

SCHEDULE 7

Regulation 32.

OTHER AMENDMENTS OF FINANCIAL SERVICES ACT

Preliminary

1. In this Schedule—

“the Act” means the Financial Services Act⁽¹⁾;

“investment agreement” has the same meaning as in the Act.

Restriction on carrying on business

2. Section 5 of the Act (agreements made by or through unauthorised persons) shall have effect as if the persons mentioned in subsection (1)(b)(i) included a European investment firm acting in the course of home-regulated investment business carried on by it in the United Kingdom.

Authorised persons

3. Section 10 of the Act (grant and refusal of recognition of self-regulating organisations) shall have effect as if the excepted cases mentioned in subsection (3) included the case where the member is a European investment firm and the business is home-regulated investment business.

4. Section 13 of the Act⁽²⁾ (alteration of rules of recognised self-regulating organisation for protection of investors) shall have effect as if the excepted cases mentioned in subsection (2) (both as amended and as originally enacted) included the case where the member is a European investment firm and the business is home-regulated investment business.

5. Section 28 of the Act (withdrawal and suspension of authorisation) shall have effect in relation to an authorisation granted to a European investment firm as if the reference in subsection (1)(a) to the investment business which the holder of the authorisation is carrying on or proposing to carry on did not include a reference to any home-regulated investment business.

6. Section 32 of the Act (notice of commencement of business) shall have effect in relation to a notice given under subsection (1) by a European investment firm or quasi-European investment firm as if the reference in subsection (2)(a) to the investment business which is proposed to be carried on did not include a reference to any home-regulated investment business.

Exempted persons

7. Section 44 of the Act (appointed representatives) shall have effect as if any reference to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

8. Section 45 of the Act (miscellaneous exemptions) shall have effect as if the reference in subsection (2) to a partnership which is an authorised person included a reference to a partnership which is or was a European investment firm carrying on home-regulated investment business in the United Kingdom.

(1) 1986 c. 60.

(2) Section 13 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989 (c. 40) subject to the savings provided for in the Companies Act 1989 (Commencement, Transitional Provisions and Transfer of Functions under the Financial Services Act 1986) Order 1990 (S.I. 1990/354).

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Conduct of business

- 9.**—(1) Section 47A of the Act⁽³⁾ (statements of principle) shall have effect as if—
- (a) the reference in subsection (1) to the conduct expected of persons authorised to carry on investment business included a reference to the conduct expected of European investment firms carrying on home-regulated investment business in the United Kingdom; and
 - (b) the reference in subsection (4) to the withdrawal or suspension of authorisation under section 28 of the Act included a reference to the imposition of a prohibition under regulation 9 of these Regulations.
- (2) That section shall also have effect as if it included provision that a statement of principle issued under that section shall not include, as respects any European investment firm—
- (a) provision as to the fitness of the firm to carry on any home-regulated investment business; or
 - (b) provision as to any other matter for which, under the Investment Services Directive, responsibility is reserved to the relevant supervisory authority in the firm’s home State.
- 10.**—(1) Section 48 of the Act⁽⁴⁾ (conduct of business rules) shall have effect as if—
- (a) the reference in subsection (1) to the conduct of investment business by authorised persons included a reference to the conduct of home-regulated investment business carried on in the United Kingdom by European investment firms; and
 - (b) the reference in subsection (2) to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.
- (2) That section shall have effect as if it included provision that rules under that section shall not include, as respects any European investment firm—
- (a) provision prohibiting the firm from carrying on, or holding itself out as carrying on, any home-regulated investment business; or
 - (b) provision as to any matter for which, under the Investment Services Directive, responsibility is reserved to the relevant supervisory authority in the firm’s home State.
- 11.**—(1) Section 49 of the Act⁽⁵⁾ (financial resources rules) shall have effect as if it included provision that rules under that section shall not include, as respects any European investment firm which is a member of a recognised self-regulating organisation, provision requiring the firm to have and maintain financial resources in respect of any home-regulated investment business carried on by it.
- (2) Subsection (2) of that section shall also have effect in relation to an authorised person who is a European investment firm as if the reference in paragraph (b) to any business (whether or not investment business) carried on by the person concerned did not include a reference to any home-regulated investment business.
- 12.**—(1) Section 51 of the Act (cancellation rules) shall have effect as if the reference in subsection (1) to a person who has entered or offered to enter into an investment agreement with an authorised person included a reference to a person who has entered or offered to enter into an investment agreement to which sub-paragraph (2) below applies.

