



Financial Services Act 1986 (Repealed)

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

CHAPTER XI

AUDITORS

Modifications etc. (not altering text)

C1 Chapters III–XI (ss. 7–111): certain functions transferred by [S.I. 1990/354](#), [art. 5](#)

107 Appointment of auditors.

[^{F1}(1) The Secretary of State may make rules requiring—

- (a) a person authorised to carry on investment business by virtue of section 25 or 31 above, or
- (b) a member of a recognised self-regulating organisation carrying on investment business in the carrying on of which he is subject to the rules of the organisation,

and who, apart from the rules, is not required by or under any enactment to appoint an auditor, to appoint as an auditor a person satisfying such conditions as to qualifications and otherwise as may be specified in or imposed under the rules.]

(2) Rules under this section may make provision—

- (a) specifying the manner in which and the time within which an auditor is to be appointed;
- (b) requiring the Secretary of State to be notified of any such appointment and enabling the Secretary of State to make an appointment if no appointment is made or notified as required by the rules;

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- (c) with respect to the remuneration of an auditor appointed under the rules;
 - (d) with respect to the term of office, removal and resignation of any such auditor;
 - (e) requiring any such auditor who is removed, resigns or is not reappointed to notify the Secretary of State whether there are any circumstances connected with his ceasing to hold office which he considers should be brought to the Secretary of State's attention.
- (3) An auditor appointed under the rules shall in accordance with the rules examine and report on the accounts of the authorised person in question and shall for that purpose have such duties and powers as are specified in the rules.
- [^{F2}(4) In its application to members of recognised self-regulating organisations, this section has effect subject to section 107A below.]

Textual Amendments

- F1** S. 107(1) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 10(2)**
- F2** S. 107(4) added by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 10(3)**

Modifications etc. (not altering text)

- C2** S. 107: certain functions transferred by S.I. 1990/354, **art. 4(5)**
 S. 107 applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg.98**.
 S. 107 amended (1.7.1994) by S.I. 1994/1696, **reg. 60(2)**
- C3** S. 107(3) amended (1.1.1993) by S.I. 1992/3218, **reg. 55, Sch. 9 para.30**.
 s. 107(3) modified (1.1.1996) by S.I. 1995/3275, **reg. 32, Sch. 7 para. 28**

[^{F3}107A Application of audit rules to members of self-regulating organisations.

- (1) The Secretary of State may in rules under section 107 designate provisions which apply, to such extent as may be specified, to a member of a recognised self-regulating organisation in respect of investment business in the carrying on of which he is subject to the rules of the organisation.
- (2) It may be provided that the designated rules have effect, generally or to such extent as may be specified, subject to the rules of the organisation.
- (3) A member of a recognised self-regulating organisation who contravenes a rule applying to him by virtue of that section shall be treated as having contravened the rules of the organisation.
- (4) Except as mentioned above, rules made under section 107 do not apply to members of recognised self-regulating organisations in respect of investment business in the carrying on of which they are subject to the rules of the organisation.
- (5) A recognised self-regulating organisation may on the application of a member of the organisation—
 - (a) modify a rule designated under this section so as to adapt it to his circumstances or to any particular kind of business carried on by him, or
 - (b) dispense him from compliance with any such rule, generally or in relation to any particular kind of business carried on by him.
- (6) The powers conferred by subsection (5) shall not be exercised unless it appears to the organisation—

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- (a) that compliance with the rule in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors, and
 - (b) that the exercise of those powers will not result in any undue risk to investors.
- (7) The powers conferred by subsection (5) may be exercised unconditionally or subject to conditions; and subsection (3) applies in the case of a contravention of a condition as in the case of contravention of a designated rule.
- (8) The reference in paragraph 4(1) of Schedule 2 (requirements for recognition of self-regulating organisations) to monitoring and enforcement of compliance with rules includes monitoring and enforcement of compliance with conditions imposed by the organisation under subsection (7).]

Textual Amendments

F3 S. 107A inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), **Sch. 23 Pt. I para. 11**

108 Power to require second audit.

- (1) If in any case it appears to the Secretary of State that there is good reason to do so he may direct any person who is authorised to carry on investment business by virtue of section 25 or 31 above to submit for further examination by a person approved by the Secretary of State—
- (a) any accounts on which that person’s auditor has reported or any information given under section 52 or 104 above which has been verified by that auditor; or
 - (b) such matters contained in any such accounts or information as are specified in the direction;
- and the person making the further examination shall report his conclusions to the Secretary of State.
- (2) Any further examination and report required by a direction under this section shall be at the expense of the authorised person concerned and shall be carried out and made within such time as is specified in the direction or within such further time as the Secretary of State may allow.
- (3) The person carrying out an examination under this section shall have all the powers that were available to the auditor; and it shall be the duty of the auditor to afford him all such assistance as he may require.
- (4) Where a report made under this section relates to accounts which under any enactment are required to be sent to or made available for inspection by any person or to be delivered for registration, the report, or any part of it (or a note that such a report has been made) may be similarly sent, made available or delivered by the Secretary of State.

