
STATUTORY INSTRUMENTS

1995 No. 3275

The Investment Services Regulations 1995

PART V

AMENDMENTS OF FINANCIAL SERVICES ACT

Exempted persons

26.—(1) Section 43 of the Financial Services Act (listed money market institutions) shall have effect as if it included provision that an investment firm which—

- (a) is a European investment firm or quasi-European investment firm; and
- (b) is for the time being included in a list maintained for the purposes of that section,

is not, by virtue of its inclusion in that list, an exempted person as respects any home-regulated investment business.

(2) That section shall also have effect as if it included provision that the conditions and arrangements referred to in subsection (2) must be such as to secure that—

- (a) no European investment firm, other than one on which an absolute prohibition has been imposed under regulation 9 of these Regulations or under regulation 15 of the Banking Coordination (Second Council Directive) Regulations, is refused admission to the list, or removed from it, for reasons relating to—
 - (i) the fitness of the firm to provide listed services;
 - (ii) the financial standing of the firm; or
 - (iii) any other matter for which, under the Investment Services Directive, responsibility is reserved to a supervisory authority in the firm's home State;
- (b) where any power that the Bank has by virtue of those conditions and arrangements is exercisable by virtue of a European investment firm's contravention of any provision made by the Bank pursuant to any provision of the Investment Services Directive that confers power on host States, the exercise of the power is subject to such restrictions as are necessary for the purposes of complying with article 19 of the Investment Services Directive;
- (c) the Bank is under an obligation—
 - (i) upon admitting a UK investment firm which is neither an authorised person nor a UK authorised institution to the list, to issue the firm with a written statement specifying the core investment services which that firm is permitted to provide by virtue of its inclusion in the list;
 - (ii) upon becoming aware of the occurrence of any change in the range of core investment services which such a firm is permitted to provide by virtue of its inclusion in the list, to withdraw the previous statement and to issue the firm in question with a further written statement reflecting the change;

- (iii) upon becoming aware that such a firm has become an authorised person or a UK authorised institution, to withdraw from the firm the written statement specifying the core investment services which the firm is permitted to provide by virtue of its inclusion in the list; and
 - (iv) to inform each applicant for admission to the list who is a UK investment firm but who is neither an authorised person nor a UK authorised institution of the Bank's decision on the application not later than six months after the date on which the application was received; and
 - (d) no UK investment firm which is neither an authorised person nor a UK authorised institution is admitted to the list unless the requirements of paragraph (3) below are met.
- (3) The requirements of this paragraph are that—
- (a) the head office of the firm, and if the firm has a registered office, its registered office, must be situated in the United Kingdom;
 - (b) the firm must be a fit and proper person to carry on listed services;
 - (c) in the case of a firm which is neither a body corporate nor a partnership constituted under the law of Scotland, the firm must carry on business in the United Kingdom;
 - (d) the firm must have adequate capital to meet the requirements of any rules applicable to it requiring the maintenance of financial resources;
 - (e) either the firm will, if admitted to the list, be subject to conditions making provision with respect to the matters mentioned in section 48(2)(l) of the Financial Services Act (protection of investor on death etc. of natural person) or its business will be effectively directed by two or more persons of sufficiently good repute and experience to provide listed services;
 - (f) the firm must have submitted to the Bank a programme of operations of the business to be carried on by the firm containing at least the following information—
 - (i) a description of the particular listed services that the firm proposes to provide; and
 - (ii) particulars of the firm's structure; and
 - (g) in the case of a firm which is not and is not seeking to become, an authorised person but which is—
 - (i) a subsidiary undertaking;
 - (ii) a subsidiary undertaking of the parent undertaking; or
 - (iii) controlled by the 50 per cent. controller,
 of an investment firm or credit institution which is for the time being authorised to act as such a firm or institution by a relevant supervisory authority in another EEA State, the Bank has consulted that authority.
- (4) That section shall also have effect as if it enabled the Bank to regard itself as satisfied with respect to any matter relevant for the purposes of its supervision of a person admitted to the list maintained for the purposes of section 43 of that Act who is a UK investment firm or a European authorised investment firm if—
- (a) any relevant regulatory authority informs the Bank that it is satisfied with respect to the matter; and
 - (b) the Bank is satisfied as to the nature and scope of the supervision exercised by that regulatory authority.
- (5) In paragraph (4) above, “relevant regulatory authority”—
- (a) in relation to a UK investment firm means any UK regulatory authority; and

- (b) in relation to a European investment firm means a supervisory authority in the firm's home State.