

*Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000  
(Markets in Financial Instruments) Regulations 2006**

*Made* - - - - *\*\*\**  
*Coming into force* - - *in accordance with*  
*regulation 1(2)*

The Treasury are a government department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to investment firms and to the provision of investment services and to the operation of regulated markets and clearing or settlement systems and in relation to credit and financial institutions;

A draft of this instrument has been laid before Parliament in accordance with paragraph 2(2) of Schedule 2 to that Act and approved by a resolution of each House of Parliament;

The Treasury make these Regulations in exercise of the powers conferred on them by section 2(2) of that Act:

**PART 1**

**GENERAL**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2006.

(2) These Regulations come into force on 1st April 2007 for the purposes of—

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(1) [S.I. 1993/2661](#) and [2001/3495](#).

(2) [1972 c.68](#); by virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 ([c. 51](#)) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p. 572). For the decision of the EEA Joint Committee in relation to Directive [2004/39/EC](#), see Decision No 65/2005 of 29th April 2005 (OJ No L 239, 15.9.2005, p.50).

- (a) enabling the Authority to receive a notice under subsection (1)(b) of section 312A of the Act (inserted by these Regulations) in preparation for the making of arrangements as mentioned in that section by an EEA market operator on or after 1st November 2007;
  - (b) enabling a recognised investment exchange to give notice under subsection (2) of section 312C of the Act (inserted by these Regulations), and enabling the Authority to send a copy of the notice to the host state regulator as required by subsection (3) of that section;
  - (c) enabling applications to be made for approval under section 412A of the Act (inserted by these Regulations);
  - (d) enabling the Authority to give a direction as to the manner in which an application under section 412A is to be made and as to the content of the application and information to accompany it, and enabling the Authority to require the applicant to provide further information in accordance with section 412A(3);
  - (e) enabling the Authority, on receipt on or after that date of a consent notice under paragraph 13(1)(a) of Schedule 3(3) in relation to a EEA firm exercising an EEA right deriving from the markets in financial instruments directive, to prepare for the firm’s supervision in accordance with paragraph 13(2)(a) of that Schedule;
  - (f) enabling the Authority, on receipt of a regulator’s notice under paragraph 14 of Schedule 3(4) or a notice referred to in paragraph 14(1)(ba) of that Schedule (inserted by these Regulations) in relation to a EEA firm exercising an EEA right deriving from the markets in financial instruments directive, to prepare for the firm’s supervision in accordance with paragraph 14(2)(a) of that Schedule;
  - (g) enabling—
    - (i) a UK firm to give a notice of intention under paragraph 19 of Schedule 3(5) (as amended by these Regulations) in exercise of an EEA right deriving from the markets in financial instruments directive,
    - (ii) the Authority to give a consent notice referred to in paragraph 19(4) of that Schedule to the host state regulator or a notice referred to in paragraph 19(8), (11) or (12) of that Schedule in relation to the exercise of that EEA right, and
    - (iii) the firm to make a reference to the Tribunal in accordance with paragraph 19(12)(b) of that Schedule in relation to the exercise of that EEA right;
  - (h) enabling—
    - (i) a UK firm to give a notice of intention under paragraph 20 of Schedule 3(6) (as amended by these Regulations) in exercise of an EEA right deriving from the markets in financial instruments directive,
    - (ii) the Authority to send a copy of such a notice to the host state regulator under paragraph 20(3) of that Schedule and notify the UK firm under paragraph 20(4) of that Schedule that it has done so,
- and for all other purposes on 1st November 2007.

(3) For the purposes of paragraph (2)(e) to (h)—

“EEA right” has the meaning given in paragraph 7 of Schedule 3;

an “EEA right deriving from the markets in financial instruments directive” means an EEA right to carry on an activity—

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(3) Paragraph 13(1) was amended by [S.I. 2003/1473](#) and [2066](#).

(4) Relevant amendments to paragraph 14 were made by [S.I. 2003/1473](#) and [2066](#).

(5) Relevant amendments to paragraph 19 were made by [S.I. 2003/1473](#) and [2066](#).

(6) Relevant amendments to paragraph 20 were made by [S.I. 2001/1376](#) and [2003/2066](#).

- (a) which is an investment service or activity listed in Section A of Annex I to the markets in financial instruments directive;
- (b) which is an ancillary service listed in Section B of Annex I to the markets in financial instruments directive; or
- (c) in relation to an investment which is a financial instrument listed in Section C of Annex I to the markets in financial instruments directive;

“Schedule 3” means Schedule 3 to the Act.

(4) Nothing in paragraph (2)(e) to (h) gives an EEA firm or a UK firm an EEA right to carry on, before 1st November 2007, an activity—

- (a) which is an ancillary service listed in Section B of Annex I to the markets in financial instruments directive but which is not a non-core service listed in Section C of the Annex to the investment services directive;
- (b) in relation to an investment which is a financial instrument listed in Section C of Annex I to the markets in financial instruments directive but which is not an instrument listed in Section B of the Annex to the investment services directive; or
- (c) referred to in paragraph 5 of Section A of Annex I to the markets in financial instruments directive unless the firm has an EEA right to carry on one or more core services listed in Section A of the Annex to the investment services directive.

## Interpretation

2. In these Regulations—

“the Act” means the Financial Services and Markets Act 2000(7);

“authorised person” has the meaning given in section 31(2) of the Act;

“the Authority” means the Financial Services Authority;

“investment services directive” means Council Directive [93/22/EEC](#) of 10 May 1993 on investment services in the securities field(8);

“markets in financial instruments directive” means Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments(9);

“Part IV permission” has the meaning given in section 40(4) of the Act;

“Schedule 3” means Schedule 3 to the Act;

## Amendments of primary and secondary legislation

3.—(1) Schedule 1, which contains amendments of Part 13 of the Act (incoming firms: intervention by authority), has effect.

(2) Schedule 2, which contains amendments of Part 18 of the Act (recognised investment exchanges and clearing houses), has effect.

(3) Schedule 3, which inserts Part 18A of the Act, has effect.

(4) Schedule 4, which contains amendments of Schedule 3 to the Act (EEA passport rights), has effect.

(5) Schedule 5, which contains other amendments of the Act, has effect.

(6) Schedule 6, which contains consequential amendments of other enactments, has effect.

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(7) [2000 c. 8](#).

(8) [OJ No L 141, 11.6.1993, p. 27](#).

(9) [OJ No L 145, 30.4.2004, p.1](#).

