
STATUTORY INSTRUMENTS

1995 No. 3275

The Investment Services Regulations 1995

PART VIII

MISCELLANEOUS

Restrictions on disclosure of information

48.—(1) This paragraph applies to any confidential information which—

- (a) any person who works or has worked for any person designated by the United Kingdom as a competent authority for the purposes of Article 22 of the Investment Services Directive or Article 9 of the Capital Adequacy Directive; or
- (b) any auditor or expert instructed by such an authority,

has received in the course of discharging his duties as such a person, auditor or expert in relation to an investment firm having its head or registered office in an EEA State.

(2) Section 179 of the Financial Services Act shall not apply to information to which paragraph (1) above applies.

(3) Information to, which paragraph (1) above applies shall not be disclosed by any person referred to in sub-paragraph (a) or (b) of that paragraph, or by any person receiving it directly or indirectly from such a person, except in any of the circumstances specified in Article 25 of the Investment Services Directive, the text of which is set out in Schedule 8 to these Regulations; and for these purposes such information—

- (a) may, subject to the provisions of paragraph (5) below, be disclosed in the circumstances described in Article 25.8 of the Investment Services Directive; and
- (b) may, until 2nd July 1996, be disclosed in the circumstances described in Article 25.9 of that Directive.

(4) Information received under Article 25.2 of the Investment Services Directive may not be communicated in the circumstances referred to in Article 25.7 of that Directive without the express consent of the supervisory authority from whom it was obtained.

(5) Information of the kind described in the third paragraph of Article 25.8 of the Investment Services Directive may not be disclosed in the cases referred to in Article 25.8 except with the express consent of whichever is relevant of the authorities mentioned in the third paragraph of Article 25.8.

(6) Information which is obtained from the supervisory authorities of another EEA State may not be disclosed for any of the purposes mentioned in the first paragraph of Article 25.9 of the Investment Services Directive without the express consent of the authorities that disclosed the information; and such information may be used only for the purposes that caused those authorities to agree to disclose it.

(7) Any person who contravenes any provision of this regulation shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;

- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.
- (8) Proceedings in respect of an offence under this Regulation shall not be instituted—
 - (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
 - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.
- (9) In proceedings brought against any person for an offence under this regulation, it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Regulated markets

49.—(1) The Board shall keep a list upon which it shall enter the name of each market of which the United Kingdom is the home State and which appears to the Board to satisfy the conditions set out in paragraph (2) below,

- (2) The conditions referred to in paragraph (1) above are that the market in question—
 - (a) is a market for instruments of a kind listed in section B of the Annex to the Investment Services Directive (the text of which is set out in Schedule 1 to these Regulations);
 - (b) functions regularly;
 - (c) is subject to rules made or approved by a UK regulatory authority that define—
 - (i) the conditions for the operation of the market;
 - (ii) the conditions for access to the market;
 - (iii) where the Council Directive coordinating the conditions for the admission of securities to official stock exchange listing (No.79/279/EEC)(1) is applicable, the conditions governing admission to listing imposed in that directive; and
 - (iv) where that directive is not applicable, the conditions that must be satisfied by an instrument before it can effectively be dealt in on the market: and
 - (d) has rules that give effect to the provisions of articles 20 and 21 of the Investment Services Directive.
- (3) If it appears to the Board that a market the name of which the Board has entered on the list kept by it by virtue of this regulation has ceased to comply with any of the conditions set out in paragraph (2) above, the Board shall forthwith remove the name of the market in question from the list.
- (4) In this Regulation—
 - (a) “home State”, in relation to a market, means the EEA State in which the registered office of the person providing trading facilities is situated or, if that person has no registered office, the EEA State in which his head office is situated; and
 - (b) “UK regulatory authority”, in relation to a regulated market, means an authority in the United Kingdom which has regulatory functions in relation to that market.

Power of Board to give directions

50.—(1) If, on the application of a UK authorised investment firm other than a UK authorised institution, it appears to the Board that—

(1) OJ No. L66, 5.3.1979, p. 21.

- (a) compliance by that firm with any provision of any rules made by the Board under section 49 of the Financial Services Act (financial resources rules) is, on any particular occasion, not required by any provisions of the Capital Adequacy Directive; and
- (b) the Board may, consistently with the provisions of that Directive, exempt the firm from complying with the relevant provision,

it may direct that the firm need not, on the occasion in question, comply with such requirements as it may specify in writing.

(2) The power conferred by paragraph (1) above may be exercised unconditionally or subject to conditions.

