



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVIII

RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES^{F1F1}

CHAPTER I

EXEMPTION

Applications for recognition

287 Application by an investment exchange.

- (1) Any body corporate or unincorporated association may apply to the Authority for an order declaring it to be a recognised investment exchange for the purposes of this Act.
- (2) The application must be made in such manner as the Authority may direct and must be accompanied by—
 - (a) a copy of the applicant's rules;
 - (b) a copy of any guidance issued by the applicant;
 - (c) the required particulars; and
 - (d) such other information as the Authority may reasonably require for the purpose of determining the application.
- (3) The required particulars are—
 - (a) particulars of any arrangements which the applicant has made, or proposes to make, for the provision of clearing services in respect of transactions effected on the exchange;
 - (b) if the applicant proposes to provide clearing services in respect of transactions other than those effected on the exchange, particulars of the criteria which the applicant will apply when determining to whom it will provide those services^{F1};

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- (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.]

[^{F2}(4) Subsection (3)(c) to (e) does not apply to an application by an overseas applicant.]

Textual Amendments

- F1** S. 287(3)(c)-(e) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(2), [Sch. 2 para. 3\(a\)](#)
- F2** S. 287(4) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(2), [Sch. 2 para. 3\(b\)](#)

Commencement Information

- I1** S. 287 wholly in force at 3.9.2001; s. 287 not in force at Royal Assent see s. 431(2); s. 287(2) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); s. 287 in so far as not already in force at 3.9.2001 by [S.I. 2001/2632](#), [art. 2](#), [Sch. Pt. 2](#)

288 Application by a clearing house.

- (1) Any body corporate or unincorporated association may apply to the Authority for an order declaring it to be a recognised clearing house for the purposes of this Act.
- (2) The application must be made in such manner as the Authority may direct and must be accompanied by—
 - (a) a copy of the applicant's rules;
 - (b) a copy of any guidance issued by the applicant;
 - (c) the required particulars; and
 - (d) such other information as the Authority may reasonably require for the purpose of determining the application.
- (3) The required particulars are—
 - (a) if the applicant makes, or proposes to make, clearing arrangements with a recognised investment exchange, particulars of those arrangements;
 - (b) if the applicant proposes to provide clearing services for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

Commencement Information

- I2** S. 288 wholly in force at 3.9.2001; s. 288 not in force at Royal Assent see s. 431(2); s. 288(2) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); s. 288 in force in so far as not already in force at 3.9.2001 by [S.I. 2001/2632](#), [art. 2](#) [Sch. Pt. 2](#)

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289 Applications: supplementary.

- (1) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.
- (2) Information which the Authority requires in connection with an application must be provided in such form, or verified in such manner, as the Authority may direct.
- (3) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

290 Recognition orders.

- (1) If it appears to the Authority that the applicant satisfies the recognition requirements applicable in its case, the Authority may make a recognition order declaring the applicant to be—
 - (a) a recognised investment exchange, if the application is made under section 287;
 - (b) a recognised clearing house, if it is made under section 288.

[^{F3}(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.]

- (2) The Treasury's approval of the making of a recognition order is required under section 307.
- (3) In considering an application, the Authority may have regard to any information which it considers is relevant to the application.
- (4) A recognition order must specify a date on which it is to take effect.
- (5) Section 298 has effect in relation to a decision to refuse to make a recognition order—
 - (a) as it has effect in relation to a decision to revoke such an order; and
 - (b) as if references to a recognised body were references to the applicant.
- (6) Subsection (5) does not apply in a case in which the Treasury have failed to give their approval under section 307.