## PART 2

### PART IV PERMISSION: INVESTMENT FIRMS

4.—(1) The Authority must not give a Part IV permission to an applicant who is an investment firm unless it is satisfied that the applicant complies with—

- (a) the provisions contained in or made under the Act implementing Chapter I of Title II of the markets in financial instruments directive; and
- (b) any directly applicable Community regulation made under that Chapter.

(2) Paragraph (1) also applies if an authorised person becomes an investment firm by virtue of a variation of his Part IV permission.

(3) “Investment firm” has the meaning given in section 424A of the Act<sup>(10)</sup>.

## PART 3

### TRANSITIONAL AND SAVING PROVISIONS

#### **Transitional and saving provisions: market operators**

5.—(1) Section 312A(2) of the Act applies to arrangements made on or before 31st October 2007, in the United Kingdom, by an EEA market operator to facilitate access to, or use of, a regulated market or multilateral trading facility operated by it as it applies to arrangements under section 312A(1).

(2) Section 312C(2) and (4) of the Act does not apply in relation to arrangements made by a recognised investment exchange on or before 31st October 2007 in the territory of another EEA State to facilitate access to, or use of, a regulated market or multilateral trading facility operated by it by persons established in that State.

#### **Transitional and saving provisions: EEA firms**

6.—(1) Where the Authority has received a consent notice of the sort referred to in paragraph 13(1)(a) of Schedule 3 from the home state regulator of an EEA investment firm on or before 31st October 2007, paragraph 13 of Schedule 3 applies as if it had not been amended by paragraph 8 of Schedule 4 to these Regulations.

(2) In this regulation, “EEA investment firm” means an EEA firm falling within paragraph 5(a) of Schedule 3 (before its amendment by these Regulations).

#### **Transitional provisions: UK investment firms exercising passport rights under the investment services directive**

7.—(1) Where—

(a) a UK investment firm on or before 31st October 2007 has given—

- (i) notice of intention under paragraph 19(2) or 20(1) of Schedule 3 in relation to an investment service specified in the first column in table 1 in Schedule 7 to these Regulations, or

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

- (ii) notice of change under regulation 11(3) or 12(2)(a) of the EEA Passport Rights Regulations in relation to an investment service specified in the first column in table 1 in Schedule 7 to these Regulations, or
- (b) the Authority on or before 31st October 2007 has given—
  - (i) a consent notice under paragraph 19(4) of Schedule 3 or a notice referred to in paragraph 20(3) of Schedule 3 in relation to an investment service specified in the first column in table 1 in Schedule 7 to these Regulations, or
  - (ii) a notice referred to in regulation 11(5) of the EEA Passport Rights Regulations in relation to an investment service specified in the first column in table 1 in Schedule 7 to these Regulations,

it is on 1st November 2007 to be treated as having given that notice in relation to the investment service or activity specified in the second column of table 1 opposite that investment service.

(2) Where—

- (a) a UK investment firm on or before 31st October 2007 has given—
  - (i) notice of intention under paragraph 19(2) or 20(1) of Schedule 3 in relation to a non-core service specified in the first column in table 2 in Schedule 7 to these Regulations, or
  - (ii) notice of change under regulation 11(3) or 12(2)(a) of the EEA Passport Rights Regulations in relation to a non-core service specified in the first column in table 2 in Schedule 7 to these Regulations, or
- (b) the Authority on or before 31st October 2007 has given—
  - (i) a consent notice under paragraph 19(4) of Schedule 3 or a notice referred to in paragraph 20(3) of Schedule 3 in relation to a non-core service specified in the first column in table 2 in Schedule 7 to these Regulations, or
  - (ii) a notice referred to in regulation 11(5) of the EEA Passport Rights Regulations in relation to a non-core service specified in the first column in table 2 in Schedule 7 to these Regulations,

it is on 1st November 2007 to be treated as having given that notice in relation to the ancillary service specified in the second column of table 2 opposite that non-core service.

(3) Where—

- (a) a UK investment firm on or before 31st October 2007 has given—
  - (i) notice of intention under paragraph 19(2) or 20(1) of Schedule 3 in relation to the non-core service specified in paragraph 6 of Section C of the Annex to the investment services directive (investment advice concerning one or more of the instruments listed in Section B), or
  - (ii) notice of change under regulation 11(3) or 12(2)(a) of the EEA Passport Rights Regulations in relation to the non-core service specified in paragraph 6 of Section C of the Annex to the investment services directive, or
- (b) the Authority on or before 31st October 2007 has given—
  - (i) a consent notice under paragraph 19(4) of Schedule 3 or a notice referred to in paragraph 20(3) of Schedule 3 in relation to the non-core service specified in paragraph 6 of Section C of the Annex to the investment services directive, or
  - (ii) a notice referred to in regulation 11(5) of the EEA Passport Rights Regulations in relation to the non-core service specified in paragraph 6 of Section C of the Annex to the investment services directive,

it is on 1st November 2007 to be treated as having given that notice in relation to the investment service specified in paragraph 5 of Section A of Annex I to the markets in financial instruments directive (investment advice) and the ancillary service specified in paragraph 5 of Section B of the Annex to that directive (investment research and financial analysis).

(4) Where—

(a) a UK investment firm on or before 31st October 2007 has given—

- (i) notice of intention under 19(2) or 20(1) of Schedule 3 in relation to an instrument specified in the first column in table 3 in Schedule 7 to these Regulations, or
- (ii) notice of change under regulation 11(3) or 12(2)(a) of the EEA Passport Rights Regulations in relation to an instrument specified in the first column in table 3 in Schedule 7 to these Regulations, or

(b) the Authority on or before 31st October 2007 has given—

- (i) a consent notice under paragraph 19(4) of Schedule 3 or a notice referred to in paragraph 20(3) of Schedule 3 in relation to an instrument specified in the first column in table 3 in Schedule 7 to these Regulations, or
- (ii) a notice referred to in regulation 11(5) of the EEA Passport Rights Regulations in relation to an instrument specified in the first column in table 3 in Schedule 7 to these Regulations,

it is on 1st November 2007 to be treated as having given that notice in relation to the financial instrument specified in the second column of table 3 opposite that instrument.

(5) Nothing in this regulation gives a UK investment firm the right to carry on a regulated activity (or an activity which, if it were regarded as carried on in the United Kingdom, would be a regulated activity) which it would require Part IV permission to carry on but for which it does not have Part IV permission.