(3) If it appears to the Board that, having regard to any change in the circumstances of a UK authorised investment firm other than a UK authorised institution since the end of the period for which the firm last prepared annual accounts, the firm requires financial resources additional to those which it is required to maintain by virtue of rules made under section 49 of the Financial Services Act that give effect to the provisions of Annex IV to the Capital Adequacy Directive, it may direct the firm to increase the amount of its financial resources so that they are equivalent to such proportion of its fixed overheads for the twelve months preceding the date of the direction as the Board considers appropriate.

(4) Any failure by a firm to comply with any condition imposed under paragraph (2) above or with any direction given under paragraph (3) above shall be treated as a failure by the firm to comply with an obligation imposed on it under the Financial Services Act or, in the case of a firm which is a member of a recognised self-regulating organisation, with the rules of that organisation.

Board's power to obtain information from group members

51.—(1) Subject to paragraph (2) below, the Board may require a UK authorised investment firm (other than a UK authorised institution) which is a member of a group to supply it, or, in a case in which the requirement is imposed at the request of a recognised self-regulating organisation, the organisation concerned, with such information as the Board may reasonably require in order to assess, or enable the assessment of, the adequacy of the financial resources available to a group of which the firm concerned is a member.

(2) The powers conferred by this regulation shall not be exercisable in relation to an investment firm 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 investment business carried on by it unless such an organisation has requested the exercise of the powers.

(3) If it appears to the Board to be necessary to do so for the purpose of assessing, or enabling the assessment of, the adequacy of the financial resources available to a group which includes amongst its members a UK authorised investment firm which is not a UK authorised institution, it may also exercise the powers conferred by paragraph (1) above in relation to any of the persons mentioned in paragraph (4) below.

(4) The persons referred to in paragraph (3) above are any person who is or has at any relevant time been—

- (a) a partnership of which the investment firm in question is or was a member;
- (b) a parent undertaking, subsidiary undertaking or related company of that firm;
- (c) a subsidiary undertaking of a parent undertaking of that firm;
- (d) a parent undertaking of a subsidiary undertaking of that firm; or
- (e) any undertaking which is a 50 per cent. controller of that firm.

(5) The Board may exercise the powers conferred by this regulation at the request of the relevant supervisory authority in the home State of a European investment firm for the purpose of assisting

that authority to assess the adequacy of the financial resources available to a group of which the firm is a member or to enable such an assessment to be made.

(6) In this Regulation, “related company” means any body corporate in which a member of a group of which an investment firm is a member has a qualifying interest; and for these purposes what constitutes a qualifying interest shall be determined in accordance with sub-paragraphs (2) to (4) of paragraph 30 of Schedule 1 to the Financial Services Act⁽²⁾.

Powers of entry

52. Any officer, servant or agent of the Board may, on producing (if required to do so) evidence of his authority, enter upon any premises occupied by a person on whom a requirement has been imposed under regulation 51 above for any of the following purposes—

- (a) obtaining any information that the person has been required to give under that regulation;
- (b) verifying the accuracy of any information that the person has given in pursuance of such a requirement;
- (c) verifying that the person is able to give any information that he may reasonably be required to give under that regulation.

Contravention of regulation 51 or 52

53.—(1) Any authorised person who fails to comply with a requirement imposed on it under regulation 51 above or who intentionally obstructs a person exercising rights conferred by regulation 52 above shall be treated as having failed to comply with a requirement imposed on it under the Financial Services Act, or, in the case of a person who is a member of a recognised self-regulating organisation, the rules of that organisation.

(2) Any person, other than an authorised person, who, without reasonable excuse, fails to comply with a requirement imposed on him under regulation 51 above or intentionally obstructs a person exercising rights under regulation 52 above shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(3) Proceedings in respect of an offence under this regulation shall not be instituted—

- (a) in England and Wales, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

Directions to the Bank

54.—(1) If it appears to the Treasury—

- (a) that any action proposed to be taken by the Bank would be incompatible with the provisions of the Investment Services Directive or the Capital Adequacy Directive; or
- (b) that any action which the Bank has power to take is required for the purpose of implementing any provision of those Directives,

they may direct the Bank not to take or, as the case may be, to take the action in question.

(2) A direction under this regulation may contain such supplementary or incidental requirements as the Treasury think necessary or expedient.

(2) Paragraph 30 of Schedule 1 to the Financial Services Act 1986 was substituted by section 23 of, and Schedule 10 to, the Companies Act 1989 (c. 40).

(3) A direction under this regulation is enforceable by injunction or, in Scotland, by an order under section 45 of the Courts of Session Act 1988(3).

Position of European subsidiaries

55. The provisions of Schedule 9 to these Regulations (which makes provision with respect to certain European subsidiaries) shall have effect.