



# Financial Services Act 1986 (Repealed)

## 1986 CHAPTER 60

### PART I

#### REGULATION OF INVESTMENT BUSINESS

#### CHAPTER XIV

#### PREVENTION OF RESTRICTIVE PRACTICES

##### *Examination of rules and practices*

#### **119 Recognised self-regulating organisations, investment exchanges and clearing houses.**

- (1) The Secretary of State shall not make a recognition order in respect of a self-regulating organisation, investment exchange or clearing house unless he is satisfied that—
- [<sup>F1</sup>(a) in the case of a self-regulating organisation, the rules and any guidance of which copies are furnished with the application for the order, together with any statements of principle, rules, regulations or codes of practice to which members of the organisation would be subject by virtue of Chapter V of this Part,
  - (b) in the case of an investment exchange, the rules and any guidance of which copies are furnished with the application for the order, together with any arrangements of which particulars are furnished with the application,
  - (c) in the case of a clearing house, the rules and any guidance of which copies are furnished with the application for the order.]

do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.

*Status: Point in time view as at 19/06/1995.*

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- (2) The powers conferred by subsection (3) below shall be exercisable by the Secretary of State if at any time it appears to him that—
- [<sup>F2</sup>(a) in the case of a self-regulating organisation—
- (i) any rules made or guidance issued by the organisation,
  - (ii) any practices of the organisation, or
  - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the organisation,
- together with any statements of principle, rules, regulations or codes of practice to which members of the organisation are subject by virtue of Chapter V of this Part,
- (b) in the case of a recognised investment exchange—
- (i) any rules made or guidance issued by the exchange,
  - (ii) any practices of the exchange, or
  - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the exchange,
- (c) in the case of a recognised clearing house—
- (i) any rules made or guidance issued by the clearing house,
  - (ii) any practices of the clearing house, or
  - (iii) any practices of persons who are members of, or otherwise subject to the rules made by, the clearing house,
- or any clearing arrangements made by the clearing house,]
- have, or are intended or likely to have, to a significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.
- (3) The powers exercisable under this subsection are—
- (a) to revoke the recognition order of the organisation, exchange or clearing house;
  - (b) to direct it to take specified steps for the purpose of securing that [<sup>F3</sup>its rules, or the] guidance, arrangements or practices in question do not have the effect mentioned in subsection (2) above;
  - (c) to make alterations in [<sup>F4</sup>its rules] for that purpose;
- and subsections (2) to (5), (7) and (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.
- (4) Subsection (3)(c) above does not apply to an overseas investment exchange or overseas clearing house.
- (5) The practices referred to in [<sup>F5</sup>paragraph (a)(ii), (b)(ii) and (c)(ii)] of subsection (2) above are practices of the organisation, exchange or clearing house in its capacity as such, being, in the case of a clearing house, practices in respect of its clearing arrangements; . . . <sup>F6</sup>
- [<sup>F7</sup>(6) The practices referred to in paragraph (a)(iii), (b)(iii) and (c)(iii) of subsection (2) above are—
- (a) in relation to a recognised self-regulating organisation, practices in relation to business in respect of which the persons in question are subject to—
    - (i) the rules of the organisation, or

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- (ii) statements of principle, rules, regulations or codes of practice to which its members are subject by virtue of Chapter V of this Part, and which are required or contemplated by the rules of the organisation or by those statements, rules, regulations or codes, or by guidance issued by the organisation,
- (b) in relation to a recognised investment exchange or clearing house, practices in relation to business in respect of which the persons in question are subject to the rules of the exchange or clearing house, and which are required or contemplated by its rules or guidance,
- or which are otherwise attributable to the conduct of the organisation, exchange or clearing house as such.]