#### **Additional saving provision: UK investment firms**

**8.** Where the Authority has given a consent notice under paragraph 19(4) of Schedule 3 in relation to a UK investment firm on or before 31st October 2007, paragraph 19(6) of that Schedule applies as if it had not been amended by paragraph 10(c) of Schedule 4 to these Regulations, and paragraph 19(7B) (inserted by paragraph 10(d) of Schedule 4 to these Regulations) does not apply.

#### **Transitional provision: appointed representatives and tied agents**

**9.—**(1) A person—

- (a) to whom section 39(1A) or 39A(1) of the Act (both inserted by these Regulations) applies,
- (b) whose name appeared in the record maintained by the Authority under section 347(1)(i) of the Act immediately before 1st November 2007,

is deemed, with effect from 1st November 2007, to be included in the record maintained by the Authority under section 347(1)(ha) of the Act (inserted by paragraph 12 of Schedule 5 to these Regulations).

(2) Paragraph (1) does not prevent the Authority from removing an entry from the record in accordance with section 347(3).

#### **Interpretation of Part 3**

**10.** In this Part—

“ancillary service” has the meaning given in Article 4.1.3 of the markets in financial instruments directive;

“EEA Passport Rights Regulations” means the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001<sup>(11)</sup>;

“EEA State” has the meaning given in paragraph 8 of Schedule 3;

“EEA market operator” has the meaning given in section 312D of the Act (inserted by these Regulations);

“financial instrument” has the meaning given in Article 4.1.17 of the markets in financial instruments directive;

“home state regulator” the meaning given in paragraph 9 of Schedule 3;

“instrument” (except in the expression “financial instrument”) means any of the instruments listed in Section B of the Annex to the investment services directive;

“investment service” (except in the expression “investment services and activities”) has the meaning given in Article 1.1 of the investment services directive;

“investment services and activities” has the meaning given in Article 4.1.2 of the markets in financial instruments directive;

“multilateral trading facility” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;

“non-core service” means any of the services listed in Section C of the Annex to the investment services directive;

“recognised investment exchange” has the meaning given in section 285 of the Act;

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

“regulated market” has the meaning given in Article 4.1.14 of the markets in financial instruments directive;

“Schedule 3” means Schedule 3 to the Act;

“UK investment firm” means a UK firm (within the meaning of paragraph 10 of Schedule 3<sup>(12)</sup>)—

- (a) which is an investment firm (within the meaning of the investment services directive); and
- (b) whose EEA right derives from that directive.

Date

*name*  
*name*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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(11) S.I. 2001/2511.

(12) Paragraph 10 was amended by S.I. 2003/1473.

SCHEDULE 1

Regulation 3(1)

AMENDMENTS OF PART 13 OF THE ACT

1. Part 13 of the Act (incoming firms: intervention by Authority) is amended as follows.
2. After section 194 of the Act (general grounds on which power of intervention is exercisable) insert—

**“Contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: Authority primarily responsible for securing compliance**

**194A.**—(1) This section applies if—

- (a) a relevant EEA firm has a branch in the United Kingdom; and
- (b) the Authority ascertains that the firm has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article 62.2 of the markets in financial instruments directive applies).

(2) “Relevant EEA firm” means an EEA firm falling within paragraph 5(a) or (b) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the markets in financial instruments directive.

(3) A requirement falls within this subsection if it is imposed on the firm—

- (a) by any provision of or made under this Act which implements the markets in financial instruments directive; or
- (b) by any directly applicable Community regulation made under that directive.

(4) The Authority must give the firm written notice which—

- (a) requires the firm to put an end to the contravention;
- (b) states that the Authority’s power of intervention will become exercisable in relation to the firm if the firm continues the contravention; and
- (c) indicates any requirements that the Authority proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.

(5) The Authority may exercise its power of intervention in respect of the firm if—

- (a) a reasonable time has expired since the giving of the notice under subsection (4);
- (b) the firm has failed to put an end to the contravention within that time; and
- (c) the Authority has informed the firm’s home state regulator of its intention to exercise its power of intervention in respect of the firm.

(6) Subsection (5) applies whether or not the Authority’s power of intervention is also exercisable as a result of section 194.

(7) If the Authority exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (5), it must at the earliest opportunity inform the firm’s home state regulator and the Commission of—

- (a) the fact that the Authority has exercised that power in respect of the firm; and
- (b) any requirements it has imposed on the firm in exercise of the power.”.

3. After section 195 of the Act (exercise of power in support of overseas regulator) insert—



**“Contravention by relevant EEA firm of requirement under markets in financial instruments directive: home state regulator primarily responsible for securing compliance**

**195A.**—(1) This section applies if the Authority has clear and demonstrable grounds for believing that a relevant EEA firm has contravened, or is contravening, a requirement falling within subsection (2) (in a case to which Article 62.1 or 62.3 of the markets in financial instruments directive applies).

(2) A requirement falls within this subsection if it is imposed on the firm—

- (a) by or under any provision adopted in the firm’s home state for the purpose of implementing the markets in financial instruments directive; or
- (b) by any directly applicable Community regulation made under that directive.

(3) The Authority must notify the firm’s home state regulator of the situation mentioned in subsection (1).

(4) The notice under subsection (3) must—

- (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the firm puts an end to the contravention;
- (b) state that the Authority’s power of intervention is likely to become exercisable in relation to the firm if the firm continues the contravention; and
- (c) indicate any requirements that the Authority proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.

(5) The Authority may exercise its power of intervention in respect of the firm if—

- (a) a reasonable time has expired since the giving of the notice under subsection (3); and
- (b) conditions A to C are satisfied.

(6) Condition A is that—

- (a) the firm’s home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
- (b) any measures taken by the home state regulator have proved inadequate for that purpose.

(7) Condition B is that the firm is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the markets.

(8) Condition C is that the Authority has informed the firm’s home state regulator of its intention to exercise its power of intervention in respect of the firm.

(9) Subsection (5) applies whether or not the Authority’s power of intervention is also exercisable as a result of section 194 or 195.

(10) If the Authority exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (5), it must at the earliest opportunity inform the Commission of—

- (a) the fact that the Authority has exercised that power in respect of the firm; and
- (b) any requirements it has imposed on the firm in exercise of the power.

