

SCHEDULE 5

Regulation 3(5)

OTHER AMENDMENTS OF THE ACT

1. The Act is further amended as follows.

Amendment of section 39

2. In section 39 (exemption of appointed representatives)—

- (a) after subsection (1) insert—

“(1A) But a person is not exempt as a result of subsection (1)—

- (a) if his principal is an investment firm or a credit institution, and
- (b) so far as the business for which his principal has accepted responsibility is investment services business,

unless he is entered on the applicable register.

- (1B) The “applicable register” is—

- (a) in the case of a person established in an EEA State (other than the United Kingdom) which permits investment firms authorised by the competent authority of that State to appoint tied agents, the register of tied agents maintained in that State pursuant to Article 23 of the markets in financial instruments directive;
- (b) in the case of a person established in an EEA State which does not permit investment firms authorised as mentioned in paragraph (a) to appoint tied agents—
 - (i) if his principal has his relevant office in the United Kingdom, the record maintained by the Authority by virtue of section 347(1)(ha), and
 - (ii) if his principal is established in an EEA State (other than the United Kingdom) which permits investment firms authorised by the competent authority of the State to appoint tied agents, the register of tied agents maintained by that State pursuant to Article 23 of the markets in financial instruments directive; and
- (c) in any other case, the record maintained by the Authority by virtue of section 347(1)(ha).”;

- (b) in subsection (4), after “this Act,” insert “or with a provision contained in any directly applicable Community regulation made under the markets in financial instruments directive,”;

- (c) after subsection (6) insert—

“(7) A person carries on “investment services business” if—

- (a) the business includes providing services or carrying on activities of the kind mentioned in Article 4.1.25 of the markets in financial instruments directive, and
- (b) as a result of providing such services or carrying on such activities he is a tied agent or would be if he were established in an EEA State.

- (8) In this section—

“competent authority” has the meaning given in Article 4.1.22 of the markets in financial instruments directive;

“credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive, or

Status: This is the original version (as it was originally made).

- (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its relevant office in an EEA State;
“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 other than a body corporate, the person’s head office.”.

Section 39A

3. After section 39 (exemption of appointed representatives) insert—

“Certain tied agents operating outside United Kingdom

39A.—(1) This section applies to an authorised person whose relevant office is in the United Kingdom if—

- (a) he is a party to a contract with a person (other than an authorised person) who is established—
 - (i) in the United Kingdom, or
 - (ii) in an EEA State which does not permit investment firms authorised by the competent authority of the State to appoint tied agents; and
 - (b) the contract is a relevant contract.
- (2) A contract is a “relevant contract” if it satisfies conditions A to C.
- (3) Condition A is that the contract permits or requires the person mentioned in subsection (1)(a) (the “agent”) to carry on investment services business.
- (4) Condition B is that either—
- (a) it is a condition of the contract that such business may only be carried on by the agent in an EEA State other than the United Kingdom; or
 - (b) in a case not falling within paragraph (a), the Authority is satisfied that no such business is, or is likely to be, carried on by the agent in the United Kingdom.
- (5) Condition C is that the business is of a description that, if carried on in the United Kingdom, would be prescribed for the purposes of section 39(1)(a)(i).
- (6) An authorised person to whom this section applies who—
- (a) enters into or continues to perform a relevant contract with an agent which does not comply with the applicable requirements,
 - (b) enters into or continues to perform a relevant contract without accepting or having accepted responsibility in writing for the agent’s activities in carrying on investment services business,
 - (c) enters into a relevant contract with an agent who is not entered on the record maintained by the Authority by virtue of section 347(1)(ha), or
 - (d) continues to perform a relevant contract with an agent when he knows or ought to know that the agent is not entered on that record,

is to be taken for the purposes of this Act to have contravened a requirement imposed on him by or under this Act.

(7) The “applicable requirements” are the requirements prescribed for the purposes of subsection (1)(a)(ii) of section 39 which have effect in the case of a person to whom subsection (1A) of that section applies.

- (8) A person carries on “investment services business” if—
 - (a) his business includes providing services or carrying on activities of the kind mentioned in Article 4.1.25 of the markets in financial instruments directive, and
 - (b) as a result of providing such services or carrying on such activities he is a tied agent.
- (9) In this section—
 - “competent authority” has the meaning given in Article 4.1.22 of the markets in financial instruments directive;
 - “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 other than a body corporate, the person’s head office.”.

Amendment of section 45

- 4. In section 45 (variation etc. on the Authority’s own initiative), after subsection (2) insert—
 - “(2A) Without prejudice to the generality of subsections (1) and (2), the Authority may, in relation to an authorised person who is an investment firm, exercise its power under this section to cancel the Part IV permission of the firm if it appears to it that—
 - (a) the firm has failed, during a period of at least six months, to carry on a regulated activity which is an investment service or activity for which it has a Part IV permission;
 - (b) the firm obtained the Part IV permission by making a false statement or by other irregular means;
 - (c) the firm no longer satisfies the requirements for authorisation pursuant to Chapter I of Title II of the markets in financial instruments directive, or pursuant to or contained in any Community legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part IV permission; or
 - (d) the firm has seriously and systematically infringed the operating conditions pursuant to Chapter II of Title II of the markets in financial instruments directive, or pursuant to or contained in any Community legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part IV permission.
 - (2B) For the purposes of subsection (2A) a regulated activity is an investment service or activity if it falls within the definition of “investment services and activities” in section 417(1).”.

