

SCHEDULE 2

Regulation 3(2)

AMENDMENTS OF PART 18 OF THE ACT

1. Part 18 of the Act (recognised investment exchanges and clearing houses) is amended as follows.

2. In section 286 (qualification for recognition), after subsection (5) insert—

“(6) In the case of an investment exchange, requirements resulting from this section are in addition to requirements which must be satisfied by the exchange as a result of section 290(1A) before the Authority may make a recognition order declaring the exchange to be a recognised investment exchange.”.

3. In section 287 (application by an investment exchange)—

(a) in subsection (3), after paragraph (b) insert—

“;

(c) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant’s proposed organisational structure;

(d) such particulars of the persons who effectively direct the business and operations of the exchange as the Authority may reasonably require;

(e) such particulars of the ownership of the exchange, and in particular of the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly, as the Authority may reasonably require.”;

(b) after subsection (3) insert—

“(4) Subsection (3)(c) to (e) does not apply to an application by an overseas applicant.”.

4. In section 290 of the Act (recognition orders), after subsection (1), insert—

“(1A) In the case of an application for an order declaring the applicant to be a recognised investment exchange, the reference in subsection (1) to the recognition requirements applicable in its case includes a reference to requirements contained in any directly applicable Community regulation made under the markets in financial instruments directive.

(1B) In the case mentioned in subsection (1A), the application must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.

(1C) Subsection (1B) does not apply in the case of an application by an overseas applicant.”.

5. After section 292 (overseas investment exchanges and overseas clearing houses) insert—

*“Publication of information by recognised investment exchange*

**Publication of information by recognised investment exchange**

**292A.**—(1) A recognised investment exchange must as soon as practicable after a recognition order is made in respect of it publish such particulars of the ownership of the exchange as the Authority may reasonably require.

(2) The particulars published under subsection (1) must include particulars of the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

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(3) If an ownership transfer takes place in relation to a recognised investment exchange, the exchange must as soon as practicable after becoming aware of the transfer publish such particulars relating to the transfer as the Authority may reasonably require.

(4) "Ownership transfer", in relation to an exchange, means a transfer of ownership which gives rise to a change in the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

(5) A recognised investment exchange must publish such particulars of any decision it makes to suspend or remove a financial instrument from trading on a regulated market operated by it as the Authority may reasonably require.

(6) The Authority may determine the manner of publication under subsections (1), (3) and (5) and the timing of publication under subsection (5).

(7) This section does not apply to an overseas investment exchange."

6. After section 293 (notification requirements) insert—

**"Information: compliance of recognised investment exchanges with directly applicable Community regulations**

**293A.** The Authority may require a recognised investment exchange to give the Authority such information as it reasonably requires in order to satisfy itself that the exchange is complying with any directly applicable Community regulation made under the markets in financial instruments directive."

7. In section 296 (Authority's power to give directions)—

(a) after subsection (1) insert—

"(1A) This section also applies in the case of a recognised body which is a recognised investment exchange if it appears to the Authority that the body has failed, or is likely to fail, to comply with any obligation imposed on it by any directly applicable Community regulation made under the markets in financial instruments directive.";

(b) after subsection (2) insert—

"(2A) In the case of a recognised investment exchange other than an overseas investment exchange, those steps may include—

(a) the granting to the Authority of access to the premises of the exchange for the purpose of inspecting—

(i) those premises; or

(ii) any documents on the premises which appear to the Authority to be relevant for the purpose mentioned in subsection (2);

(b) the suspension of the carrying on of any regulated activity by the exchange for the period specified in the direction."

8. In section 297 (revoking recognition)—

(a) after subsection (2) insert—

"(2A) If it appears to the Authority that a recognised body which is a recognised investment exchange—

(a) has not carried on the business of an investment exchange during the period of twelve months beginning with the day on which the recognition order took effect in relation to it,

(b) has not carried on the business of an investment exchange at any time during the period of six months ending with the relevant day, or

- (c) has failed, or is likely to fail, to comply with any obligation imposed on it by a directly applicable Community regulation made under the markets in financial instruments directive,

it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.

(2B) The “relevant day”, for the purposes of paragraph (b) of subsection (2A), is the day on which the power to make an order under that subsection is exercised.

(2C) Subsection (2A) does not apply to an overseas investment exchange.”;

- (b) in subsection (4) after “(2)” insert “or (2A)”.

