
STATUTORY INSTRUMENTS

1995 No. 3275

The Investment Services Regulations 1995

PART VII

NOTIFICATION OF CONTROLLERS

Notification of new or increased control

41.—(1) No person shall become a minority, 10 per cent., 20 per cent., 33 per cent. or 50 per cent. controller of a UK authorised investment firm which is not a UK authorised institution unless—

- (a) he has served on each relevant regulator written notice that he intends to become such a controller of the firm; and
- (b) each relevant regulator has done one of the following, that is to say—
 - (i) has notified him in writing before the end of the period of three months beginning with the date of service of that notice on the regulator that there is no objection to his becoming such a controller of the firm; or
 - (ii) has allowed that period to elapse without serving on him under regulation 42 below a written notice of objection to his becoming such a controller.

(2) Paragraph (1) above applies also in relation to a person becoming a partner in a UK authorised investment firm which is not a UK authorised institution but is a partnership formed under the law of any part of the United Kingdom.

(3) A relevant regulator may, after receiving a notice under paragraph (1)(a) above from any person, by notice in writing require him to provide such additional information or documents as the regulator concerned may reasonably require for deciding whether to serve a notice of objection.

(4) Where additional information or documents are required from any person by a notice under paragraph (3) above the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in paragraph (1)(b) above.

(5) A notice given by a person under paragraph (1)(a) above shall not be regarded as compliance with that paragraph except as respects his becoming a controller of the firm in question within the period of one year beginning—

- (a) in a case where a person has become a controller without his having been served with a notice of objection, with the date on which he became such a controller; and
- (b) in a case in which he has been served with one or more notices of objection and the notice or, as the case may be, each of them, has been quashed, with the date upon which the notice is quashed or, if more than one notice was served, with the date of the quashing of the last such notice to be quashed.

Objection to new or increased control

42.—(1) A relevant regulator may serve a notice of objection on a person who has given a notice under regulation 41 above unless the regulator concerned is satisfied, having regard to the need to

ensure the sound and prudent management of the firm, that the person in question is a fit and proper person to become a controller of the description in question.

(2) Before deciding whether to serve a notice of objection under this regulation in any case where—

- (a) the person concerned is, or is a 50 per cent. controller of, an investment firm which is for the time being authorised to act as such by the relevant supervisory authority in another EEA State; and
- (b) the notice under regulation 41 above stated the intention to become a 50 per cent. controller,

each relevant regulator shall consult the relevant supervisory authority in the investment firm's home State.

(3) Before serving a notice of objection under this regulation, a relevant regulator shall serve the person concerned with a preliminary written notice stating that the regulator is considering the service on that person of a notice of objection; and that preliminary notice—

- (a) shall specify the reasons why the regulator is not satisfied as mentioned in paragraph (1) above; and
- (b) shall give particulars of the rights conferred by paragraph (4) below.

(4) A person served with a notice under paragraph (3) above may, within the period of one month beginning with the day on which the notice is served, make written representations to the regulator who served the notice; and where such representations are made, that regulator shall take them into account in deciding whether to serve a notice of objection.

(5) Where a person required to give notice under regulation 41 above in relation to his becoming a controller of any description becomes a controller of that description without having given notice as required by that regulation, any regulator to whom the person concerned failed to give notice may serve him with a notice of objection under this regulation at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such notice, require him by notice in writing to provide such information or documents as the regulator concerned may reasonably require.

(6) The period mentioned in regulation 41(1)(b) above (with any extension under paragraph (4) of that regulation) and the period mentioned in paragraph (5) above shall not expire, if it would otherwise do so, until fourteen days after the end of the period within which representations can be made under paragraph (4) above.

(7) Where the reasons stated in a notice of objection under this regulation relate specifically to matters which—

- (a) refer to a person identified in the notice other than the person seeking to become a controller of the relevant description; and
- (b) are in the opinion of the regulator serving the notice prejudicial to that person in relation to any office or employment,

the regulator concerned shall, unless it considers it impracticable to do so, serve a copy of the notice on that person.

(8) A notice of objection under this regulation shall—

- (a) specify the reasons why the regulator concerned is not satisfied as mentioned in paragraph (1) above; and
- (b) given particulars of the right to require the matter to be referred to the Financial Services Tribunal under the provisions of section 97 of the Financial Services Act or, as the case may be, of any right that the person concerned may have to appeal against the notice under any rules or arrangements made by the regulator concerned.