(11) In this section—

“home state”, in relation to a relevant EEA firm, means—

- (a) in the case of a firm which is a body corporate, the EEA State in which the firm has its registered office or, if it has no registered office, its head office; and

- (b) in any other case, the EEA State in which the firm has its head office;  
“relevant EEA firm” has the same meaning as in section 194A.”.

4. In section 199 of the Act (additional procedure for EEA firms in certain cases), in subsections (2)(b) and (8)(b), after “directives” insert “(other than the markets in financial instruments directive)”.

## 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.

(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;
- (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.

(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

(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(**13**) (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(**14**) (consideration by the Competition Commission), after subsection (12) insert—

“(13) Subsection (14) applies if—

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

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

- (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
- (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(15) (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.

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

### **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—

- (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;

“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;”.

## SCHEDULE 3

Regulation 3(3)

### PART 18A OF THE ACT

**1.** After section 313 of the Act (interpretation of Part 18) insert—

#### “Part 18A

#### SUSPENSION AND REMOVAL OF FINANCIAL INSTRUMENTS FROM TRADING

#### **Authority’s power to require suspension or removal of financial instruments from trading**

**313A.**—(1) The Authority may, for the purpose of protecting—

- (a) the interests of investors, or
- (b) the orderly functioning of the financial markets,

require an institution to suspend or remove a financial instrument from trading.

(2) If the Authority exercises the power conferred by subsection (1), the institution concerned or, if any, the issuer of the financial instrument concerned may refer the matter to the Tribunal.

(3) In this section, “trading” includes trading otherwise than on a regulated market or a multilateral trading facility.

### **Suspension or removal of financial instruments from trading: procedure**

**313B.**—(1) A requirement imposed on an institution under section 313A (a “relevant requirement”) takes effect—

- (a) immediately, if the notice given under subsection (2) states that this is the case;
- (b) in any other case, on such date as may be specified in the notice.

(2) If the Authority proposes to impose a relevant requirement on an institution, or imposes such a requirement with immediate effect, it must give written notice to—

- (a) the institution, and
- (b) if any, the issuer of the financial instrument in question.

(3) The notice must—

- (a) give details of the relevant requirement;
- (b) state the Authority’s reasons for imposing the requirement and choosing the date on which it took effect or takes effect;
- (c) inform the recipient that he may make representations to the Authority within such period as may be specified by the notice (whether or not he has referred the matter to the Tribunal);
- (d) inform him of the date on which the requirement took effect or takes effect; and
- (e) inform him of his right to refer the matter to the Tribunal and give an indication of the procedure on such a reference.

(4) The Authority may extend the period within which representations may be made to it.

(5) If, having considered any representations made to it by the institution or any issuer, the Authority decides—

- (a) to impose the relevant requirement proposed, or
- (b) if it has been imposed, not to revoke it,

it must give the institution and any issuer written notice.

(6) If, having considered any representations made to it by the institution or any issuer, the Authority decides—

- (a) not to impose the relevant requirement proposed, or
- (b) to revoke a requirement which has been imposed,

it must give the institution and any issuer written notice.

(7) A notice given under subsection (5) must inform the recipient of his right to refer the matter to the Tribunal.

(8) Subsections (9) and (10) apply if—

- (a) the Authority has imposed a relevant requirement on an institution, and
- (b) the institution or any issuer of the financial instrument in question has applied for the revocation of the requirement.

(9) If the Authority decides to grant the application, it must give the institution and any issuer written notice of its decision.

(10) If the Authority proposes to refuse the application, it must give the institution and any issuer a warning notice.

(11) If, having considered any representations made in response to the warning notice, the Authority decides to refuse the application, it must give the institution and any issuer a decision notice.

(12) If the Authority gives a decision notice under subsection (11), the recipient may refer the matter to the Tribunal.

### **Notification in relation to suspension or removal of a financial instrument from trading**

**313C.**—(1) If the Authority exercises the power under section 313A(1) in relation to a financial instrument traded on a regulated market, it must as soon as reasonably practicable—

- (a) publish its decision in such manner as it considers appropriate, and
- (b) inform the competent authorities of all other EEA States of its decision.

(2) If the Authority receives notice from a recognised investment exchange that the exchange has suspended or removed a financial instrument from trading on a regulated market operated by it, the Authority must inform the competent authorities of all other EEA States of the action taken by the exchange.

(3) Subsections (4) and (5) apply if the Authority receives notice from the competent authority of another EEA State that that authority, pursuant to Article 41.2 of the markets in financial instruments directive—

- (a) has required the suspension of a financial instrument from trading, or
- (b) has required the removal of a financial instrument from trading.

(4) In the case of a notice under subsection (3)(a), the Authority—

- (a) must require each recognised investment exchange to suspend the instrument from trading on any regulated market operated by the exchange, and
- (b) must require each institution operating a multilateral trading facility to suspend the instrument from trading on that facility,

unless such a step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

(5) In the case of a notice under subsection (3)(b), the Authority—

- (a) must require each recognised investment exchange to remove the instrument from trading on any regulated market operated by the exchange, and
- (b) must require each institution operating a multilateral trading facility to remove the instrument from trading on that facility,

unless such a step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

(6) "Competent authority" has the meaning given in Article 4.1.22 of the markets in financial instruments directive.

### **Interpretation of Part 18A**

**313D.** In this Part—

"financial instrument" has the meaning given in Article 4.1.17 of the markets in financial instruments directive;

"institution" means—

- (a) a recognised investment exchange, other than an overseas investment exchange (within the meaning of Part 18);
- (b) an investment firm;
- (c) a credit institution authorised under the banking consolidation directive, when carrying on investment services and activities; or
- (d) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State,

but does not include an EEA firm qualifying for authorisation under Schedule 3;

“issuer”, in relation to a financial instrument, means the person who issued the instrument;

“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.”.

#### SCHEDULE 4

Regulation 3(4)

##### AMENDMENTS OF SCHEDULE 3 TO THE ACT

1. Schedule 3 to the Act (EEA passport rights) is amended as follows.
2. In paragraph 1(d) for “investment services directive” substitute “markets in financial instruments directive”.
3. Paragraph 4 is repealed.
4. In paragraph 5(a)—
  - (a) for “Article 1.2 of the investment services directive” substitute “Article 4.1.1 of the markets in financial instruments directive”;
  - (b) for “Article 3” substitute “Article 5”.
5. After paragraph 10A(16) insert—

*“UK investment firm*

**10B.** “UK investment firm” means a UK firm—

- (a) which is an investment firm, and
- (b) whose EEA right derives from the markets in financial instruments directive.”.