9. In section 298 of the Act (directions and revocations: procedure), in subsection (1), after “section 297(2)” insert “or (2A)”.

10. After section 301 (supervision of certain contracts) insert—

#### “CHAPTER 1A

#### CONTROL OVER RECOGNISED INVESTMENT EXCHANGE

##### *Notice of control*

#### **Obligation to notify the Authority of acquisition of or increase in control**

**301A.**—(1) If a step which a person proposes to take would result in his acquiring—

- (a) control over a recognised investment exchange,
- (b) an additional kind of control over an exchange, or
- (c) an increase in a relevant kind of control which he already has over an exchange,

he must notify the Authority of his proposal.

(2) A person who, without himself taking any such step, acquires any such control or additional or increased control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.

(3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give notice to the Authority on acquiring, or increasing, the control in question.

(4) A notice under subsection (1) or (2) is referred to in this Chapter as a “notice of control”.

(5) Section 182 applies to a notice of control under this Chapter as it applies to a notice of control under Part 12.

- (6) Nothing in this Chapter applies to an overseas investment exchange.

##### *Acquiring and increasing control*

#### **Acquiring and increasing control**

**301B.**—(1) For the purposes of this Chapter, a person (“the acquirer”) acquires control over a recognised investment exchange (“E”) on first falling within any of the cases in subsection (2).

- (2) The cases are where the acquirer—

- (a) holds 20% or more of the shares in E;

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- (b) is able to exercise significant influence over the management of E by virtue of his shareholding in E;
  - (c) holds 20% or more shares in a parent undertaking (“P”) of E;
  - (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;
  - (e) is entitled to exercise, or control the exercise of, 20% or more of the voting power in E;
  - (f) is able to exercise significant influence over the management of E by virtue of his voting power in E;
  - (g) is entitled to exercise, or to control the exercise of, 20% or more of the voting power in P; or
  - (h) is able to exercise significant influence over the management of P by virtue of his voting power in P.
- (3) In subsection (2) “the acquirer” means—
- (a) the acquirer,
  - (b) any of his associates, or
  - (c) the acquirer and any of his associates.
- (4) For the purposes of this Chapter, each of the following is to be regarded as a kind of control—
- (a) control arising as a result of the holding of shares in E;
  - (b) control arising as a result of the holding of shares in P;
  - (c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in E;
  - (d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in P.
- (5) For the purposes of this Chapter, a controller of E increases his control over E if—
- (a) the percentage of shares held by the controller in E increases by the step mentioned in subsection (6);
  - (b) the percentage of shares held by the controller in P increases by the step mentioned in subsection (6);
  - (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in E increases by the step mentioned in subsection (6);
  - (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P increases by the step mentioned in subsection (6); or
  - (e) the controller becomes a parent undertaking of E.
- (6) The step is from 20% or more (but less than 50%) to 50% or more.
- (7) In the rest of this Chapter “acquiring control” or “having control” includes—
- (a) acquiring or having an additional kind of control; or
  - (b) acquiring an increase in a relevant kind of control, or having increased control of a relevant kind.

*Acquiring or increasing control: procedure*

**Duty of Authority in relation to notice of control**

**301C.**—(1) The Authority must, before the end of the period of three months beginning with the date on which it receives a notice of control, determine whether—

- (a) to approve of the person concerned having the control to which the notice relates; or
- (b) to give a warning notice under subsection (7).

(2) If the Authority decides to approve of the person concerned having the control to which the notice relates it must notify that person of its approval in writing without delay.

(3) If the Authority fails to comply with subsection (1) it is to be treated as having given its approval and notified the person concerned at the end of the period fixed by that subsection.

(4) The Authority's approval remains effective only if the person to whom it relates acquires the control in question—

- (a) before the end of such period as may be specified in the notice of approval under subsection (2); or
- (b) if no period is specified, before the end of the period of one year beginning with the date—
  - (i) of the notice of approval under subsection (2);
  - (ii) on which the Authority is treated as having given approval under subsection (3); or
  - (iii) of a decision on a reference to the Tribunal which results in the person concerned receiving approval.

(5) The Authority may give a decision notice under this subsection unless it is satisfied that the approval requirement is met.

(6) The approval requirement is that the acquisition of control by the person who gave the notice of control does not pose a threat to the sound and prudent management of any financial market operated by the recognised investment exchange.

(7) If the Authority proposes to give the person concerned a decision notice under subsection (5), it must give him a warning notice.

