

1987 No. 942

FINANCIAL SERVICES

The Financial Services Act 1986 (Delegation) Order 1987

Made - - - - - *18th May 1987*

Coming into force - - - - - *19th May 1987*

Whereas it appears to the Secretary of State that The Securities and Investments Board Limited is able and willing to discharge the functions transferred by this Order and that the requirements of Schedule 7 to the Financial Services Act 1986(a) are satisfied with respect to it, and

Whereas the Secretary of State has been furnished by The Securities and Investments Board Limited with a copy of the rules and regulations it proposes to make in the exercise of the functions transferred by this Order, and

Whereas the Secretary of State is satisfied that the rules and regulations which The Securities and Investments Board Limited proposes to make in the exercise of the functions transferred by this Order will afford investors an adequate level of protection and, in the case of such rules and regulations as are mentioned in Schedule 8 to the Financial Services Act 1986, comply with the principles set out in that Schedule, and

Whereas the Secretary of State has required The Securities and Investments Board Limited to furnish him with a copy of any guidance intended to have continuing effect which it proposes to issue in writing or other legible form, and

Whereas the Secretary of State has sent to the Director-General of Fair Trading a copy of the rules and regulations and of any guidance which the Secretary of State is required to consider in making the decision whether he is precluded by 121(1) of the Financial Services Act 1986 from making this Order together with such other information as the Secretary of State considers will assist the Director-General of Fair Trading in discharging his functions under section 122(2) of that Act, and

Whereas the Secretary of State has had regard to the report made to him by the Director-General of Fair Trading under section 122(2) of the Financial Services Act 1986 in deciding whether he is precluded by section 121(1) of that Act from making this Order, and

Whereas the Secretary of State is satisfied that the rules, regulations and guidance of which copies have been furnished to him under section 114(9) and (10) of the Financial Services Act 1986 do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, and

Whereas the Secretary of State is satisfied that the rules and regulations which The

(a) 1986 c.60.

Securities and Investments Board Limited proposes to make under Chapter V of Part I of the Financial Services Act 1986 with respect to regulated insurance companies will take proper account of Part II of the Insurance Companies Act 1982(a) or, as the case may be, of the provisions for corresponding purposes in the law of the member State in which a regulated insurance company is established, and

Whereas a draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 114(11) of the Financial Services Act 1986:

Now, therefore, the Secretary of State in exercise of the powers conferred on him by sections 114, 118, 178(10), 199(7), 201(4) and 206(4) of and paragraph 3(3) of Schedule 10 and paragraph 12 of Schedule 15 to that Act and of all other powers enabling him in that behalf hereby makes the following Order:-

Citation and commencement

1. This Order may be cited as the Financial Services Act 1986 (Delegation) Order 1987 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order-

“the Act” means the Financial Services Act 1986;

“designated agency” means the body known as The Securities and Investments Board Limited.

Transfer of functions

3. Except as provided in Schedule 1 to this Order and subject to the provisions of article 4, all those functions of the Secretary of State to which section 114 of the Act applies and which are specified in subsection (4) of that section are hereby transferred to the designated agency.

4. The functions of the Secretary of State specified in Schedule 2 to this Order are transferred to the designated agency subject to a reservation that they are to be exercisable by the Secretary of State concurrently with the designated agency.

5. The functions of the Secretary of State under section 178 of the Act and, to the extent provided in article 6, under section 199 of the Act are hereby transferred to the designated agency subject to a reservation that the functions are to be exercisable by the Secretary of State concurrently with the designated agency and, in the case of functions exercisable by virtue of sections 178 and 199(1)(a) of the Act, so as to be exercisable by the designated agency subject to such conditions or restrictions as the Secretary of State may from time to time impose.

6. The function of the Secretary of State under section 199 is transferred-

(a) where it is exercisable by virtue of section 199(1)(a) in any case in which the offence or one of the offences is an offence under section 4 or 57(3) of the Act, and

(b) where it is exercisable by virtue of section 199(1)(b) in any case in which the requirement referred to in that enactment is one which has been imposed by the designated agency or by a person authorised by it under section 106 of the Act.

