



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVIII

#### RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

#### [<sup>F1</sup>CHAPTER 1A

#### CONTROL OVER RECOGNISED INVESTMENT EXCHANGE

#### *[<sup>F1</sup>Acquiring and increasing control*

#### Textual Amendments

- F1** Pt. 18 Ch. 1A substituted (21.3.2009) by virtue of [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009 \(S.I. 2009/534\)](#), reg. 5, [Sch. 2](#) (with reg. 8)

#### **301D Acquiring and increasing control**

- (1) For the purposes of this Chapter, a person (“A”) acquires control over a recognised investment exchange (“B”) if any of the cases in subsection (2) begin to apply.
- (2) The cases are where A holds—
  - (a) 20% or more of the shares in B or in a parent undertaking of B (“P”);
  - (b) 20% or more of the voting power in B or P; or
  - (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.
- (3) For the purposes of this Chapter, a person (“A”) increases control over a recognised investment exchange (“B”) whenever—
  - (a) the percentage of shares which A holds in B or in a parent undertaking of B (“P”) increases from less than 50% to 50% or more;

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Acquiring and increasing control is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the percentage of voting power A holds in B or P increases from less than 50% to 50% or more; or
- (c) A becomes a parent undertaking of B.

### **301E Disregarded holdings**

- (1) For the purpose of section 301D, shares and voting power that a person holds in a recognised investment exchange (“B”) or in a parent undertaking of B (“P”) are disregarded in the following circumstances.
- (2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.
- (3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power represented by the shares in accordance with instructions given in writing.
- (4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, provided that it—
  - (a) holds the shares in the capacity of a market maker (as defined in article [F<sup>2</sup>4.1.7] of the markets in financial instruments directive);
  - (b) is authorised by its home state regulator under the markets in financial instruments directive; and
  - (c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.
- (5) Shares held by a credit institution or investment firm in its trading book are disregarded, provided that—
  - (a) the shares represent no more than 5% of the total voting power in B or P; and
  - (b) <sup>F<sup>3</sup></sup>... the voting power is not exercised nor otherwise used to intervene in the management of B or P.
- (6) Shares held by a credit institution or an investment firm are disregarded, provided that—
  - (a) the shares are held as a result of performing the investment services and activities of—
    - (i) underwriting a share issue; or
    - (ii) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of the markets in financial instruments directive; and
  - (b) the credit institution or investment firm—
    - (i) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and
    - (ii) retains the holding for a period of less than one year.
- (7) Where a management company (as defined in [F<sup>4</sup>Article 2.1(b)] of the UCITS directive) and its parent undertaking both hold shares or voting power, each may disregard holdings of the other, provided that each exercises its voting power independently of the other.
- (8) But subsection (7) does not apply if the management company—
  - [F<sup>5</sup>(a) manages holdings for its parent undertaking or a controlled undertaking of the parent undertaking;]

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- (b) has no discretion as to the exercise of the voting power attached to such holdings; and
  - (c) may only exercise the voting power in relation to such holdings under direct or indirect instruction from—
    - (i) the parent undertaking; or
    - [<sup>F6</sup>(ii) a controlled undertaking of the parent undertaking.]
- (9) Where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking, provided that the investment firm—
- (a) has permission to provide portfolio management;
  - (b) exercises its voting power independently from the parent undertaking; and
  - (c) may only exercise the voting power under instructions given in writing, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.
- [<sup>F7</sup>(9A) Shares acquired for stabilisation purposes in accordance with [Commission Regulation \(EC\) No 2273/2003](#) of 22 December 2003 implementing [Directive 2003/6/EC](#) as regards exemptions for buy-back programmes and stabilisation of financial instruments are disregarded, provided that the voting power attached to those shares is not exercised or otherwise used to intervene in the management of B or P.]
- [<sup>F8</sup>(10) For the purposes of this section, an undertaking is a controlled undertaking of the parent undertaking if it is controlled by the parent undertaking; and for this purpose the question of whether one undertaking controls another is to be determined in accordance with section 89J(4) and (5).]

#### Textual Amendments

- F2** Word in s. 301E(4)(a) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017](#) (S.I. 2017/701), reg. 1(2)(3)(4)(6), [Sch. 2 para. 33](#) (with reg. 7)
- F3** Words in s. 301E(5)(b) omitted (1.11.2015 for specified purposes, 31.5.2016 in so far as not already in force) by virtue of [The Transparency Regulations 2015](#) (S.I. 2015/1755), regs. 1(2)(4), [6\(2\)\(a\)](#)
- F4** Words in s. 301E(7) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011](#) (S.I. 2011/1613), [reg. 2\(27\)](#)
- F5** S. 301E(8)(a) substituted (1.1.2014) by [The Capital Requirements Regulations 2013](#) (S.I. 2013/3115), reg. 1(2), [Sch. 2 para. 17\(a\)](#)
- F6** S. 301E(8)(c)(ii) substituted (1.1.2014) by [The Capital Requirements Regulations 2013](#) (S.I. 2013/3115), reg. 1(2), [Sch. 2 para. 17\(b\)](#)
- F7** S. 301E(9A) inserted (1.11.2015 for specified purposes, 31.5.2016 in so far as not already in force) by [The Transparency Regulations 2015](#) (S.I. 2015/1755), regs. 1(2)(4), [6\(2\)\(b\)](#)
- F8** S. 301E(10) inserted (1.1.2014) by [The Capital Requirements Regulations 2013](#) (S.I. 2013/3115), reg. 1(2), [Sch. 2 para. 17\(c\)](#)

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