(8) A person to whom a decision notice is given under subsection (5) may refer the matter to the Tribunal.

**Objection to existing control**

**301D.**—(1) If the Authority is not satisfied that the approval requirement is met, it may give a decision notice under this section to a person if he has failed to comply with a duty to notify imposed by section 301A.

(2) If the failure relates to subsection (1) or (2) of that section, the Authority may (instead of giving a notice under subsection (1)) approve the acquisition of control in question by the person concerned as if he had given it a notice of control.

(3) The Authority may also give a decision notice under this section to a person who is a controller of a recognised investment exchange if the Authority becomes aware of matters as a result of which it is satisfied that the approval requirement is not met with respect to the controller.

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(4) If the Authority proposes to give a decision notice under subsection (1) or (3) to a person, it must give him a warning notice before the end of the period of three months beginning—

- (a) in the case of a notice to be given under subsection (1), with the date on which it became aware of the failure to comply with the duty in question;
- (b) in the case of a notice to be given under subsection (3), with the date on which it became aware of the matters in question.

(5) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.

(6) "Approval requirement" has the same meaning as in section 301C.

### *Improperly acquired shares*

#### **Improperly acquired shares**

**301E.**—(1) The powers conferred by this section are exercisable if a person has acquired, or has continued to hold, any shares in contravention of a decision notice given under section 301C(5) or 301D(1) or (3).

(2) The Authority may by notice in writing given to the person concerned ("a restriction notice") direct that any such shares which are specified in the notice are, until further notice, subject to one or more of the following restrictions—

- (a) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares any transfer of (or agreement to transfer) the right to be issued with them, is void;
- (b) no voting rights are to be exercisable in respect of the shares;
- (c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;
- (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.

(3) The court may, on the application of the Authority, order the sale of any shares to which this section applies and, if they are for the time being subject to any restriction under subsection (2), that they are to cease to be subject to that restriction.

(4) No order may be made under subsection (3)—

- (a) until the end of the period within which a reference may be made to the Tribunal in respect of the decision notice in question; and
- (b) if a reference is made, until the matter has been determined or the reference withdrawn.

(5) If an order has been made under subsection (3), the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

- (a) in the case of an acquirer falling within section 301A(1), to all the shares—

- (i) in the recognised investment exchange which the acquirer has acquired,
    - (ii) which are held by him or an associate of his, and
    - (iii) which were not so held immediately before he became a person having control over the exchange;
  - (b) in the case of an acquirer falling within section 301A(2), to all the shares held by him or an associate of his at the time when he first became aware that he had acquired control over the exchange; and
  - (c) to all the shares in an undertaking (“C”)—
    - (i) which are held by the acquirer or an associate of his, and
    - (ii) which were not so held before he became a person with control in relation to the exchange,where C is the undertaking in which shares were acquired by the acquirer (or an associate of his) and, as a result, he became a person with control in relation to that exchange.
- (8) A copy of the restriction notice must be given to—
- (a) the recognised investment exchange to whose shares it relates; and
  - (b) if it relates to shares held by an associate of that exchange, that associate.
- (9) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

### *Offences*

#### **Offences in relation to acquisition of control**

**301F.**—(1) A person who fails to comply with the duty to notify the Authority imposed on him by section 301A(1) is guilty of an offence.

(2) A person who fails to comply with the duty to notify the Authority imposed on him by section 301A(2) is guilty of an offence.

(3) If a person who has given a notice of control to the Authority carries out the proposal to which the notice relates, he is guilty of an offence if—

- (a) the period of three months beginning with the date on which the Authority received the notice is still running; and
- (b) the Authority has not responded to the notice by either giving its approval or giving him a warning notice under section 301C(7).

(4) A person to whom the Authority has given a warning notice under subsection (7) of section 301C is guilty of an offence if he carries out the proposal to which the notice relates before the Authority has decided whether to give him a decision notice under subsection (5) of that section.

(5) A person to whom a decision notice under section 301C(5) or 301D(1) or (3) has been given is guilty of an offence if he acquires or retains the control to which the notice applies at a time when the notice is still in force.

(6) A person guilty of an offence under subsection (1), (2), (3) or (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person guilty of an offence under subsection (5) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and

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

(8) It is a defence for a person charged with an offence under subsection (1) to show that he had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.