Amendment of section 66(2)

- 5. In section 66 (disciplinary powers), in subsection (2)(b), after “this Act” insert “or by any directly applicable Community regulation made under the markets in financial instruments directive”.

Status: This is the original version (as it was originally made).

Amendment of section 102B

6. In section 102B(1) (meaning of “offer of transferable securities to the public” etc.), in subsection (6), omit “(within the meaning of Article 1.2 of the investment services directive)”.

Amendment of section 167

7. In section 167 (appointment of persons to carry out general investigations)—

(a) in subsection (1)—

(i) in paragraph (a) after “business of” insert “a recognised investment exchange or”;

(ii) in paragraph (c) after “control of” insert “a recognised investment exchange or”;

(b) after subsection (5) insert—

“(6) References in subsection (1) to a recognised investment exchange do not include references to an overseas investment exchange (as defined by section 313(1)).”.

Amendment of section 168

8. In section 168 (appointment of persons to carry out investigations in particular cases), in subsection (4)—

(a) after paragraph (h) omit “or”;

(b) after paragraph (i) insert—

“; or

(j) a person may have contravened any provision made by or under this Act for the purpose of implementing the markets in financial instruments directive or by any directly applicable Community regulation made under that directive.”.

Amendment of section 171

9. In section 171 (powers of persons appointed under section 167)—

(a) after subsection (3) insert—

“(3A) Where the investigation relates to a recognised investment exchange, an investigator has the additional powers conferred by sections 172 and 173 (and for this purpose references in those sections to an investigator are to be read accordingly).”;

(b) after subsection (6) insert—

“(7) The reference in subsection (3A) to a recognised investment exchange does not include a reference to an overseas investment exchange (as defined by section 313(1)).”.

Amendment of section 205

10. In section 205 (public censure), in subsection (1), after “this Act,” insert “or by any directly applicable Community regulation made under the markets in financial instruments directive,”.

Amendment of section 206

11. In section 206 (financial penalties), in subsection (1), after “this Act,” insert “or by any directly applicable Community regulation made under the markets in financial instruments directive,”.

(1) Section 102B was inserted by [S.I. 2005/1433](#).

Amendment of section 347

12. In section 347 (record of authorised persons etc.)—
- (a) after paragraph (h) of subsection (1), omit “and”;
 - (b) after that paragraph insert—
 - “(ha) person to whom subsection (2A) applies; and”;
 - (c) after subsection (2) insert—
 - “(2A) This subsection applies to—
 - (a) an appointed representative to whom subsection (1A) of section 39 applies for whom the applicable register (as defined by subsection (1B) of that section) is the record maintained by virtue of subsection (1)(ha) above;
 - (b) a person mentioned in subsection (1)(a) of section 39A if—
 - (i) the contract with an authorised person to which he is party complies with the applicable requirements (as defined by subsection (7) of that section), and
 - (ii) the authorised person has accepted responsibility in writing for the person’s activities in carrying on investment services business (as defined by subsection (8) of that section); and
 - (c) any person not falling within paragraph (a) or (b) in respect of whom the Authority considers that a record must be maintained for the purpose of securing compliance with Article 23.3 of the markets in financial instruments directive (registration of tied agents).”.

Amendment of section 380

13. In section 380 (injunctions), in subsection (6)(a)(i), after “this Act” insert “or by any directly applicable Community regulation made under the markets in financial instruments directive”.

Amendment of section 382

14. In section 382 (restitution orders), in subsection (9)(a)(i), after “this Act” insert “or by any directly applicable Community regulation made under the markets in financial instruments directive”.

Amendment of section 384

15. In section 384 (power of the Authority to require restitution), in subsection (7)(a), after “this Act” insert “or by any directly applicable Community regulation made under the markets in financial instruments directive”.

Amendment of section 392

16. In section 392 (application of sections 393 and 394)—
- (a) in paragraph (a) for “or 385(1)” substitute “, 385(1) or 412B(4) or (8)”;
 - (b) in paragraph (b) for “or 386(1)” substitute “, 386(1) or 412B(5) or (9)”.

Amendment of section 405

17. In section 405 (directions), in subsection (5), for paragraph (a) substitute—
 - “(a) Article 15(3) of the markets in financial instruments directive”.

Sections 412A and 412B

18. After section 412 (gaming contracts), insert—

“Trade-matching and reporting systems

Approval and monitoring of trade-matching and reporting systems

412A.—(1) A relevant system is an approved relevant system if it is approved by the Authority under subsection (2) for the purposes of Article 25.5 of the markets in financial instruments directive; and references in this section and section 412B to an “approved relevant system” are to be read accordingly.

(2) The Authority must approve a relevant system if, on an application by the operator of the system, it is satisfied that the arrangements established by the system for reporting transactions comply with Article 12(1) of Commission Regulation 1287/2006 of 10 August 2006⁽²⁾ (“the Regulation”).

