct that the proposed provision must not be made.

(3) A requirement is excessive if—

(a) it is not required under [[F1]EU] law or any enactment or rule of law in the United Kingdom, and

(b) either—

(i) it is not justified as pursuing a reasonable regulatory objective, or

(ii) it is disproportionate to the end to be achieved.

(4) In considering whether a requirement is excessive the Authority must have regard to all the relevant circumstances, including—

(a) the effect of existing legal and other requirements,

(b) the global character of financial services and markets and the international mobility of activity,

(c) the desirability of facilitating innovation, and

(d) the impact of the proposed provision on market confidence.

(5) In this section "requirement" includes any obligation or burden.

(6) Any provision made in contravention of a direction under this section is of no effect.".

Textual Amendments

F1 Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

2 Procedural and other supplementary provisions

In Part 18 of the Financial Services and Markets Act 2000 (c. 8) (recognised investment exchanges and clearing houses), after the section inserted by section 1 above insert—

"**300B Duty to notify proposal to make regulatory provision**

(1) A recognised body that proposes to make any regulatory provision must give written notice of the proposal to the Authority without delay.

(2) The Authority may by rules under section 293 (notification requirements)—

(a) specify descriptions of regulatory provision in relation to which, or circumstances in which, the duty in subsection (1) above does not apply, or

(b) provide that the duty applies only to specified descriptions of regulatory provision or in specified circumstances.

(3) The Authority may also by rules under that section—

(a) make provision as to the form and contents of the notice required, and

(b) require the body to provide such information relating to the proposal as may be specified in the rules or as the Authority may reasonably require.

300C Restriction on making provision before Authority decides whether to act

(1) Where notice of a proposal to make regulatory provision is required to be given to the Authority under section 300B, the provision must not be made—
  (a) before that notice is given, or
  (b) subject to the following provisions of this section, before the end of the initial period.

(2) The initial period is—
  (a) the period of 30 days beginning with the day on which the Authority receives notice of the proposal, or
  (b) if any consultation period announced by the body in relation to the proposal ends after that 30-day period, the end of the consultation period.

(3) If before the end of the initial period the Authority notifies the body that it is calling in the proposal, the provisions of section 300D (consideration by Authority whether to disallow proposed provision) apply as to when the provision may be made.

(4) If—
  (a) before the end of the initial period the Authority notifies the body that it is not calling in the proposal, or
  (b) the initial period ends without the Authority having notified the body that it is calling in the proposal,

  the body may then make the proposed provision.

(5) Any provision made in contravention of this section is of no effect.

300D Consideration by Authority whether to disallow proposed provision

(1) This section applies where the Authority notifies a recognised body that it is calling in a proposal to make regulatory provision.

(2) The Authority must publish a notice—
  (a) giving details of the proposed provision,
  (b) stating that it has called in the proposal in order to consider whether to disallow it, and
  (c) specifying a period during which representations with respect to that question may be made to it.

(3) The Authority may extend the period for making representations.

(4) The Authority must notify the body of its decision whether to disallow the provision not later than 30 days after the end of the period for making representations, and must publish the decision and the reasons for it.

(5) The body must not make the provision unless and until—
  (a) the Authority notifies it of its decision not to disallow it, or
  (b) the 30-day period specified in subsection (4) ends without the Authority having notified any decision.

(6) If the Authority notifies the body of its decision to disallow the provision and that decision is questioned in legal proceedings—
  (a) the body must not make the provision until those proceedings, and any proceedings on appeal, are finally determined,
  (b) if the Authority's decision is quashed and the matter is remitted to it for reconsideration, the court may give directions as to the period within which the Authority is to complete its reconsideration, and
  (c) the body must not make the provision until—
    (i) the Authority notifies it of its decision on reconsideration not to disallow the provision, or
    (ii) the period specified by the court ends without the Authority having notified any decision.

(7) Any provision made in contravention of subsection (5) or (6) is of no effect.

300E Power to disallow excessive regulatory provision: supplementary

(1) In sections 300A to 300D—
  (a) "regulatory provision" means any rule, guidance, arrangements, policy or practice, and
  (b) references to making provision shall be read accordingly as including, as the case may require, issuing guidance, entering into arrangements or adopting a policy or practice.

(2) For the purposes of those sections a variation of a proposal is treated as a new proposal.

(3) Those sections do not apply to an overseas investment exchange or overseas clearing house.".

3 Interim power to give directions about notification

(1) The Authority may, on the application or with the consent of a recognised body, direct that the obligation under section 300B(1) of the Financial Services and Markets Act 2000 (c. 8) (duty to notify Authority of proposal to make regulatory provision) does not apply—
  (a) to specified provision proposed to be made by that body, or
  (b) to any provision proposed to be made by that body that is of a specified description or is made in specified circumstances.

(2) An application must be made in such manner as the Authority may require.

(3) The Authority may give a direction if it thinks it appropriate to do so.

(4) A direction may be given subject to conditions.

(5) The effect of a direction is that the provisions of sections 300B to 300D of that Act (provisions requiring notification and restricting the making of regulatory provision of which notification is required) do not apply or, as the case may be, cease to apply to regulatory provision to which the direction relates.

(6) The Authority may—
  (a) revoke a direction, or

(b) vary it on the application or with the consent of the recognised body to which it relates.

(7) Expressions used in this section that are defined for the purposes of sections 300A to 300E of that Act have the same meaning as in those sections.

(8) This section shall cease to have effect twelve months after the passing of this Act.

4 Consequential amendment of grounds for refusing recognition

In Part 18 of the Financial Services and Markets Act 2000 (recognised investment exchanges and clearing houses), after section 290 (recognition orders) insert—

"**290A Refusal of recognition on ground of excessive regulatory provision**

(1) The Authority must not make a recognition order if it appears to the Authority that an existing or proposed regulatory provision of the applicant in connection with—

(a) the applicant's business as an investment exchange, or

(b) the provision by the applicant of clearing services,

imposes or will impose an excessive requirement on the persons affected (directly or indirectly) by it.

(2) The reference in section 290(1) (making of recognition order) to satisfying the applicable recognition requirements shall be read accordingly.

(3) Expressions used in subsection (1) above that are defined for the purposes of section 300A (power of Authority to disallow excessive regulatory provision) have the same meaning as in that section.

(4) The provisions of section 300A(3) and (4) (determination whether regulatory provision excessive) apply for the purposes of this section as for the purposes of section 300A.

(5) Section 298 has effect in relation to a decision under this section to refuse a recognition order—

(a) as it has effect in relation to a decision to revoke such an order, and

(b) as if references to a recognised body were references to the applicant.

(6) This section does not apply to an application for recognition as an overseas investment exchange or overseas clearing house.".

5 Short title and commencement

(1) The short title of this Act is the Investment Exchanges and Clearing Houses Act 2006.

(2) This Act comes into force on the day after that on which it is passed.

(3) Sections 300A to 300E of the Financial Services and Markets Act 2000 (c. 8) (as inserted by this Act)—

(a) do not apply to regulatory provision made before that day, and

(b) apply to regulatory provision proposed on or after that day, whenever originally proposed.

Expressions used in this subsection that are defined for the purposes of those sections have the same meaning as in those sections.

Changes to legislation:
There are currently no known outstanding effects for the Investment Exchanges and Clearing Houses Act 2006.