6. After paragraph 11 insert—

*“Tied agent*

**11A.** “Tied agent” has the meaning given in Article 4.1.25 of the markets in financial instruments directive.”.

7. In paragraph 12, after sub-paragraph (2), insert—

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(16) Paragraph 10A was inserted by S.I. 2003/1473.



“(3) If an EEA firm falling within paragraph 5(a) is seeking to use a tied agent established in the United Kingdom in connection with the exercise of an EEA right deriving from the markets in financial instruments directive, this Part of this Schedule applies as if the firm were seeking to establish a branch in the United Kingdom.

(4) But if—

- (a) an EEA firm already qualifies for authorisation by virtue of sub-paragraph (1); and
- (b) the EEA right which it is exercising derives from the markets in financial instruments directive,

sub-paragraph (3) does not require the firm to satisfy the establishment conditions in respect of its use of the tied agent in question. ”.

8. In paragraph 13—

(a) in sub-paragraph (1)—

- (i) at the end of paragraph (b) omit “and”;
- (ii) after paragraph (b) insert—

“(ba) in the case of a firm falling within paragraph 5(a), the Authority has given the firm notice for the purposes of this paragraph or two months have elapsed beginning with the date when the home state regulator gave the consent notice; and”;

(iii) in paragraph (c), at the beginning, insert “in the case of a firm falling within paragraph 5(b), (c), (d) or (f),”;

(b) in sub-paragraph (2), in paragraph (b), at the beginning insert “except if the firm falls within paragraph 5(a),”.

9. In paragraph 14—

(a) in sub-paragraph (1), after paragraph (b), insert—

“(ba) if the firm falls within paragraph 5(b) and is seeking to provide services in exercise of the right under Article 31.5 of the markets in financial instruments directive, the Authority has received notice (“a regulator’s notice”) from the firm’s home state regulator stating that the firm intends to exercise that right in the United Kingdom;”;

(b) after sub-paragraph (2) insert—

“(2A) Sub-paragraph (2)(b) does not apply in the case of a firm falling within paragraph 5(a).”.

10. In paragraph 19—

(a) in sub-paragraph (3) for “The” substitute “Subject to sub-paragraph (5B), the”;

(b) after sub-paragraph (5A)(17) insert—

“(5B) If the firm is a UK investment firm, a notice of intention may not include ancillary services unless such services are to be provided in connection with the carrying on of one or more investment services and activities.

(5C) In sub-paragraph (5B) “ancillary services” has the meaning given in Article 4.1.3 of the markets in financial instruments directive.”;

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(17) Paragraph 19(5A) was inserted by [S.I. 2003/1473](#).

- (c) in sub-paragraph (6)(18) for “the investment services directive or the UCITS directive” substitute “the UCITS directive or, in the case of a credit institution authorised under the banking consolidation directive, the markets in financial instruments directive”;
- (d) after sub-paragraph (7A)(19) insert—
  - “(7B) If the firm is a UK investment firm and the first condition is satisfied, the Authority must give a consent notice to the host state regulator within three months beginning with the date on which it received the firm’s notice of intention unless the Authority has reason to doubt the adequacy of the firm’s resources or its administrative structure.”.

**11.** In paragraph 20—

- (a) in sub-paragraph (2) for “The” substitute “Subject to sub-paragraph (2A), the”;
- (b) after sub-paragraph (2) insert—
  - “(2A) If the firm is a UK investment firm, a notice of intention may not include ancillary services unless such services are to be provided in connection with the carrying on of one or more investment services and activities.
  - (2B) In sub-paragraph (2A) “ancillary services” has the meaning given in Article 4.1.3 of the markets in financial instruments directive.”;
- (c) in sub-paragraph (3)(20) for “investment services directive” substitute “markets in financial instruments directive”;
- (d) in sub-paragraph (4B)(21), after “insurance directives” insert “or from the markets in financial instruments directive”;
- (e) after sub-paragraph (4B) insert—
  - “(4BA) If the firm’s EEA right derives from the markets in financial instruments directive, the Authority must comply as soon as reasonably practicable with a request for information under the second sub-paragraph of Article 31.6 of that directive from the host state regulator.”.

**12.** After paragraph 20 insert—

*“Tied agents*

**20A.**—(1) If a UK investment firm is seeking to use a tied agent established in an EEA State (other than the United Kingdom) in connection with the exercise of an EEA right deriving from the markets in financial instruments directive, this Part of this Schedule applies as if the firm were seeking to establish a branch in that State.

(2) But if—

- (a) a UK investment firm has already established a branch in an EEA State other than the United Kingdom in accordance with paragraph 19; and
- (b) the EEA right which it is exercising derives from the markets in financial instruments directive,

paragraph 19 does not apply in respect of its use of the tied agent in question.”.

(18) Paragraph 19(6) was amended by [S.I. 2003/2066](#).

(19) Paragraph 19(7A) was inserted by [S.I. 2003/1473](#).

(20) Paragraph 20(3) was amended by [S.I. 2003/2066](#).

(21) Paragraph 20(4B) was inserted by [S.I. 2001/1376](#).

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

- (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”.

### **Amendment of section 102B**

6. In section 102B(22) (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,”.

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(22) 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<sup>(23)</sup> (“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.

<sup>(23)</sup> 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<sup>(24)</sup>”;

(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<sup>(25)</sup> (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.”.

<sup>(24)</sup> OJ No L 241, 2.9.2006, p. 26.

<sup>(25)</sup> Section 424A was inserted by [S.I. 2006/2975](#).

### Amendment of section 425

**22.** In section 425(26) (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(27) (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.”.

## SCHEDULE 6

Regulation 3(6)

### CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

## PART 1

### AMENDMENTS OF PRIMARY LEGISLATION

#### Amendment of the Judicial Pensions Act (Northern Ireland) 1951

**1.** In section 11A of the Judicial Pensions Act (Northern Ireland) 1951(28) (voluntary contributions), in subsection (7B)(a), for “C of the Annex to the Investment Services Directive” substitute “B of Annex I to the Markets in Financial Instruments Directive”.

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

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

(28) [1951 c.20 \(N.I.\)](#); section 11A was inserted by [SI 1991/2631 \(N.I.24\)](#) and subsection (7B) was inserted by [S.I. 2001/3649](#).