7. The function of the Secretary of State under section 201(1) of the Act to institute proceedings with respect to any offence specified in Schedule 3 to this Order is hereby transferred to the designated agency subject to a reservation that it is to be exercisable by the Secretary of State concurrently with the designated agency and so as to be exercisable by the designated agency subject to such conditions or restrictions as the Secretary of State may from time to time impose.

(a) 1982 c.50.

8. The functions of the Secretary of State under section 206 of the Act are hereby transferred to the designated agency.

Supplementary provisions

9. Section 102 of the Act shall have effect as if it did not require the designated agency to keep a register containing an entry in respect of each overseas investment exchange, each overseas clearing house and each person in respect of whom a direction under section 59 of the Act is in force, but required it instead to keep a register containing an entry in respect of each body or person who appears to it to be a body or person of the kind described above.

10. Section 109(1) of the Act shall have effect as if—

- (a) the reference to the Secretary of State included a reference to the designated agency, and
- (b) the reference to the functions of the Secretary of State included a reference to the functions of the designated agency transferred to it by this Order.

11. Sections 180(6) and 206(1)(b) of the Act, section 19(6) of the Banking Act 1979(a), section 449 (1A) of the Companies Act 1985(b), and article 442(1A) of the Companies (Northern Ireland) Order 1986(c) shall have effect as if references to the functions of, or the functions conferred on, the Secretary of State under, or by, the Act included references to the functions transferred by this Order.

Michael Howard
Parliamentary Under Secretary of State,
Department of Trade and Industry

18th May 1987

SCHEDULE 1

Article 3

FUNCTIONS SPECIFIED IN SECTION 114(4) OF THE ACT WHICH ARE NOT TRANSFERRED BY THE ORDER

1. All functions under sections 28, 29, 33, 34, 60, 61, 97, 98, 99, 100 and 101 of the Act in any case in which those functions are exercisable by virtue of a contravention of a partial restriction notice as respects investment business as described in section 184(4) of the Act.
2. The function of giving a direction under section 33(1)(a) of the Act in respect of a regulated insurance company.
3. All functions under sections 37, 39 and 40 of the Act with respect to a body or association of the kind described in section 40(1).
4. All functions under sections 41 and 104 of the Act with respect to an overseas investment exchange or overseas clearing house.
5. All functions under section 53 of the Act.
6. The function of giving a direction under section 59 of the Act and associated functions where the direction would have the effect of prohibiting the employment of an individual in connection with investment business carried on in connection with or for the purpose of insurance

(a) 1979 c.37.
(b) 1985 c.6.
(c) SI 1986/1032 (NI 6).

business at Lloyd's, being employment by any person who is an exempted person as respects such business.

7. All functions under sections 60 and 61(1) of the Act in any case in which those functions are exercisable by virtue of a contravention of a direction of the kind described in paragraph 6 of this Schedule.

8. All functions under section 61(1) of the Act with respect to a person who is an exempted person by virtue of section 42 of the Act in any case in which the contravention or proposed contravention arises or is likely to arise in the course of investment business as respects which the person is exempt.

9. All functions under section 61 of the Act in relation to a contravention or proposed contravention of section 130 of the Act.

10. All functions under section 61(3) of the Act in relation to a contravention of a provision referred to in section 61(1)(a)(ii) or (iii) by a person who neither is, nor ever has been, an authorised person or an appointed representative.

11. All functions under section 73 of the Act.

12. All functions under Chapter VIII of Part I of the Act.

13. All functions under sections 97, 98, 99, 100 and 101 of the Act in any case in which those functions are exercisable by virtue of the exercise of any function under section 59 or 60 of the Act which, by virtue of paragraph 6 or 7 of this Schedule, is not transferred.