(9) Where a case is not required by the person on whom a notice of objection has been served to be referred to the Financial Services Tribunal or, as the case may be, an appeal is not made by him against the notice, the regulator concerned may give public notice that he has objected to that person becoming a controller of the relevant description and the reasons for the objection.

(10) Section 97 of the Financial Services Act (references to the Tribunal) shall have effect as if any reference to a notice served under section 59(4) of that Act included a reference to a notice of objection served by the Board under this regulation.

Contraventions of regulation 41

43.—(1) Subject to paragraph (2) below, any person who contravenes regulation 41 above by—

- (a) failing to give the notice required by sub-paragraph (a) of paragraph (1) of that regulation; or
- (b) becoming a controller of any description to which that regulation applies before the end of the period mentioned in sub-paragraph (b) of that paragraph in a case in which no relevant regulator has served him with the preliminary notice under regulation 42(3) above,

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under paragraph (1) above if he shows that he did not know the acts or circumstances by virtue of which he became a controller of the relevant description; but where a person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives each relevant regulator written notice of the fact that he has become such a controller within fourteen days of becoming aware of that fact.

(3) Any person who—

- (a) before the end of the period mentioned in paragraph (1)(b) of regulation 41 above becomes a controller of any description to which that paragraph applies after being served with a preliminary notice under regulation 42(3) above;
- (b) contravenes regulation 41 above by becoming a controller of any description after having been served with a notice of objection to his becoming a controller of that description; or
- (c) having become a controller of any description in contravention of that regulation (whether before or after being served with such a notice of objection) continues to be such a controller after such a notice has been served on him,

shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (1) or (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person guilty of an offence under paragraph (3) above shall be 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 a fine not exceeding level 5 on the standard scale and, in respect of an offence under sub-paragraph (c) of that paragraph, to a fine not exceeding £100 for each day on which the offence has continued.

Restrictions on voting rights

44.—(1) The powers conferred by this regulation shall be exercisable where a person—

- (a) has contravened regulation 41 above by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or

(b) having become a controller of any description in contravention of that regulation continues to be one after such a notice has been served on him.

(2) The Board or, in a case in which the person concerned is a controller of a UK authorised investment firm which is an exempted person by virtue of being admitted to the list maintained by the Bank for the purposes of section 43 of the Financial Services Act and is not an authorised person, the Bank, may, by notice in writing served on the person concerned direct that any specified shares to which this regulation applies shall, until further notice, be subject to the restriction that no voting rights shall be exercisable in respect of the shares.

(3) This regulation applies—

(a) to all the shares in the firm of which the person in question is a controller of the relevant description which are held by him or any associate of his and which were not so held immediately before he became such a controller of the firm; and

(b) where the person in question became a controller of the relevant description of a firm as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and which were not so held before he became such a controller of that firm.

(4) A copy of any notice served on the person concerned under paragraph (2) above shall be served on the firm or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

Prior notification of ceasing to be a relevant controller

45.—(1) A person shall not cease to be a minority, 10 per cent., 20 per cent., 33 per cent. or 50 per cent. controller of a UK authorised investment firm which is not a UK authorised institution unless he has first given to each relevant regulator written notice of his intention to cease to be such a controller of the firm.

(2) If, after ceasing to be such a controller of such a firm, a person will, either alone or with any associate or associates—

(a) still hold 10 per cent. or more of the shares in the firm or another person of whom it is a subsidiary undertaking;

(b) still be entitled to exercise or control the exercise of 10 per cent. or more of the voting power at any general meeting of the firm or of another person of whom it is such an undertaking; or

(c) still be able to exercise a significant influence over the management of the firm or another person of whom it is such an undertaking by virtue of—

(i) a holding of shares in; or

(ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,

the firm or, as the case may be, the other person concerned,

his notice under paragraph (1) above shall state the percentage of the shares or voting power which he will (alone or with any associate or associates) hold or be entitled to exercise or control.

(3) Subject to paragraph (4) below, any person who contravenes paragraph (1) or (2) above shall be guilty of an offence.