Modifications etc. (not altering text)

C4 S. 108 applied (with modifications) (12.2.1992) by [S.I. 1992/225, reg.98](#).

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109 Communication by auditor with supervisory authorities.

- (1) No duty to which an auditor of an authorised person may be subject shall be regarded as contravened by reason of his communicating in good faith to the Secretary of State, whether or not in response to a request from him, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that person and which is relevant to any functions of the Secretary of State under this Act.
- (2) If it appears to the Secretary of State that any auditor or class of auditor to whom subsection (1) above applies is not subject to satisfactory rules made or guidance issued by a professional body specifying circumstances in which matters are to be communicated to the Secretary of State as mentioned in that subsection the Secretary of State may himself make rules applying to that auditor or that class of auditor and specifying such circumstances; and it shall be the duty of an auditor to whom the rules made by the Secretary of State apply to communicate a matter to the Secretary of State in the circumstances specified by the rules.
- (3) The matters to be communicated to the Secretary of State in accordance with any such rules or guidance may include matters relating to persons other than the authorised person.
- (4) No such rules as are mentioned in subsection (2) above shall be made by the Secretary of State unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
- (5) This section applies to—
 - (a) the communication by an auditor to a recognised self-regulating organisation or recognised professional body of matters relevant to its function of determining whether a person is a fit and proper person to carry on investment business; and
 - (b) the communication to such an organisation or body or any other authority or person of matters relevant to its or his function of determining whether a person is complying with the rules applicable to his conduct of investment business,

as it applies to the communication to the Secretary of State of matters relevant to his functions under this Act.

Modifications etc. (not altering text)

- C5** S. 109(1) amended by S.I. 1987/942, **art. 10**
 S. 109(1) applied (with modifications) (12.2.1992) by S.I. 1992/225, **reg.98**.
 S. 109(1) amended (1.1.1993) by S.I. 1992/3218, **reg. 55, Sch. 9 para.31**.
 s. 109(1) extended (1.1.1996) by S.I. 1995/3275, **reg. 32, Sch. 7 para. 29**
 s. 109(1)(3) applied (with modifications) (18.7.1996) by S.I. 1996/1669, **reg. 10(1)**

110 Overseas business.

- (1) A person incorporated or having his head office outside the United Kingdom who is authorised as mentioned in subsection (1) of section 107 above may, whether or not he is required to appoint an auditor apart from the rules made under that subsection, appoint an auditor in accordance with those rules in respect of the investment business carried on by him in the United Kingdom and in that event that person shall be treated for the purposes of this Chapter as the auditor of that person.

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- (2) In the case of a person to be appointed as auditor of a person incorporated or having his head office outside the United Kingdom the conditions as to qualifications imposed by or under the rules made under that section may be regarded as satisfied by qualifications obtained outside the United Kingdom which appear to the Secretary of State to be equivalent.
- (3) A person incorporated or having his head office outside the United Kingdom shall not be regarded for the purposes of section 25 above as a fit and proper person to carry on investment business unless—
 - (a) he has appointed an auditor in accordance with rules made under section 107 above in respect of the investment business carried on by him in the United Kingdom; or
 - (b) he has an auditor having qualifications, powers and duties appearing to the Secretary of State to be equivalent to those applying to an auditor appointed in accordance with those rules,and, in either case, the auditor is able and willing to communicate with the Secretary of State and other bodies and persons as mentioned in section 109 above.

Modifications etc. (not altering text)

- C6 S. 110 applied (with modifications) (12.2.1992) by S.I. 1992/225, reg.98.
C7 S. 110(3) amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para.32.
s. 110(3) modified (1.1.1996) by S.I. 1995/3275, reg. 32, SCh. 7 para. 30

111 Offences and enforcement.

- (1) Any authorised person and any officer, controller or manager of an authorised person, who knowingly or recklessly furnishes an auditor appointed under the rules made under section 107 or a person carrying out an examination under section 108 above with information which the auditor or that person requires or is entitled to require and which is false or misleading in a material particular shall be guilty of an offence and liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (2) The duty of an auditor under section 108(3) above shall be enforceable by mandamus or, in Scotland, by an order for specific performance under section 91 of the ^{M1}Court of Session Act 1868.
- (3) If it appears to the Secretary of State that an auditor has failed to comply with the duty mentioned in section 109(2) above, the Secretary of State may disqualify him from being the auditor of an authorised person or any class of authorised person; but the Secretary of State may remove any disqualification imposed under this subsection if satisfied that the person in question will in future comply with that duty.
- (4) An authorised person shall not appoint as auditor a person disqualified under subsection (3) above; and a person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body who contravenes this subsection shall be treated as having contravened the rules of the organisation or body.

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M1 1868 c. 100.

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