### **Amendment of the County Courts Act (Northern Ireland) 1959**

2. In section 127A of the County Courts Act (Northern Ireland) 1959(29) (voluntary contributions), in subsection (7B)(a), for “C of the Annex to the Investment Services Directive” substitute “B of Annex I to the Markets in Financial Instruments Directive”.

### **Amendment of the Resident Magistrates’ Pensions Act (Northern Ireland) 1960**

3. In section 9A of the Resident Magistrates’ Pensions Act (Northern Ireland) 1960(30) (voluntary contributions), in subsection (7B)(a), for “C of the Annex to the Investment Services Directive” substitute “B of Annex I to the Markets in Financial Instruments Directive”.

### **Amendment of the Superannuation Act 1972**

4. In section 1 of the Superannuation Act 1972(31) (superannuation schemes as respects civil servants, etc.), in subsection (9B)(a), for “C of the Annex to the Investment Services Directive” substitute “B of Annex I to the markets in financial instruments directive”.

### **Amendment of the Consumer Credit Act 1974**

5. In section 25 of the Consumer Credit Act 1974(32) (licensee to be a fit person), in subsection (1C), for “the Annex to the investment services directive (93/22/EEC)” substitute “Annex I to the markets in financial instruments directive (2004/39/EC)”.

### **Amendment of the Judicial Pensions Act 1981**

6. In section 33A of the Judicial Pensions Act 1981(33)(voluntary contributions), in subsection (9B)(a), for “C of the Annex to the Investment Services Directive” substitute “B of Annex I to the markets in financial instruments directive”.

### **Amendment of the Companies Act 1985**

7.—(1) The Companies Act 1985(34) is amended as follows.

(2) In section 23(35)(membership of holding company), in subsection (3B)(c), for “Article 16 of Council Directive 93/22/EEC on investment services in the securities field” substitute “Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

(3) In section 162(36) (power of company to purchase own shares), in subsection (4)(d), for “for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field” substitute “which appears on the list drawn up by that State pursuant to Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,”.

(29) 1959 c.25 (N.I.); section 127A was inserted by S.I. 1991/2631 (N.I.24) and subsection (7B) was inserted by S.I. 2001/3649.

(30) 1960 c. 2 (N.I.); section 9A was inserted by S.I. 1991/2631 (N.I.24) and subsection (7B) was inserted by S.I. 2001/3649.

(31) 1972 c.11; section 1(9B) was inserted by S.I. 2001/3649.

(32) 1974 c.39; section 25(1C) was inserted by S.I. 2001/3649 and amended by S.I. 2006/3221.

(33) 1981 c.20; section 33A was inserted by section 82 of the Courts and Legal Services Act 1990 (c.41), and subsection (9B) was inserted by S.I. 2001/3649.

(34) 1985 c.6.

(35) Section 23 was substituted by section 129 of the Companies Act 1989 (c.40), and subsection (3B) was inserted by S.I. 1997/2306. Section 23 is prospectively repealed by the Companies Act 2006 (c. 46).

(36) Subsection (4) of section 162 was inserted by S.I. 2003/1116 and section 162 is prospectively repealed by the Companies Act 2006, Schedule 16.

(4) In section 162E(37) (Treasury shares: mandatory cancellation), in subsection (3), for “is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field” substitute “appears on the list drawn up by an EEA State pursuant to Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

(5) In section 226(38) (duty to prepare individual accounts), in subsection (5), for “Council Directive 93/22/EEC on investment services in the securities field” substitute “Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

(6) In section 227(39) (duty to prepare group accounts), in subsection (6), for “Council Directive 93/22/EEC on investment services in the securities field” substitute “Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

(7) In section 228(40) (exemption for parent companies included in accounts of larger group), in subsection (3), for “Council Directive 93/22/EEC on investment services in the securities field” substitute “Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

(8) In section 228A(41) (exemption for parent companies included in non-EEA group accounts), in subsection (3), for “Council Directive 93/22/EEC on investment services in the securities field” substitute “Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

#### **Amendment of the Finance Act 1986**

8.—(1) The Finance Act 1986(42) is amended as follows.

(2) In section 80B(43) (intermediaries: supplementary), in subsection (2), in the definition of “EEA exchange”, for “Article 16 of European Communities Council Directive No.93/22/EEC on investment services in the securities field” substitute “Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

(3) In section 88B(44) (intermediaries: supplementary), in subsection (2), in the definition of “EEA exchange”, for “Article 16 of European Communities Council Directive No. 93/22/EEC on investment services in the securities field” substitute “Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

#### **Amendment of the Building Societies Act 1986**

9. In section 81B of the Building Societies Act 1986(45) (interpretation of Part 8), in subsection (1), for the definition of “regulated market” substitute—

““regulated market” has the meaning given in Article 4.1.14 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.”.

(37) Section 162E was inserted by S.I. 2003/1116 and is prospectively repealed by the Companies Act 2006, Schedule 16.

(38) Section 226 was inserted by S.I. 2004/2947, and is prospectively repealed by the Companies Act 2006, Schedule 16.

(39) Section 227 was inserted by S.I. 2004/2947, and is prospectively repealed by the Companies Act 2006, Schedule 16.

(40) Section 228 is prospectively repealed by the Companies Act 2006, Schedule 16.

(41) Section 228A was inserted by S.I. 2004/2947, and is prospectively repealed by the Companies Act 2006, Schedule 16.

(42) 1986 c.41.

(43) Section 80B was inserted by section 97 of the Finance Act 1997 (c.16), and is prospectively repealed by section 113 of, and Part VII of Schedule 18 to, that Act.

(44) Section 88B was inserted by section 102 of the Finance Act 1997, and is prospectively repealed by section 132 of, and Part VII of Schedule 19 to, the Finance Act 1990 (c. 29).

(45) 1986 c.53; section 81B was inserted by S.I. 2004/3380.

### **Amendment of the Friendly Societies Act 1992**

**10.**—(1) The Friendly Societies Act 1992(46) is amended as follows.

(2) In section 69A(47) (duty to prepare individual accounts), in subsection (4), for “Council Directive 93/22/EEC on investment services in the securities field” substitute “Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

(3) In section 69E(48) (duty to prepare group accounts), in subsection (5), for “Council Directive 93/22/EEC on investment services in the securities field” substitute “Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

### **Amendment of the Judicial Pensions and Retirement Act 1993**

**11.** In section 10 of the Judicial Pensions and Retirement Act 1993(49) (additional benefits from voluntary contributions), in subsection (8B), for “C of the Annex to the Investment Services Directive” substitute “B of Annex I to the markets in financial instruments directive”.