(4) Subject to paragraph (5) below, a person shall not be guilty of an offence under paragraph (3) above if he shows that he did not know of the acts or circumstances by virtue of which he ceased to be a controller of the relevant description in sufficient time to enable him to comply with paragraph (1) above.

(5) Notwithstanding anything in paragraph (4) above, a person who ceases to be a controller of a relevant description without having complied with paragraph (1) above shall be guilty of an offence if, within fourteen days of becoming aware of the fact that he has ceased to be such a controller—

- (a) he fails to give each relevant regulator written notice of that fact; or
- (b) he gives each relevant regulator such a notice but any such notice fails to comply with paragraph (2) above.

(6) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Construction of Part VII

46.—(1) In this Part of these Regulations—

- (a) a “minority controller” means a controller not falling within sub-paragraph (a) or (b) of paragraph (2) below;
- (b) a “10 per cent. controller” means a controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;
- (c) a “20 per cent. controller” means a controller in whose case the percentage referred to in the relevant paragraph is 20 or more but less than 33;
- (d) a “33 per cent. controller” means a controller in whose case the percentage referred to in the relevant paragraph is 33 or more but less than 50; and
- (e) a “50 per cent. controller” means a controller in whose case the percentage referred to in the relevant paragraph is 50 or more,

and for these purposes “controller” has the meaning given in paragraph (2) below and “the relevant paragraph”, in relation to a controller, means whichever one of sub-paragraph (a) or (b) of paragraph (2) below gives the greater percentage of his case.

(2) A “controller”, in relation to an investment firm, means a person who, either alone or with any associate or associates—

- (a) holds 10 per cent. or more of the shares in the firm or another person of whom the firm is a subsidiary undertaking;
- (b) is entitled to exercise, or control the exercise of, 10 per cent. or more of the voting power at any general meeting of the firm or another person of whom the firm is such an undertaking; or
- (c) is able to exercise a significant influence over the management of the firm or another person of whom the firm is such an undertaking by virtue of—
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,the firm or, as the case may be, the other person concerned.

(3) In this Part of these Regulations “associate”, in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, an undertaking, means—

- (a) the wife or husband or son or daughter of that person;
- (b) the trustees of any settlement under which that person has a life interest in possession or, in Scotland, a life interest;
- (c) any company of which that person is a director;
- (d) any person who is an employee or partner of that person;
- (e) if that person is a company—

- (i) any director of that company;
 - (ii) any subsidiary undertaking of that company;
 - (iii) any director or employee of any such subsidiary undertaking; and
- (f) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that undertaking or body corporate or under which they undertake to act together in exercising their voting power in relation to it, that other person.
- (4) For the purposes of paragraph (3) above—
- “son” includes stepson and “daughter” includes stepdaughter; and
 - “settlement” includes any disposition or arrangement under which property is held on trust.
- (5) References in this Part of these Regulations to a “relevant regulator”, in relation to an investment firm, are references to—
- (a) any recognised self-regulating organisation to whose rules the firm is subject in providing core investment services;
 - (b) the Board, in a case in which the firm in question is subject, in providing core services, to rules made by the Board; and
 - (c) the Bank, in a case in which the firm in question is not an authorised person and is an exempted person by virtue of being admitted to the list maintained for the purposes of section 43 of the Financial Services Act.
- (6) References in this Part of these Regulations to “voting rights”, in relation to an undertaking, shall be construed in accordance with paragraph 2 of Schedule 10A to the Companies Act 1985⁽¹⁾ or paragraph 2 of Schedule 10A to the Companies (Northern Ireland) Order 1986⁽²⁾.
- (7) Nothing in this Part of these Regulations shall require a person to give notice of his intention to become or to cease to be a controller of any description pursuant to an agreement entered into before the commencement date to acquire or dispose of a holding of shares or an entitlement to exercise or control the exercise of voting power.

Prosecution of offences under Part VII

- 47.** Proceedings in respect of an offence under any provision of this Part of these Regulations shall not be instituted—
- (a) in England and Wales, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions; or
 - (b) in Northern Ireland, except by the Board or by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

⁽¹⁾ 1985 c. 6; Schedule 10A was inserted by the Companies Act 1989 (c. 40), section 21(2).

⁽²⁾ S.I. 1986/1032 (N.I.6); Schedule 10A was inserted by the Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I.5)), Article 23(2).