⁽³⁾ Section 47A was inserted by section 192 of the Companies Act 1989 (c. 40).

⁽⁴⁾ Section 48 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989.

⁽⁵⁾ Section 49 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

(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.

13.—(1) Section 52 of the Act(**6**) (notification regulations) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European investment firms, or a European investment firm, carrying on home-regulated investment business in the United Kingdom.

(2) That section shall also have effect as if it included provision that regulations under that section shall not require European investment firms to furnish information which is not reasonably required for purposes connected with the exercise of functions under the Act or these Regulations.

14. Section 53 of the Act (indemnity rules) shall have effect as if the reference in subsection (1) to civil liability incurred by an authorised person in connection with his investment business included a reference to civil liability incurred by a European investment firm in connection with home-regulated investment business carried on by it in the United Kingdom.

15. Section 54 of the Act(**7**) (compensation fund) shall have effect as if—

- (a) it included provision that rules establishing a scheme under that section may include in the scheme provision for compensating investors in cases where persons who are or have been European investment firms are unable, or likely to be unable, to satisfy claims in respect of any civil liability incurred by them in connection with home-regulated investment business carried on by them in the United Kingdom; and
- (b) any reference in subsection (2) to authorised persons included a reference to European investment firms carrying on home-regulated investment business in the United Kingdom.

16. Section 55 of the Act(**8**) (clients' money) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European investment firms, or a European investment firm, carrying on home-regulated investment business in the United Kingdom.

17. Section 57 of the Act (restrictions on advertising) shall have effect as if any reference to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

18. Section 59 of the Act (employment of prohibited persons) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European investment firms, or a European investment firm, carrying on home-regulated investment business in the United Kingdom.

19. Section 60 of the Act (public statement as to a person's misconduct) shall have effect as if—

- (a) the reference in subsection (1) to a person who is or was an authorised person by virtue of section 25 of that Act included a reference to a person who is or was a European investment firm carrying on home-regulated investment business in the United Kingdom; and
- (b) the reference in subsection (3) to the authorised person included a reference to the European investment firm.

20. Section 64 of the Act (scope of powers of intervention) shall have effect in relation to an authorised person who is a European investment firm as if the reference in subsection (1) to investment business of a particular kind did not include a reference to any home-regulated investment business which the authorised person is carrying on or proposing to carry on.

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

(7) Section 54 has been amended by article 389 of, and Schedule 9 to, the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)).

(8) Section 55 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 (c. 40).

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21. Section 65 of the Act (restriction of business) shall have effect as if the reference in subsection (1) to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

Collective investment schemes

22. Section 75 of the Act⁽⁹⁾ (collective investment schemes: interpretation) shall have effect as if the reference in subsection (6) to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

23. Section 76 of the Act (restrictions on promotion) shall have effect as if and reference to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

24. Section 93 of the Act (applications to the court) shall have effect as if the reference in subsection (1) to an authorised person included a reference to a European investment firm.

Information

25. Section 102 of the Act (register of authorised persons etc) shall have effect as if it included provision that—

- (a) the register kept under that section shall contain an entry in respect of each firm which appears to the Board to be a European investment firm carrying on home-regulated investment business in the United Kingdom;
- (b) the entry in respect of each such firm shall consist of—
 - (i) information as to the services which the firm holds itself out as able to provide; and
 - (ii) such other information as the Board may determine;
- (c) where it appears to the Board that any person in respect of whom there is an entry in the register by virtue of paragraph (a) above has ceased to be a European investment firm carrying on home-regulated investment business in the United Kingdom, the Board shall make a note to that effect in the entry together with the reason why the person in question is no longer such a firm; and
- (d) an entry in respect of which a note is made by virtue of paragraph (c) above may be removed from the register at the end of such period as the Board thinks fit.