### **Amendment of the Data Protection Act 1998**

**12.** In Schedule 7 to the Data Protection Act 1998(50) (miscellaneous exemptions), in paragraph 6(3), in the definition of “instrument”, for “section B of the Annex to the Council Directive on investment services in the securities field (93/22/EEC)” substitute “section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

### **Amendment of the Competition Act 1998**

**13.** In Schedule 3 to the Competition Act 1998(51) (general exclusions), in paragraph 3(5), in paragraph (a) of the definition of “EEA regulated market”, for “article 16 of Council Directive 93/22/EEC of 10th May 1993 on investment services in the securities field” substitute “Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

## **PART 2**

### **AMENDMENTS OF SECONDARY LEGISLATION**

#### **Amendment of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999**

**14.** In regulation 2 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(52)—

- (a) in paragraph (b) of the definition of “institution” for “point 2 of Article 1 of Council Directive 93/22/EEC excluding the bodies set out in the list in Article 2(2)(a) to (k)” substitute “Article 4.1.1 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, other than a person to whom Article 2 applies”;

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(46) 1992 c.40.

(47) Section 69A was inserted by S.I. 2005/2211.

(48) Section 69E was inserted by S.I. 2005/2211.

(49) 1993 c.8; section 10(8B) was inserted by S.I. 2001/3649.

(50) 1998 c. 29; the definition of “instrument” in paragraph 6(3) of Schedule 7 was amended by S.I. 2002/1555.

(51) 1998 c.41.

(52) S.I. 1999/2979.

- (b) in the definition of “securities” for “B of the Annex to Council Directive [93/22/EEC](#)” substitute “C of Annex I to Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

#### **Amendment of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001**

15. In article 3 of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001([53](#)), in the definition of “regulated market”, for “Article 1(13) of the investment services directive” substitute “Article 4.1.14 of the markets in financial instruments directive”.

#### **Amendment of the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001**

16. In regulation 7 of the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001([54](#)), in paragraphs (3)(b)(iii) and (4)(b)(iii), for “investment services directive” substitute “markets in financial instruments directive”.

#### **Amendment of the Insurers (Reorganisation and Winding Up) Regulations 2004**

17. In regulation 44 of the Insurers (Reorganisation and Winding Up) Regulations 2004([55](#)), in paragraph (3), for “Council Directive ([93/22/EEC](#)) of 10th May 1993 in investment services in the securities field” substitute “Article 4.1.14 of Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

#### **Amendment of the Credit Institutions (Reorganisation and Winding up) Regulations 2004**

18.—(1) The Credit Institutions (Reorganisation and Winding up) Regulations 2004([56](#)) are amended as follows.

(2) In regulation 29(2) for “Council Directive of 10th May 1993 on investment services in the securities field (No [93/22/EEC](#))” substitute “Article 4.1.14 of Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

(3) In regulation 31(3) for “Section B of the Annex to the Council Directive of 10th May 1993 on investment services in the securities field (No [93/22/EEC](#))” substitute “Section C of Annex I to Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

#### **Amendment of the Financial Conglomerates and Other Financial Groups Regulations 2004**

19.—(1) The Financial Conglomerates and Other Financial Groups Regulations 2004([57](#)) are amended as follows.

(2) In regulation 1(2), in paragraph (d) of the definition of “regulated entity”, for “Article 1(2) of the investment services directive” substitute “Article 4.1.1 of the markets in financial instruments directive”.

(3) In regulation 7(1), in paragraph (b) of the definition of “investment firm”, for “investment services directive” substitute “markets in financial instruments directive”.

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(53) [S.I. 2001/996](#); the definition of “regulated market” was inserted by [S.I. 2005/381](#).

(54) [S.I. 2001/2509](#); regulation 7 was inserted by [S.I. 2004/1862](#).

(55) [S.I. 2004/353](#).

(56) [S.I. 2004/1045](#).

(57) [S.I. 2004/1862](#); the definition of “regulated entity” in regulation 1(2) was amended by [S.I. 2006/3221](#).

**Amendment of the Investment Recommendation (Media) Regulations 2005**

20. In regulation 2 of the Investment Recommendation (Media) Regulations 2005(58), in the definition of “financial instrument”, for “1(13) of Council Directive 93/22/EEC on investment services in the securities field” substitute “4.1.14 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

## SCHEDULE 7

Regulation 7

## EXERCISE OF PASSPORT RIGHTS UNDER THE INVESTMENT SERVICES DIRECTIVE

**Table 1**

<i>Investment service in Section A of the Annex to the investment services directive</i>	<i>Corresponding investment service or activity in Section A of Annex I to the markets in financial instruments directive</i>
1(a) (reception and transmission, on behalf of investors, of orders in relation to one or more of the instruments listed in Section B)	1 (reception and transmission of orders in relation to one or more financial instruments)
1(b) (execution of such orders other than for own account)	2 (execution of orders on behalf of clients)
2 (dealing in any of the instruments listed in Section B for own account)	3 (dealing on own account)
3 (managing portfolios of investments in accordance with mandates given by investors on a discriminatory, client-by-client basis where such portfolios include one or more of the instruments listed in Section B)	4 (portfolio management)
4 (underwriting in respect of issues of any of the instruments listed in Section B and/or the placing of such issues)	6 (underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis) and 7 (placing of financial instruments without a firm commitment basis)

**Table 2**

<i>Non-core service in Section C of the Annex to the investment services directive</i>	<i>Corresponding ancillary service in Section B of Annex I to the markets in financial instruments directive</i>
1 (safekeeping and administration in relation to one or more of the instruments listed in Section B)	1 (safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management)
2 (safe custody services)	1
3 (granting credits or loans to an investor to allow him to carry out a transaction in one or	2 (granting credits or loans to an investor to allow him to carry out a transaction in one

(58) S.I. 2005/382.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:  
The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 No. 126

<i>Non-core service in Section C of the Annex to the investment services directive</i>	<i>Corresponding ancillary service in Section B of Annex I to the markets in financial instruments directive</i>
more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction)	or more financial instruments, where the firm granting the credit or loan is involved in the transaction)
4 (advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings)	3 (advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings)
5 (services related to underwriting)	6 (services related to underwriting)
7 (foreign-exchange services where these are connected with the provision of investment services)	4 (foreign exchange services where these are connected to the provision of investment services)