(9) If a person—

(a) was under the duty to notify the Authority imposed by section 301A(1) but had no knowledge of the act or circumstances by virtue of which that duty arose, but

(b) subsequently becomes aware of that act or those circumstances,

he must notify the Authority before the end of the period of 14 days beginning with the day on which he first became so aware.

(10) A person who fails to comply with the duty to notify the Authority imposed by subsection (9) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### *Interpretation*

#### **Interpretation of Chapter 1A**

**301G.** In this Chapter—

“associate”, “shares” and “voting power” have the same meaning as in section 422;

“controller”, in relation to a recognised investment exchange, means a person who falls within any of the cases in section 301B(2);

“notice of control” has the meaning given in section 301A(4).”.

**11.** In section 302 of the Act (interpretation), in subsection (1), in paragraph (c) of the definition of “regulatory provisions”, for “287(3)” substitute “287(3)(a) and (b)”.

**12.** In section 303 of the Act<sup>(1)</sup> (initial report by OFT), after subsection (5) insert—

“(6) In the case of an application for recognition under section 287, the OFT must issue its report under subsection (3) before the end of the period of 12 weeks beginning with the date on which it receives the copy sent to it under subsection (1).

(7) Subsection (6) does not apply if the application is made by an overseas investment exchange.”.

**13.** In section 306 of the Act<sup>(2)</sup> (consideration by the Competition Commission), after subsection (12) insert—

“(13) Subsection (14) applies if —

(a) the case relates to an application for recognition under section 287, other than an application by an overseas applicant; and

(b) subsection (2)(a) or (3)(a) of this section applies.

(14) The Commission must —

(a) make a report under this section, or a statement under subsection (5), before the end of the period of 12 weeks beginning with the date on which it receives a copy of the OFT’s report under section 303(3); and

(1) Section 303 was amended by the Enterprise Act 2002 (c. 40), section 278 and Schedule 25.

(2) Section 306 was amended by the Enterprise Act 2002 (c. 40), section 278 and Schedule 25.



- (b) if it makes a statement under subsection (5), send a copy to the Authority and the Treasury.”.

14. In section 307 of the Act<sup>(3)</sup> (recognition orders: role of the Treasury), after subsection (4) insert—

“(5) Subsection (6) applies in the case of an application for recognition under section 287, other than an application by an overseas applicant.

(6) The Treasury must decide whether to approve the application before the end of the period of 10 days beginning with—

- (a) in a case falling within subsection (2)(a) or (3)(a) of section 306, the date on which they receive a copy of the report under that section or, if no such report was made, of the statement under subsection (5) of that section;
- (b) in any other case, the date on which they receive a copy of the report from the OFT under section 303.”.

15. After section 312 (the Chapter II prohibition) insert—

“CHAPTER 3A  
PASSPORT RIGHTS

*EEA market operators in United Kingdom*

**Exercise of passport rights by EEA market operator**

**312A.**—(1) An EEA market operator may, in pursuance of the right under the applicable provision, make arrangements in the United Kingdom to facilitate access to, or use of, a specified regulated market or specified multilateral trading facility operated by it if—

- (a) the operator has given its home state regulator notice of its intention to make such arrangements; and
- (b) the home state regulator has given the Authority notice of the operator’s intention.

(2) In making arrangements under subsection (1), the operator is exempt from the general prohibition as respects any regulated activity which is carried on as a part of its business of operating the market or facility in question, or in connection with, or for the purposes of, that business.

(3) ”Specified” means specified in the notice referred to in subsection (1)(a).

(4) This section does not apply to an overseas investment exchange.

**Removal of passport rights from EEA market operator**

**312B.**—(1) The Authority may prohibit an EEA market operator from making or, as the case may be, continuing arrangements in the United Kingdom, in pursuance of the applicable provision, to facilitate access to, or use of, a regulated market or multilateral trading facility operated by the operator if—

- (a) the Authority has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
- (b) the Authority has first complied with subsections (3) to (9).

(2) A requirement is relevant if it is imposed—

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(3) Section 307 was amended by the Enterprise Act 2002 (c. 40), section 278 and Schedule 25.