26. Section 104 of the Act (power to call for information) shall have effect as if—

- (a) the reference in subsection (1) to a person who is authorised to carry on investment business by virtue of any of the provisions there mentioned included a reference to a European investment firm carrying on home-related investment business in the United Kingdom; and
- (b) references to functions under the Act included references to functions under these Regulations.

27. Section 106 of the Act⁽¹⁰⁾ (exercise of investigation powers by officer etc.) shall have effect as if it included provision that—

- (a) where the Secretary of State or the Board authorises a person other than one of his or its officers to exercise any powers under section 105 of the Act (investigation powers) in relation to any home-regulated investment business of a European investment firm, the

⁽⁹⁾ Section 75 has been amended by the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1990 (S.I. 1990/349).

⁽¹⁰⁾ Section 106 has been amended by section 73 of the Companies Act 1989 (c. 40).

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Secretary of State or, as the case may be, the Board may determine that subsection (3) of section 106 shall not apply; and

- (b) where such a determination is made, the person authorised to exercise the powers shall make a report to the relevant supervisory authority in the firm's home State, in such manner as that authority may require, on the exercise of those powers and the results of exercising them.

Auditors

28. Subsection (3) of section 107 of the Act(**11**) (appointment of auditors) shall have effect in relation to an auditor appointed by an authorised person which is a European investment firm as if the reference to the accounts of the authorised person did not include a reference to any accounts relating to home-regulated investment business.

29. Section 109 of the Act (communication by auditor with supervisory authorities) shall have effect as if in subsection (1)—

- (a) the reference to an authorised person included a reference to a European investment firm; and
- (b) the reference to functions under the Act included a reference to functions under these Regulations.

30. Subsection (3) of section 110 of the Act (overseas business) shall have effect in relation to a European investment firm as if any reference to investment business did not include a reference to home-regulated investment business; and the reference in paragraph (b) of that subsection to the powers and duties of an auditor shall be construed accordingly.

Fees

31. Section 113 of the Act (periodical fees) shall have effect as if it included provision that a European investment firm carrying on home-regulated investment business in the United Kingdom shall pay such periodical fees to the Board as may be prescribed by regulations made under that section.

Prevention of restrictive practices

32. Section 119 of the Act(**12**) (recognised self-regulating organisations, investment exchanges and clearing houses) shall have effect as if any reference in subsections (1) and (2) to the protection of investors included a reference to compliance with the Investment Services Directive.

33. Section 121 of the Act(**13**) (designated agencies) shall have effect as if any reference in subsections (1) and (2) to the protection of investors included a reference to compliance with the Investment Services Directive.

Relations with other regulatory authorities

34.—(1) Section 128C of the Act(**14**) (enforcement in support of overseas regulatory authority) shall have effect as if it—

(11) Section 107 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

(12) Section 119 has been amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989.

(13) Section 121 has been amended by section 206, of, and Schedule 23 to, the Companies Act 1989.

(14) Section 128C was inserted by section 196 of the Companies Act 1989 (c. 40).

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- (a) required the powers mentioned in subsection (1) to be exercised at the request of the relevant supervisory authority in another EEA State if their exercise is necessary for the purposes of complying with the Investment Services Directive; and
- (b) included provision that, in relation to the exercise of those powers in such a case, subsections (4) and (5) shall not apply and the Board shall notify the action taken by it to that authority.

(2) That section shall also have effect as if the reference in subsection (2) to the power to withdraw or suspend authorisation under section 28 of the Act included a reference to the power to impose a prohibition under regulation 9 of these Regulations.

Official listing of securities

35. Section 142 of the Act (official listing) shall have effect as if—

- (a) transferable shares in a body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies; and
- (b) bills of exchange accepted by a banker,

were not investments to which that section applies⁽¹⁵⁾.

