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## SCHEDULES

### SCHEDULE 2

#### EXCLUSIONS: OTHER COMPETITION SCRUTINY

##### PART I

##### FINANCIAL SERVICES

##### *The Financial Services Act 1986 (c. 60)*

- 1 (1) The Financial Services Act 1986 is amended as follows.
- (2) For section 125 (effect of the Restrictive Trade Practices Act 1976), substitute—

##### **“125 The Competition Act 1998: Chapter I prohibition**

- (1) The Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a recognised self-regulating organisation,
  - (b) a recognised investment exchange, or
  - (c) a recognised clearing house,
- to the extent to which the agreement relates to the regulating provisions of the body concerned.
- (2) Subject to subsection (3) below, the Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a self-regulating organisation,
  - (b) an investment exchange, or
  - (c) a clearing house,
- to the extent to which the agreement relates to the regulating provisions of the body concerned.
- (3) The exclusion provided by subsection (2) above applies only if—
- (a) the body has applied for a recognition order in accordance with the provisions of this Act; and
  - (b) the application has not been determined.
- (4) The Chapter I prohibition does not apply to a decision made by—
- (a) a recognised self-regulating organisation,
  - (b) a recognised investment exchange, or
  - (c) a recognised clearing house,
- to the extent to which the decision relates to any of that body’s regulating provisions or specified practices.

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- (5) The Chapter I prohibition does not apply to the specified practices of—
- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
  - (b) a person who is subject to—
    - (i) the rules of one of those bodies, or
    - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order.
- (6) The Chapter I prohibition does not apply to any agreement the parties to which consist of or include—
- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
  - (b) a person who is subject to—
    - (i) the rules of one of those bodies, or
    - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order,
 to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by any of the body's regulating provisions or specified practices or by the statements of principle, rules, regulations or codes of practice of the agency.
- (7) The Chapter I prohibition does not apply to—
- (a) any clearing arrangements; or
  - (b) any agreement between a recognised investment exchange and a recognised clearing house, to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by any clearing arrangements.
- (8) If the recognition order in respect of a body of the kind mentioned in subsection (1)(a), (b) or (c) above is revoked, subsections (1) and (4) to (7) above are to have effect as if that body had continued to be recognised until the end of the period of six months beginning with the day on which the revocation took effect.
- (9) In this section—
- “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;
- “regulating provisions” means—
- (a) in relation to a self-regulating organisation, any rules made, or guidance issued, by the organisation;
  - (b) in relation to an investment exchange, any rules made, or guidance issued, by the exchange;
  - (c) in relation to a clearing house, any rules made, or guidance issued, by the clearing house;
- “specified practices” means—
- (a) in the case of a recognised self-regulating organisation, the practices mentioned in section 119(2)(a)(ii) and (iii) above (read with section 119(5) and (6)(a));

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- (b) in the case of a recognised investment exchange, the practices mentioned in section 119(2)(b)(ii) and (iii) above (read with section 119(5) and (6)(b));
  - (c) in the case of a recognised clearing house, the practices mentioned in section 119(2)(c)(ii) and (iii) above (read with section 119(5) and (6)(b));
  - (d) in the case of a person who is subject to the 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, the practices mentioned in section 121(2)(c) above (read with section 121(4));
- and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.”

- (3) Omit section 126 (certain practices not to constitute anti-competitive practices for the purposes of the Competition Act 1980).
- (4) For section 127 (modification of statutory provisions in relation to recognised professional bodies), substitute—

**“127 Application of Competition Act 1998 in relation to recognised professional bodies: Chapter I prohibition**

- (1) This section applies to—
  - (a) any agreement for the constitution of a recognised professional body to the extent to which it relates to the rules or guidance of that body relating to the carrying on of investment business by persons certified by it (“investment business rules”); and
  - (b) any other agreement, the parties to which consist of or include—
    - (i) a recognised professional body,
    - (ii) a person certified by such a body, or
    - (iii) a member of such a body,and which contains a provision required or contemplated by that body’s investment business rules.
- (2) If it appears to the Treasury, in relation to some or all of the provisions of an agreement to which this section applies—
  - (a) that the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
  - (b) that the effect of restricting, distorting or preventing competition which the provisions in question do have, or are intended or are likely to have, is not greater than is necessary for the protection of investors,the Treasury may make a declaration to that effect.
- (3) If the Treasury make a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.

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- (4) If the Treasury are satisfied that there has been a material change of circumstances, they may—
- (a) revoke a declaration made under this section, if they consider that the grounds on which it was made no longer exist;
  - (b) vary such a declaration, if they consider that there are grounds for making a different declaration; or
  - (c) make a declaration even though they have notified the Director of their intention not to do so.
- (5) If the Treasury make, vary or revoke a declaration under this section they must notify the Director of their decision.
- (6) If the Director proposes to exercise any Chapter III powers in respect of any provisions of an agreement to which this section applies, he must—
- (a) notify the Treasury of his intention to do so; and
  - (b) give the Treasury particulars of the agreement and such other information—
    - (i) as he considers will assist the Treasury to decide whether to exercise their powers under this section; or
    - (ii) as the Treasury may request.
- (7) The Director may not exercise his Chapter III powers in respect of any provisions of an agreement to which this section applies, unless the Treasury—
- (a) have notified him that they have not made a declaration in respect of those provisions under this section and that they do not intend to make such a declaration; or
  - (b) have revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) A declaration under this section ceases to have effect if the agreement to which it relates ceases to be one to which this section applies.
- (9) In this section—
- “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
- “Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition, and
- expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.
- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”