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- (a) by the operator's home state regulator in the implementation of the markets in financial instruments directive or any Community legislation made under that directive;
  - (b) by provision implementing that directive, or any Community legislation made under it, in the operator's home state; or
  - (c) by any directly applicable Community regulation made under that directive.
- (3) The Authority must notify the operator and its home state regulator of its finding under subsection (1)(a).
- (4) The notice to the home state regulator under subsection (3) must—
- (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the operator puts an end to the contravention; and
  - (b) state that the Authority proposes to exercise the power under subsection (1) if the operator continues the contravention.
- (5) The Authority may not exercise the power under subsection (1) unless satisfied—
- (a) either—
    - (i) that the home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
    - (ii) that the measures taken by the home state regulator have proved inadequate for that purpose; and
  - (b) that the operator is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the financial markets.
- (6) If the Authority is satisfied as mentioned in subsection (5), it must give written notice to—
- (a) the operator, and
  - (b) the home state regulator,
- of its intention to exercise the power under subsection (1).
- (7) A notice under subsection (6) must—
- (a) state why the Authority intends to exercise its power under subsection (1), and
  - (b) in the case of the notice to the operator, inform the operator that it may make representations to the Authority before the end of the representation period.
- (8) The representation period is—
- (a) the period of two months beginning with the date on which the notice is given to the operator; or
  - (b) such longer period as the Authority may allow in a particular case.
- (9) If, having considered any representations made by the operator, the Authority decides to exercise the power under subsection (1), it must—
- (a) notify the operator in writing that it will be prohibited from making or, as the case may be, continuing the arrangements mentioned in that subsection from the date specified in the notice; and
  - (b) notify the home state regulator of the action to be taken in relation to the operator.
- (10) If the Authority exercises the power under subsection (1) it must at the earliest opportunity notify the Commission of the action taken in relation to the operator.

(11) The exemption conferred on an operator by section 312A(2) ceases to apply if the Authority exercises the power under subsection (1) in relation to the operator.

(12) The right to make the arrangements mentioned in subsection (1) may be reinstated in relation to the operator (together with the exemption mentioned in subsection (11)) if the Authority is satisfied that the contravention which led to the Authority exercising the power under subsection (1) has been remedied.

### *Recognised investment exchanges operating in EEA States (other than the United Kingdom)*

#### **Exercise of passport rights by recognised investment exchange**

**312C.**—(1) Subject to subsection (4), a recognised investment exchange may, in pursuance of the right under the applicable provision, make arrangements in an EEA State (other than the United Kingdom) to facilitate access to, or use of, a regulated market or multilateral trading facility operated by the exchange (“the relevant arrangements”).

(2) The exchange must give the Authority written notice of its intention to make the relevant arrangements which—

- (a) describes the arrangements, and
- (b) identifies the EEA State in which it intends to make them.

(3) The Authority must, within one month of receiving a notice under subsection (2), send a copy of it to the host state regulator.

(4) The exchange may not make the relevant arrangements until the Authority has complied with subsection (3).

(5) Subsection (6) applies if the Authority receives a request for information—

- (a) under the second sub-paragraph of Article 31.6 of the markets in financial instruments directive (in the case of relevant arrangements relating to a multilateral trading facility), or
- (b) under the third sub-paragraph of Article 42.6 of that directive (in the case of relevant arrangements relating to a regulated market),

from the host state regulator.

(6) The Authority must, as soon as reasonably practicable, comply with the request.

(7) “Host state regulator” means the competent authority (within the meaning of Article 4.1.22 of the markets in financial instruments directive) of the EEA State in which the exchange intends to make, or has made, the relevant arrangements.

(8) This section does not apply to an overseas investment exchange.

### *Interpretation*

#### **Interpretation of Chapter 3A**

**312D.** In this Chapter—

“the applicable provision” means—

- (a) in the case of arrangements relating to a multilateral trading facility, Article 31.5 of the markets in financial instruments directive; and
- (b) in the case of arrangements relating to a regulated market, the first sub-paragraph of Article 42.6 of that directive;

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“EEA market operator” means a person who is a market operator (within the meaning of Article 4.1.13 of the markets in financial instruments directive) whose home state is an EEA State other than the United Kingdom;

“home state”, in relation to an EEA market operator, means the EEA State in which it has its registered office, or if it has no registered office, its head office;

“home state regulator” means the competent authority (within the meaning of Article 4.1.22 of the markets in financial instruments directive) of the EEA State which is the home state in relation to the EEA market operator concerned.”.

- 16.** In section 313 (interpretation of Part 18), in subsection (1) at the appropriate place insert—
- ““multilateral trading facility” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;
  - “regulated market” has the meaning given in Article 4.1.14 of the markets in financial instruments directive;”.