#### Textual Amendments

- F1** S. 119(1)(a)—(c) substituted for (1)(a)(b) by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 14(2)**
- F2** S. 119(2)(a)—(c) substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 Pt. I para. 14(3)**
- F3** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(4)(a)**
- F4** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(4)(b)**
- F5** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(5)(a)**
- F6** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 206(1), 212, Sch. 23 para. 14(5)(b), **Sch. 24**
- F7** S. 119(6) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 14(6)**

#### Modifications etc. (not altering text)

- C1** S. 119 amended (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 154, 155, 169(4)**
- C2** S. 119(1)(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.34.**  
s. 119(1)(2) extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 32**  
s. 119(1)(2) amended (1.7.1994) by S.I. 1994/1696, **reg. 62(1)**

## 120 Modification of s. 119 where recognition function is transferred.

- (1) This section applies instead of section 119 above where the function of making or revoking a recognition order in respect of a self-regulating organisation, investment exchange or clearing house is exercisable by a designated agency.
- (2) The designated agency—
- (a) shall send to the Secretary of State a copy of the rules and of any guidance or arrangements of which copies or particulars are furnished with any application made to the agency for a recognition order together with any other information supplied with or in connection with the application; and
- (b) shall not make the recognition order without the leave of the Secretary of State;
- and he shall not give leave in any case in which he would (apart from the delegation order) have been precluded by section 119(1) above from making the recognition order.
- (3) A designated agency shall send the Secretary of State a copy of any notice received by it under section 14(6) or 41(5) or (6) above.

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- (4) If at any time it appears to the Secretary of State in the case of a recognised self-regulating organisation, recognised investment exchange or recognised clearing house that there are circumstances such that (apart from the delegation order) he would have been able to exercise any of the powers conferred by subsection (3) of section 119 above he may, notwithstanding the delegation order, himself exercise the power conferred by paragraph (a) of that subsection or direct the designated agency to exercise the power conferred by paragraph (b) or (c) of that subsection in such manner as he may specify.

## 121 Designated agencies.

- (1) The Secretary of State shall not make a delegation order transferring any function to a designated agency unless he is satisfied that any [<sup>F8</sup>statements of principle, rules, regulations, codes of practice] and guidance of which copies are furnished to him under section 114(9) or (10) above do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition or, if they have or are intended or likely to have that effect to any significant extent, that the effect is not greater than is necessary for the protection of investors.
- (2) The powers conferred by subsection (3) below shall be exercisable by the Secretary of State if at any time it appears to him that—
- (a) any [<sup>F9</sup>statements of principle, rules, regulations or codes of practice issued or made] by a designated agency in the exercise of functions transferred to it by a delegation order or any guidance issued by a designated agency;
  - (b) any practices of a designated agency; or
  - (c) any practices of persons who are subject to [<sup>F9</sup>statements of principle, rules, regulations or codes of practice issued or made] by it in the exercise of those functions,
- have, or are intended or are likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is necessary for the protection of investors.
- (3) The powers exercisable under this subsection are—
- (a) to make an order in respect of the agency under section 115(2) above as if the circumstances were such as are there mentioned; or
  - (b) to direct the agency to take specified steps for the purpose of securing that the [<sup>F10</sup>statements of principle, rules, regulations, codes of practice], guidance or practices in question do not have the effect mentioned in subsection (2) above.
- (4) The practices referred to in paragraph (b) of subsection (2) above are practices of the designated agency in its capacity as such; and the practices referred to in paragraph (c) of that subsection are practices in relation to business in respect of which the persons in question are subject to any such [<sup>F11</sup>statements of principle, rules, regulations, or codes of practice] as are mentioned in paragraph (a) of that subsection and which are required or contemplated by those [<sup>F11</sup>statements of principle, rules, regulations, or codes of practice] or by any such guidance as is there mentioned or are otherwise attributable to the conduct of the agency in its capacity as such.

### Textual Amendments

**F8** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 15\(2\)](#)

**F9** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 para. 15\(3\)](#)

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- F10** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 15(4)**  
**F11** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), **Sch. 23 para. 15(5)**
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**Modifications etc. (not altering text)**

- C3** S. 121 amended (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), **ss. 154, 155, 169(4)**  
s. 121 extended (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 33**  
s. 121 amended (1.7.1994) by S.I. 1994/1696, **reg. 62(2)**  
**C4** S. 121(1)(2) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.35.**

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