**Table 3**

<i>Instrument in Section B of the Annex to the investment services directive</i>	<i>Corresponding financial instrument in Section C of Annex I to the markets in financial instruments directive</i>
1(a) (transferable securities)	1 (transferable securities)
1(b) (units in collective investment undertakings)	3 (units in collective investment undertakings)
2 (money-market instruments)	2 (money-market instruments)
3 (financial-futures contracts, including equivalent cash-settled instruments)	4 (options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash)
4 (forward interest-rate agreements)	4
5 (interest-rate, currency and equity swaps)	4
6 (options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates)	4



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement in part Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1) (“the Directive”). The Directive is also implemented by other statutory instruments including the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order (S.I. 2006/....), the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2006 (S.I. 2006/....), the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006 (S.I. 2006/....) and the Financial Services and Markets Act 2000 (EEA Passport Rights) (Amendment) Regulations 2006 (S.I. 2006/....), and by the Financial Services Authority (“FSA”) using powers under the Financial Services and Markets Act [2000 \(c. 8\)](#) (“the Act”).

Part 2 of the Regulations requires the FSA to be satisfied that the authorisation requirements of the Directive (as to which see Chapter I of Title II and Commission Regulation 1287/2006 of 10 August 2006, OJ No L 241, 2.9.2006, p.1) are met before giving permission under Part 4 of the Act to an investment firm (as defined in section 424A of the Act, inserted by [S.I. 2006/2975](#)) or varying the permission of such a firm (transposing Article 7(1) of the Directive).

Schedule 1 to the Regulations amends Part 13 of the Act. Sections 194A and 195A are inserted into Part 13 to set out new grounds on which the power of intervention under section 196 is exercisable and to set out the additional procedure that the FSA must follow in these cases (transposing Article 62 of the Directive). The new section 194A will apply where the FSA is primarily responsible for ensuring compliance with the Directive. The new section 195A will apply where the home state regulator is primarily responsible for securing compliance with the Directive. Section 199 is amended as a consequence of the amendments to Part 13.

Schedule 2 to the Regulations amends Part 18 of the Act. Section 287 is amended to supplement the particulars which an applicant for recognition as an investment exchange is required to provide to the FSA (transposing parts of Articles 36, 37 and 38 of the Directive). New section 290(1A) requires the FSA to be satisfied that exchanges are complying with directly applicable Community legislation made under the Directive before making a recognition order. New section 290(1B) and (1C) sets time limits within which the FSA must determine applications for recognition as an investment exchange (but not as an overseas investment exchange), and to secure compliance with section 290(1B) sections 303, 306 and 307 are amended to provide for the reports and approvals required under Part 18 to be made within specific time periods (transposing Article 52.1 of the Directive). New section 292A requires exchanges to publish information in compliance with requirements in Articles 38 and 41 of the Directive. New section 293A enables the FSA to obtain information about exchanges’ compliance with directly applicable Community legislation made under the markets in financial instruments directive. Section 296 is amended to provide for the enforcement of directly applicable Community legislation made under the Directive, to give the FSA power to require an exchange to grant it access to the exchange’s premises for the purposes of inspecting the premises and documents on the premises, and to give the FSA power to require an exchange temporarily to cease carrying on a regulated activity (transposing Article 52.2(c) and (g) of the Directive). Further grounds on which the FSA can remove an exchange’s recognition are inserted into section 297 (transposing Article 36 of the Directive).

New Chapter 1A of Part 18 requires persons acquiring or increasing control (as defined in section 301B) to notify the FSA in advance, gives the FSA power in certain cases to refuse to approve

an acquisition or increase in control or to object to existing control, makes provision in relation to improperly acquired shares and creates offences in relation to breaches of the control requirements (transposing Article 38.3 of the Directive).

New Chapter 3A of Part 18 makes provision about the “passport” rights of market operators (defined in the Directive) to provide services in another EEA State. New section 312A transposes the rights for EEA market operators under Articles 31.5 and 42.6 of the Directive to make arrangements in the United Kingdom for access to their facilities. New section 312B transposes Article 62.3 of the Directive by giving the FSA power to remove EEA market operators’ passport rights in certain circumstances. New section 312C makes provision for the exercise by recognised investment exchanges of the passport rights under Articles 31.5 and 42.6.

Schedule 3 to the Regulations inserts Part 18A of the Act which gives the FSA power to require the suspension and removal of financial instruments from trading (transposing Articles 14.7, 41 and 50.2(j) and (k) of the Directive). It also requires the FSA to give notice and publish information about decisions to require the suspension or removal of instruments from trading.

Schedule 4 to the Regulations amends Schedule 3 to the Act to make minor alterations to the procedures for the exercise of passport rights under the Directive to establish a branch or provide services in another EEA State (transposing Articles 31 and 32 of the Directive). The amendments relate to the exercise of passport rights by investment firms (defined in the Directive) which are EEA firms or UK firms (in both cases within the meaning of Schedule 3).

Schedule 5 to the Regulations makes amendments to other parts of the Act. Section 39 is amended to make the exemption from financial services regulation for appointed representatives conditional, for those appointed representatives who are tied agents to whom Article 23 of the Directive applies, on the person being registered on the record maintained by the FSA or by the competent authority of another EEA State. New section 39A requires certain other tied agents, to whom section 39 does not apply, to comply with requirements mentioned in Article 23 of the Directive, including the requirement to be registered. There are consequential amendments in section 347. Section 45 is amended to specify additional grounds on which the FSA may cancel the Part IV permission of an investment firm (transposing Article 8 of the Directive). New sections 412A and 412B give effect to the FSA’s duty under Article 12(2) of Commission Regulation 1287/2006 of 10 August 2006 (OJ No L 241, 2.9.2006, p.1) to approve trade-matching and reporting systems which make reports of transactions in financial instruments, and the FSA’s duty to monitor such systems. Various provisions are also amended to provide for the enforcement of directly applicable Community legislation made under the Directive as if it were a provision made by or under the Act. Schedule 5 also makes a number of minor and consequential amendments to the Act.

Schedule 6 to the Regulations makes consequential amendments to primary and secondary legislation.

Part 3 of the Regulations and Schedule 7 make transitional provision in relation to the exercise of passport rights by investment exchanges and investment firms and the registration of tied agents.

A transposition note has been prepared which sets out how the main elements of the Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument and the other instruments transposing the Directive on the costs of business has been prepared. Both may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury’s website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)). Copies of both documents have been placed in the libraries of both Houses of Parliament.