
STATUTORY INSTRUMENTS

1992 No. 3218

**The Banking Coordination (Second
Council Directive) Regulations 1992**

PART II

RECOGNITION OF EUROPEAN INSTITUTIONS

Functions of Board

Duty to prepare for supervision

14.—(1) In any case where—

- (a) the Board receives from the Bank under paragraph 3 of Schedule 2 to these Regulations a copy of a notice given in accordance with that paragraph; and
- (b) the notice states that the institution concerned intends to establish a branch in the United Kingdom for the purpose of carrying on a home-regulated activity appearing to the Board to constitute investment business,

the Board shall, before the expiry of the period of two months beginning with the day on which the Bank received the notice, draw to the attention of the institution such provisions of these Regulations, the Financial Services Act or rules or regulations made under that Act as, having regard to the activities mentioned in the notice, it considers appropriate.

(2) In any case where—

- (a) the Board receives from the Bank under paragraph 4 of Schedule 2 to these Regulations a copy of a notice given in accordance with that paragraph; and
- (b) the institution concerned is, or as a result of the proposed change mentioned in the notice will be, carrying on in the United Kingdom a home-regulated activity appearing to the Board to constitute investment business,

the Board shall, before the expiry of the period of one month beginning with the day on which the Bank received the notice, draw to the attention of the institution such provisions of these Regulations, the Financial Services Act or rules or regulations made under that Act as, having regard to the proposed change mentioned in the notice, it considers appropriate.

Power to prohibit the carrying on of investment business

15.—(1) If it appears to the Board that a European institution—

- (a) has contravened or is likely to contravene any provision of the Financial Services Act⁽¹⁾ or any rules or regulations made under it;
- (b) in purported compliance with any such provision, has furnished it with false, inaccurate or misleading information;

(1) 1986 c. 60.

- (c) has contravened or is likely to contravene any prohibition or requirement imposed under that Act; or
- (d) has failed to comply with any statement of principle issued under that Act,

it may impose on the institution a prohibition under this regulation, that is to say, a prohibition on carrying on, or purporting to carry on, home-regulated investment business in the United Kingdom.

- (2) Where the institution is a member of a recognised self-regulating organisation—
 - (a) the reference in paragraph (1) above to rules made under the Financial Services Act shall be taken to include a reference to the rules of that organisation; and
 - (b) the reference in that paragraph to any prohibition or requirement imposed under that Act shall be taken to include a reference to any prohibition or requirement imposed by virtue of the rules of that organisation.
- (3) A prohibition under this regulation—
 - (a) may be absolute; or
 - (b) may be limited, that is to say, imposed for a specified period or until the occurrence of a specified event or until specified conditions are complied with;

and any period, event or conditions specified in the case of a limited prohibition may be varied by the Board on the application of the institution concerned.

(4) Any prohibition imposed under this regulation may be withdrawn by written notice served by the Board on the institution concerned; and any such notice shall take effect on such date as is specified in the notice.

(5) Schedule 4 to these Regulations (which makes supplemental provision with respect to prohibitions imposed under this regulation) shall have effect.

Power to restrict the carrying on of investment business

16.—(1) Where it appears to the Board that the situation as respects a European institution carrying on home-regulated investment business in the United Kingdom is such that the power conferred by regulation 15(1) above is exercisable, the Board may, instead of or as well as imposing a prohibition, exercise—

- (a) in relation to the institution; or
- (b) except in the case of the power conferred by section 65 of that Act, in relation to any appointed representative of the institution,

the powers conferred on the Board by Chapter VI of Part I of the Financial Services Act.

(2) Except where they are required to be exercised by virtue of section 128C of that Act⁽²⁾ (enforcement in support of overseas regulatory authority), the powers conferred by that Chapter shall not, subject to paragraph (3) below, be exercisable in relation to—

- (a) a European institution carrying on home-regulated investment business in the United Kingdom which is a member of a recognised self-regulating organisation and is subject to the rules of such an organisation in carrying on all the homeregulated investment business carried on by it; or
- (b) an appointed representative whose principal or, in the case of such a representative with more than one principal, each of whose principals is—
 - (i) a member of a recognised self-regulating organisation; and

(2) Section 128C is amended by paragraph 36 of Schedule 9 to these Regulations.

