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STATUTORY INSTRUMENTS

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**2007 No. 763**

**The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (Amendment) Regulations 2007**

**Exempt investment firms**

2.—(1) In regulation 2 of the principal regulations (interpretation) after the definition of “Part IV permission” insert—

““regulated activity” has the meaning given in section 22 of the Act;”.

(2) In Part 2 of the principal regulations (Part IV permission: investment firms)—

(a) immediately before regulation 4, insert the heading—

*“General restriction on giving Part IV permission”;*

(b) after regulation 4 insert—

**“Applications to be an exempt investment firm**

4A.—(1) A person may apply in accordance with section 40 of the Act for a Part IV permission to carry on regulated activities as an exempt investment firm.

(2) An authorised person may become entitled to carry on regulated activities as an exempt investment firm only by applying for a variation of his Part IV permission in accordance with section 44 of the Act.

(3) For the purposes of this regulation, and regulations 4B and 4C, “exempt investment firm” means an authorised person who—

(a) is an investment firm within the meaning given in Article 4.1.1 of the markets in financial instruments directive, and

(b) has a Part IV permission,

but to whom Title II of the markets in financial instruments directive does not apply.

(4) A person may only apply for a Part IV permission as mentioned in paragraph (1), and an authorised person may only apply for a variation of his Part IV permission as mentioned in paragraph (2), if the person or authorised person has his relevant office in the United Kingdom.

(5) In paragraph (4) “relevant office” means—

(a) in relation to a body corporate, its registered office or, if it has no registered office, its head office, and

(b) in relation to a person or authorised person other than a body corporate, the person’s head office.

**Limitation on exempt investment firms**

4B. An exempt investment firm has no entitlement—

- (a) to establish a branch by making use of the procedures in paragraph 19 of Schedule 3, or
- (b) to provide any service by making use of the procedures in paragraph 20 of Schedule 3,

in a case where the entitlement of the firm to do so would, but for this regulation, derive from the markets in financial instruments directive.

#### **Requirements to be applied to exempt investment firms**

**4C.**—(1) If the Authority—

- (a) gives to a person who has applied as mentioned in regulation 4A(1) a Part IV permission to carry on regulated activities as an exempt investment firm, or
- (b) varies the Part IV permission of an authorised person who has applied as mentioned in regulation 4A(2) for a variation to permit him to carry on regulated activities as an exempt investment firm,

the requirements specified in paragraph (3) (“the specified requirements”) shall be treated as being included in the permission by the Authority under section 43 of the Act.

(2) Notwithstanding paragraph (1)—

- (a) the inclusion of the specified requirements in the Part IV permission does not—
  - (i) amount, for the purpose of section 52(6) of the Act, to a proposal to exercise the power of the Authority under section 43(1) of the Act,
  - (ii) amount, for the purpose of section 52(9) of the Act, to a decision to exercise the power of the Authority under section 43(1) of the Act, or
  - (iii) entitle the person to refer a matter under section 55(1) of the Act;
- (b) the specified requirements shall not expire until the person ceases to be an exempt investment firm and, accordingly, section 43(5) shall not be treated as requiring the Authority to specify a period at the end of which they expire; and
- (c) no application under section 44 of the Act to vary the permission by cancelling or varying any of the specified requirements may be made by the person unless he informs the Authority when making the application that he wishes to cease to be an exempt investment firm.

(3) The requirements are that the person—

- (a) does not hold clients’ funds or securities and does not, for that reason, at any time, place himself in debt with his clients;
- (b) does not provide any investment service other than—
  - (i) the reception and transmission of orders in transferable securities and units in collective investment undertakings, and
  - (ii) the provision of investment advice in relation to the financial instruments mentioned in paragraph (i);
- (c) in the course of providing the investment services mentioned in subparagraph (b), transmits orders only to—
  - (i) investment firms authorised in accordance with the markets in financial instruments directive,
  - (ii) credit institutions authorised in accordance with the banking consolidation directive,

- (iii) branches of investment firms or of credit institutions which are authorised in a third country and which are subject to and comply with prudential rules considered by the Authority to be at least as stringent as those laid down in the markets in financial instruments directive, the banking consolidation directive or Directive [2006/49/EC](#) of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions<sup>(1)</sup>,
- (iv) collective investment undertakings authorised under the law of a Member State to market units to the public and to the managers of such undertakings,
- (v) investment companies with fixed capital, as defined in Article 15(4) of Second Council Directive [77/91/EEC](#) of 13 December 1976 on the coordination of safeguards required of public companies in respect of their formation and the maintenance and alteration of their capital<sup>(2)</sup>, the securities of which are listed or dealt in on a regulated market in a Member State.

(4) In paragraph (3)—

- (a) terms and expressions defined in Article 4 of the markets in financial instruments directive and used in the paragraph have the meanings given in that Article;
- (b) “the banking consolidation directive” means Directive [2006/48/EC](#) of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>(3)</sup>;
- (c) other terms and expressions used both in the paragraph and in Article 3 of or Annex 1 to the markets in financial instruments directive have the same meanings in the paragraph as in that Article or Annex; and
- (d) “Member State”, in sub-paragraph (c)(iv), includes an EEA State that is not a Member State.”.

(3) In regulation 10 of the principal regulations (interpretation of Part 3) omit the definitions of “regulated activity” and “Schedule 3”.

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<sup>(1)</sup> OJ No L 177, 30.6.2006, p. 210.

<sup>(2)</sup> OJ No L 26, 30.1.77, p. 1.

<sup>(3)</sup> OJ No L 177, 30.6.2006, p. 1.