Textual Amendments

- F3** S. 290(1A)-(1C) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), regs. 1(2), 3(2), [Sch. 2 para. 4](#)

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Commencement Information

- I3** S. 290 wholly in force at 1.12.2001; s. 290 not in force at Royal Assent see s. 431(2); s. 290 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632, art. 2\(2\)](#), [Sch. Pt. 2](#); s. 290 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538, art. 2\(1\)](#)

^{F4} ^{F4}290A **Refusal of recognition on ground of excessive regulatory provision**

- (1) The Authority must not make a recognition order if it appears to the Authority that an existing or proposed regulatory provision of the applicant in connection with—
 - (a) the applicant's business as an investment exchange, or
 - (b) the provision by the applicant of clearing services,
 imposes or will impose an excessive requirement on the persons affected (directly or indirectly) by it.
- (2) The reference in section 290(1) (making of recognition order) to satisfying the applicable recognition requirements shall be read accordingly.
- (3) Expressions used in subsection (1) above that are defined for the purposes of section 300A (power of Authority to disallow excessive regulatory provision) have the same meaning as in that section.
- (4) The provisions of section 300A(3) and (4) (determination whether regulatory provision excessive) apply for the purposes of this section as for the purposes of section 300A.
- (5) Section 298 has effect in relation to a decision under this section to refuse a recognition order—
 - (a) as it has effect in relation to a decision to revoke such an order, and
 - (b) as if references to a recognised body were references to the applicant.
- (6) This section does not apply to an application for recognition as an overseas investment exchange or overseas clearing house.]]

Textual Amendments

- F4** S. 290A inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\), ss. 4, 5\(2\)](#)

291 Liability in relation to recognised body's regulatory functions.

- (1) A recognised body and its officers and staff are not to be liable in damages for anything done or omitted in the discharge of the recognised body's regulatory functions unless it is shown that the act or omission was in bad faith.
- (2) But subsection (1) does not prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the ^{M1}Human Rights Act 1998.
- (3) "Regulatory functions" means the functions of the recognised body so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of this Act.

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Modifications etc. (not altering text)

- C1** S. 291 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), **art. 20**
C2 S. 291 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), **art. 39**

Marginal Citations

- M1** 1998 c. 42.

292 Overseas investment exchanges and overseas clearing houses.

- (1) An application under section 287 or 288 by an overseas applicant must contain the address of a place in the United Kingdom for the service on the applicant of notices or other documents required or authorised to be served on it under this Act.
- (2) If it appears to the Authority that an overseas applicant satisfies the requirements of subsection (3) it may make a recognition order declaring the applicant to be—
 - (a) a recognised investment exchange;
 - (b) a recognised clearing house.
- (3) The requirements are that—
 - (a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with recognition requirements [^{F5}, other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph];
 - (b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the investment exchange or clearing house;
 - (c) the applicant is able and willing to co-operate with the Authority by the sharing of information and in other ways;
 - (d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.
- (4) In considering whether it is satisfied as to the requirements mentioned in subsection (3) (a) and (b), the Authority is to have regard to—
 - (a) the relevant law and practice of the country or territory in which the applicant's head office is situated;
 - (b) the rules and practices of the applicant.
- (5) In relation to an overseas applicant and a body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2)—
 - (a) the reference in section 313(2) to recognition requirements is to be read as a reference to matters corresponding to the matters in respect of which provision is made in the recognition requirements;
 - (b) sections 296(1) and 297(2) have effect as if the requirements mentioned in section 296(1)(a) and section 297(2)(a) were those of subsection (3)(a), (b), and (c) of this section;
 - (c) section 297(2) has effect as if the grounds on which a recognition order may be revoked under that provision included the ground that in the opinion of the

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Authority arrangements of the kind mentioned in subsection (3)(d) no longer exist.

Textual Amendments

- F5** Words in s. 292(3)(a) inserted (6.12.2006) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) \(Modification of Powers\) Regulations 2006 \(S.I. 2006/2975\)](#), [reg. 9](#)

Commencement Information

- I4** S. 292 wholly in force at 1.12.2001; s. 292 not in force at Royal Assent see s. 431(2); s. 292(1) in force and s. 292(2)-(5) in force specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 292 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

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