(ii) subject to the rules of such an organisation in carrying on the home-regulated investment business in respect of which it has accepted responsibility for the appointed representative's activities.

(3) The powers conferred by section 67(1)(b) of the Financial Services Act may on any of the grounds specified in regulation 15(1) above be exercised in relation to a person mentioned in paragraph (2) above at the request of any recognised self-regulating organisation of which he or, in the case of an appointed representative, any of his principals is a member.

Limitations on Board's powers

17.—(1) This regulation applies where it appears to the Board that the situation is such that its power—

- (a) to impose a prohibition under regulation 15 above;
- (b) to publish a statement with respect to a European institution under section 60 of the Financial Services Act;
- (c) to make an application with respect to such an institution under section 61(1) of that Act;
- (d) to impose a prohibition or requirement on such an institution under Chapter VI of Part I of that Act;
- (e) to vary a prohibition or requirement imposed on such an institution under that Chapter; or
- (f) to refuse an application for the variation or rescission of such a prohibition or requirement,

is exercisable by virtue of any contravention of a requirement to furnish information for statistical purposes imposed under that Act.

(2) The Board shall require the institution in writing to remedy the situation.

(3) If the institution fails to comply with the requirement under paragraph (2) above within a reasonable time, the Board shall give a notice to that effect to the relevant supervisory authority in the institution's home State requesting that authority—

- (a) to take all appropriate measures for the purpose of ensuring that the institution concerned remedies the situation which has given rise to the issue of the notice; and
- (b) to inform the Board of the measures it proposes to take or has taken or the reasons for not taking such measures.

(4) Subject to paragraph (5) below, the Board shall not take any such action as is mentioned in sub-paragraphs (a) to (f) of paragraph (1) above with respect to a European institution unless it is satisfied—

- (a) that the relevant supervisory authority has failed or refused to take measures for the purpose mentioned in sub-paragraph (a) of paragraph (3) above; or
- (b) that the measures taken by that authority have proved inadequate for that purpose.

(5) Where the Board decides that it should take action as mentioned in any of subparagraphs (a) to (e) of paragraph (1) above with respect to a European institution as a matter of urgency in order to protect the interests of investors, it may take that action—

- (a) before complying with paragraphs (2) and (3) above; or
- (b) where it has complied with those requirements, before it is satisfied as mentioned in paragraph (4) above;

but in such a case it shall, at the earliest opportunity, inform the relevant supervisory authority in the institution's home State and the European Commission of the action taken.

(6) In any case where—

- (a) by virtue of paragraph (5) above, the Board has—

- (i) imposed a prohibition under regulation 15 above;
- (ii) published a statement with respect to a European institution under section 60 of the Financial Services Act;
- (iii) made an application under section 61(1) of that Act with respect to such an institution;
- (iv) imposed on such an institution a prohibition or requirement under Chapter VI of Part I of that Act; or
- (v) varied a prohibition or requirement imposed on such an institution under that Chapter,

before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above; and

- (b) the European Commission decides under the Second Council Directive that the Board must withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement,

the Board shall in accordance with the decision withdraw or amend the statement, withdraw the application, or rescind or vary the prohibition or requirement.

(7) For the purposes of paragraph (6)(b) above the Board shall be taken to withdraw or amend a statement if it publishes a further statement retracting or, as the case may be, correcting it; and the Board shall after publication of the further statement send a copy of it to any person to whom a copy of the previous statement was sent under section 60(5) of the Financial Services Act.

(8) In any case where—

- (a) the Board has, by virtue of sub-paragraph (5) above, given notice to a European institution under subsection (2) of section 60 of the Financial Services Act before complying with paragraphs (2) and (3) above or, as the case may be, before it is satisfied as mentioned in paragraph (4) above;
- (b) the statement to which the notice relates has not been published; and
- (c) the European Commission decides under the Second Council Directive that the Board must not publish the statement, or must publish a different statement under that section,

the Board shall in accordance with the decision withdraw the notice or give a different notice in substitution.