14. All functions under section 112 of the Act with respect to fees in respect of—

- (a) applications under sections 37(1) or 39(1) of the Act by a body or association of the kind described in section 40(1);
- (b) applications under section 77 or 88 of the Act, and
- (c) notices under section 86(2) or 87(3) of the Act.

15. All functions under section 113 of the Act with respect to periodical fees in respect of—

- (a) overseas investment exchanges or overseas clearing houses, and
- (b) managers of authorised unit trust schemes and operators of recognised schemes, but only in so far as those functions are exercisable by virtue of section 113(8) of the Act.

16. The function of revoking a recognition order in respect of a recognised self-regulating organisation whose members include or may include regulated insurance companies on the ground that the requirement specified in paragraph 3(1) of Schedule 10 to the Act is not satisfied.

17. The function of revoking a recognition order in respect of a recognised self-regulating organisation whose members include or may include regulated insurance companies on the ground that the organisation has contravened sub-paragraphs (3) or (4) of paragraph 6 of Schedule 10 to the Act as applied by sub-paragraph (5) of that paragraph.

SCHEDULE 2

Article 4

FUNCTIONS SPECIFIED IN SECTION 114(4) OF THE ACT WHICH ARE TRANSFERRED SUBJECT TO A RESERVATION THAT THEY ARE TO BE EXERCISABLE BY THE SECRETARY OF STATE CONCURRENTLY WITH THE DESIGNATED AGENCY

1. All functions under section 6 of the Act (injunctions and restitution orders relating to contraventions of section 3 of the Act).

2. All functions under section 61(1) of the Act which are exercisable by virtue of section 61(1)(a)(ii) or (iii) (injunctions relating to contraventions of sections 47, 56, 57 or 59 or of requirements imposed under section 58(3)).

3. All functions under section 72 of the Act (winding-up orders (Great Britain)).

4. All functions under sections 105 (investigation powers) and 106 (exercise of investigation powers by officer etc).

SCHEDULE 3

Article 7

OFFENCES WITH RESPECT TO WHICH THE POWER TO INSTITUTE PROCEEDINGS IS TRANSFERRED

1. Offences under sections 4 (carrying on or purporting to carry on investment business without authorisation), 32(1) (failure of person authorised under section 31 to give notice of commencement of business), and 111(1) (furnishing of false or misleading information to auditor or second auditor).

2. Offences under section 57(3) (contravention of restrictions on advertising) in any case in which the designated agency institutes proceedings at the same time and against the same person for an offence under section 4 of the Act.

3. Offences under section 59(5) (contravention of disqualification direction) where the direction is issued by the designated agency.

4. Offences under section 105(10) (failure to comply with requirement imposed under section 105 (investigation powers)) where the requirement in question is a requirement imposed by the designated agency or a person authorised by it under section 106.

5. Offences under section 200(1)(a) (false and misleading statements for the purposes of or in connection with applications) where the application in question is an application made to the designated agency.

6. Offences under section 200(1)(b) (false and misleading statements in purported compliance with requirement imposed by or under Act) where the requirement in question is a requirement imposed by the designated agency or by a person authorised by it under section 106.

7. Offences under section 200(2) and (3).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order transfers certain of the Secretary of State's functions under the Financial Services Act 1986 to the body known as The Securities and Investments Board Limited. The functions transferred are described in articles 3, 5, 6, 7 and 8 of and Schedule 3 to the Order. Schedule 1 to the Order specifies certain functions which are not transferred.

The Order transfers certain functions subject to a reservation that they are to be exercisable by the Secretary of State concurrently with The Securities and Investments Board Limited. These functions are specified in articles 4, 5 and 7 of and Schedules 2 and 3 to the Order. In addition, certain functions specified in articles 5 and 7 and Schedule 3 to the Order are transferred so as to be exercisable by The Securities and Investments Board subject to such conditions or restrictions as the Secretary of State may from time to time impose.

Articles 9, 10 and 11 of the Order make certain supplementary provisions.