(3) Section 51(3) and (4) applies to an application under this section as it applies to an application under Part 4.

(4) If, at any time after approving a relevant system under subsection (2), the Authority is not satisfied as mentioned in that subsection, it may suspend or withdraw the approval.

(5) The Authority must keep under review the arrangements established by an approved relevant system for reporting transactions for the purpose of ensuring that the arrangements comply with Article 12(1) of the Regulation; and for the purposes of this subsection the Authority must have regard to information provided to it under subsections (6) and (7).

(6) The operator of an approved relevant system must make reports to the Authority at specified intervals containing specified information relating to—

- (a) the system,
- (b) the reports made by the system in accordance with Article 25 of the markets in financial instruments directive and the Regulation, and
- (c) the transactions to which those reports relate.

“Specified” means specified by the Authority.

(7) The Authority may by written notice require the operator of an approved relevant system to provide such additional information as may be specified in the notice, by such reasonable time as may be so specified, about any of the matters mentioned in subsection (6).

(8) The recipient of a notice under subsection (7) must provide the information by the time specified in the notice.

(9) In this section and section 412B, “relevant system” means a trade-matching or reporting system of a kind described in Article 12 of the Regulation.

Procedure for approval and suspension or withdrawal of approval

412B.—(1) If the Authority approves a relevant system, it must give the operator of the system written notice specifying the date from which the approval has effect.

(2) If the Authority proposes to refuse to approve a relevant system, it must give the operator of the system a warning notice.

(3) If the Authority decides to refuse to approve a relevant system, it must give the operator of the system a decision notice.

(2) OJ No L 241, 2.9.2006, p. 1.

(4) If the Authority proposes to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a warning notice.

(5) If the Authority decides to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a decision notice specifying the date from which the suspension or withdrawal is to take effect.

(6) Subsections (7) to (9) apply if—

(a) the Authority has suspended its approval in relation to an approved relevant system, and

(b) the operator of the system has applied for the suspension to be cancelled.

(7) The Authority must grant the application if it is satisfied as mentioned in section 412A(2); and in such a case the Authority must give written notice to the operator that the suspension is to be cancelled from the date specified in the notice.

(8) If the Authority proposes to refuse the application, it must give the operator a warning notice.

(9) If the Authority decides to refuse the application, it must give the operator a decision notice.

(10) A person who receives a decision notice under subsection (3), (5) or (9) may refer the matter to the Tribunal.”.

Amendment of section 417

19. In section 417 (definitions), in subsection (1)—

(a) at the appropriate place insert—

““investment services and activities” has the meaning given in Article 4.1.2 of the markets in financial instruments directive, read with—

(a) Chapter VI of Commission Regulation 1287/2006 of 10 August 2006, and

(b) Article 52 of Commission Directive [2006/73/EC](#) of 10 August 2006(3);”;

(b) in the definition of “notice of control”, after ““notice of control”” insert “(except in Chapter 1A of Part 18)”.

Amendment of section 422

20. In section 422 (controller), in subsection (1), after “Act” insert “, except in Chapter 1A of Part 18,”.

Amendment of section 424A

21. In section 424A(4) (investment firm), for subsection (3) substitute—

“(3) References in this Act to an “investment firm” include references to a person who would be an investment firm (within the meaning of Article 4.1.1 of the markets in financial instruments directive) if—

(a) in the case of a body corporate, his registered office or, if he has no registered office, his head office, and

(b) in the case of a person other than a body corporate, his head office,

were in an EEA State.”.

(3) OJ No L 241, 2.9.2006, p. 26.

(4) Section 424A was inserted by [S.I. 2006/2975](#).

Status: This is the original version (as it was originally made).

Amendment of section 425

22. In section 425(5) (expressions relating to authorisation elsewhere in the single market), in subsection (1)(a)—

- (a) omit “investment services directive”;
- (b) after “single market directives” insert “, tied agent”.

Amendment of Schedule 1

23. In paragraph 6 of Schedule 1 (the Financial Services Authority)—

- (a) in sub-paragraph (1) after “Act” insert “, or by any directly applicable Community regulation made under the markets in financial instruments directive”;
- (b) in sub-paragraph (3) after “Act” insert “or of any directly applicable Community regulation made under the markets in financial instruments directive”.

Amendment of Schedule 6

24. In paragraph 2 of Schedule 6(6) (threshold conditions)—

- (a) in sub-paragraph (1) for “sub-paragraph (3)” substitute “sub-paragraphs (2A) and (3)”;
- (b) after sub-paragraph (2) insert—
 - “(2A) If—
 - (a) the regulated activity concerned is any of the investment services and activities,
and
 - (b) the person concerned is a body corporate with no registered office,sub-paragraph (2B) applies in place of sub-paragraph (1).
(2B) If the person concerned has its head office in the United Kingdom, it must carry on business in the United Kingdom.”.

(5) Section 425(1)(a) was substituted by [S.I. 2003/2066](#) and amended by [S.I. 2004/3379](#).

(6) Paragraph 2 of Schedule 6 was amended by [S.I. 2003/1476](#).