

SCHEDULE 11

Regulation 58.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

RECOGNITION OF INVESTMENT FIRMS

European investment firms

1.—(1) This paragraph applies to an investment firm (other than a European authorised institution) incorporated in or formed under the law of another EEA State which before the commencement date—

- (a) has commenced providing any listed service in the United Kingdom by the provision of services; or
- (b) has established in the United Kingdom for the purpose of providing any such service a branch which immediately before that date is in existence.

(2) An investment firm to which this paragraph applies and which appears on the list communicated by the supervisory authorities of its home State in accordance with article 30.3 of the Investment Services Directive shall be treated for all purposes of these Regulations as if the requirements of paragraph 1 of Schedule 3 to these Regulations had been complied with in relation to its provision of the service or, as the case may be, its establishment of the branch.

(3) An investment firm to which this paragraph applies and which does not appear on the list communicated by the supervisory authorities of its home State in accordance with the provisions of article 30.3 of the Investment Services Directive shall if it is an authorised person or an exempted person, cease, with effect from whichever first occurs of 1st January 1997 or the firm becoming authorised in its home State in accordance with the provisions of the Investment Services Directive, to be such a person as respects listed services, and any standard licence granted to the firm under the Consumer Credit Act shall cease to cover any consumer credit business falling within the Annex to the Investment Services Directive.

(4) An investment firm to which this paragraph applies and which does not appear on the list communicated to the Board by the supervisory authorities of its home State in accordance with the provisions of article 30.3 of the Investment Services Directive shall (upon its becoming authorised in its home State in accordance with the provisions of the Investment Services Directive before 1st January 1997) be treated for the purposes of these Regulations as if the requirements of paragraph 1 of Schedule 3 to these Regulations had been complied with in relation to its provision of the service or, as the case may be, its establishment of the branch.

UK authorised investment firms

2.—(1) This paragraph applies to an investment firm incorporated in or formed under the law of any part of the United Kingdom which immediately before the commencement date is an authorised person under the Financial Services Act or is an exempted person by reason of its inclusion in the list maintained by the Bank for the purposes of section 43 of that Act.

- (2) If an investment firm to which this paragraph applies—
 - (a) has, before the commencement date, commenced providing any listed service in another EEA State by the provision of services; or

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- (b) has established in another EEA State for the purpose of providing any such service a branch which immediately before that date is in existence,

it shall be treated for all purposes of these Regulations as if the requirements of paragraph 1 of Schedule 6 to these Regulations had been complied with in relation to its provision of the service or, as the case may be, its establishment of the branch.

PART II

AMENDMENTS OF FINANCIAL SERVICES ACT

Preliminary

3.—(1) Any reference in this Part of this Schedule to a statement of principle or to rules or regulations is a reference to a statement of principle issued, or to rules or regulations made, before the commencement date.

(2) Expressions used in this Part of this Schedule which are also used in Schedule 7 to these Regulations have the same meanings as in that Schedule.

Statements of principle

4.—(1) A statement of principle issued under section 47A of the Financial Services Act⁽¹⁾ (statements of principle with respect to conduct and financial standing) shall, unless the contrary intention appears, apply to a European investment firm carrying on home-regulated investment business in the United Kingdom to the same extent as it would apply if the investment firm were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Investment Services Directive or the Capital Adequacy Directive so far as relating to any particular European investment firm, the Board may, on the application or with the consent of the firm, by order direct that all or any of the provisions of such a statement—

- (a) shall not apply to the firm; or
- (b) shall apply to it with such modifications as may be specified in the order.

Conduct of business rules

5.—(1) Rules made under section 48 of the Financial Services Act⁽²⁾ (conduct of business rules) shall, unless the contrary intention appears, apply in relation to the conduct of home-regulated investment business carried on by a European investment firm in the United Kingdom to the same extent as they would apply if the investment firm were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Investment Services Directive so far as relating to any particular European investment firm, the Board may, on the application or with the consent of the firm, by order direct that all or any of the provisions of such rules—

- (a) shall not apply in relation to the conduct of home-regulated investment business carried on by the firm; or

(1) Section 47A was inserted by section 192 of the Companies Act 1989 (c. 40).

(2) Section 48 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989 (c. 40).

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(b) shall apply in relation to the conduct of such business with such modifications as may be specified in the order.

(3) A member of a recognised self-regulating organisation who contravenes a rule applying to him by virtue of this paragraph shall be treated as having contravened the rules of the organisation.

Financial resources rules

6. If the Board is satisfied that it is necessary to do so for the purpose of implementing the Capital Adequacy Directive so far as relating to any particular firm which is a European investment firm and an authorised person, the Board may, on the application or with the consent of the firm, by order direct that all or any of the provisions of rules under section 49 of the Financial Services Act(3) (financial resources rules)—

(a) shall not apply to the firm; or

(b) shall apply to it with such modifications as may be specified in the order.

Cancellation rules

7.—(1) Rules made under section 51 of the Financial Services Act (cancellation rules) shall, unless the contrary intention appears, apply in relation to a person who has entered or offered to enter into an investment agreement to which sub-paragraph (2) below applies as they apply in relation to a person mentioned in that section.

(2) This sub-paragraph applies to an investment agreement which is made by a European investment firm in the course of the carrying on by it of home-regulated investment business in the United Kingdom.

Notification regulations

8.—(1) Regulations made under section 52 of the Financial Services Act(4) (notification regulations) shall, unless the contrary intention appears, apply in relation to a European investment firm carrying on home-regulated investment business in the United Kingdom to the same extent as they would apply if the investment firm were an authorised person as respects that business.

(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Investment Services Directive or the Capital Adequacy Directive so far as relating to any particular European investment firm, the Board may, on the application or with the consent of the firm, by order direct that all or any of the provisions of such regulations—

(a) shall not apply to the firm; or

(b) shall apply to it with such modifications as may be specified in the order.

Compensation fund

9.—(1) Rules under section 54 of the Financial Services Act (compensation fund) shall, unless the contrary intention appears, apply in cases where a person who is or has been a European investment firm is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by it in connection with home-regulated investment business carried on by it in the United Kingdom to the same extent as they would apply if the investment firm were an authorised person as respects that business.

(3) Section 49 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

(4) Section 52 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

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(2) If the Board is satisfied that it is necessary to do so for the purpose of implementing the Investment Services Directive so far as relating to any particular person who is or has been a European investment firm, the Board may, on the application or with the consent of that person, by order direct that all or any of the provisions of such rules—

- (a) shall not apply in relation to cases where that person is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by it in connection with home-regulated investment business carried on by it; or
- (b) shall apply in relation to such cases with such modifications as may be specified in the order.

Unsolicited calls

10.—(1) Regulations under section 56 of the Financial Services Act(5) (unsolicited calls) shall, unless the contrary intention appears, apply in relation to a European investment firm carrying on home-regulated investment business in the United Kingdom to the same extent as they would apply if the investment firm were an authorised person.

(2) A member of a recognised self-regulating organisation who contravenes a regulation applying to him by virtue of this paragraph shall be treated as having contravened the rules of the organisation.

Supplemental

11.—(1) An order under this Part of this Schedule may be subject to conditions.

(2) Such an order may be revoked at any time by the Board; and the Board may at any time vary any such order on the application or with the consent of the European investment firm to which it applies.

(5) Section 56 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.