36. Section 154 of the Act (advertisements etc. in connection with listing applications) shall have effect as if—

- (a) it included provision that, where a European investment firm carrying on home-regulated investment business in the United Kingdom contravenes that section, it shall be treated as having contravened rules made under Chapter V of Part I of the Act, or in the case of a firm which is a member of a recognised self-regulating organisation, the rules of that organisation; and
- (b) the reference in subsection (3) to a person other than an authorised person did not include a reference to such a firm.

Insider dealing

37.—(1) Section 178 of the Act (penalty for failure to co-operate with section 177 investigations) shall have effect as if—

- (a) the reference in subsection (3) to an authorised person included a reference to a European investment firm; and
- (b) the notices which may be served on a European investment firm under that subsection included a notice—
 - (i) directing that regulation 5(1)(a) of these Regulations shall not apply in relation to the firm after the expiry of a specified period after the service of the notice; or
 - (ii) directing that during a specified period that provision shall apply in relation to the firm only as respects the performance of contracts entered into before the notice comes into force;
- (c) the reference in subsection (4) to the period mentioned in paragraphs (a) and (c) of subsection (3) included a reference to the period mentioned in paragraph (b)(i) and (ii) above;

(15) The shares and bills of exchange in question fall within paragraphs 1 and 2 respectively of Schedule 1 to the Financial Services Act 1986 by virtue of articles 3 and 4 of the Financial Services Act 1986 (Investment Services) (Extension of Scope of Act) Order 1995 (SI 1995/3271). As such, they would be investments to which section 142 of the Financial Services Act applied unless excluded from the scope of that section.

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- (d) any reference in subsection (5) to an unauthorised person did not include a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom; and
- (e) the reference in that subsection to any authorised person included a reference to such a European investment firm.

(2) That section shall also have effect as if it included provision that, if it appears to the Secretary of State—

- (a) that a person on whom he serves a notice under subsection (3) is a European investment firm carrying on home-regulated investment business in the United Kingdom; or
- (b) that a person on whom he serves a revocation notice under subsection (7) was such a firm at the time when the notice which is being revoked was served,

he shall serve a copy of the notice on the Board or, in the case of a firm which is a member of a recognised self-regulating organisation, that organisation.

Restrictions on disclosure of information

38. Section 180 of the Act⁽¹⁶⁾ (exceptions from restriction on disclosure of information) shall have effect as if—

- (a) the reference in section 180(1)(e) to functions under the Act included functions under these Regulations; and
- (b) the reference in section 180(1) to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

Miscellaneous and supplementary

39. Section 191 of the Act (occupational pension schemes) shall have effect as if any reference to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

40. Section 206 of the Act⁽¹⁷⁾ (publication of information and advice) shall have effect as if the reference in subsection (1) to authorised persons included a reference to European investment firms.

41. Section 207(5) of the Act (interpretation: definition of controller) as it has effect in relation to a UK investment firm shall have effect as if the reference in section 207(5)(a) to 15 per cent were a reference to 10 per cent.

Activities constituting investment business

42.—(1) Paragraph 17 of Schedule 1 to the Act⁽¹⁸⁾ (investments and investment business) shall have effect as if any reference to authorised persons, or an authorised person, included a reference to European investment firms, or a European investment firm, carrying on home-regulated investment business in the United Kingdom.

(2) Paragraph 18 of that Schedule shall have effect as if the reference in sub-paragraph (2) to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

⁽¹⁶⁾ Section 180 has been amended by section 108 of, and paragraph 27(3) of Schedule 6 to, the Banking Act 1987 (c. 22) and by sections 75 and 212 of, and Schedule 24 to, the Companies Act 1989 (c. 40).

⁽¹⁷⁾ Section 206 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.

⁽¹⁸⁾ Paragraph 17 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989 and by the Financial Services Act 1986 (Restriction of Scope of Act and Meaning of Collective Investment Scheme) Order 1990 (S.I. 1990/349).

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(3) Paragraph 26 of that Schedule shall have effect as if any reference to an authorised person, or authorised persons, included a reference to a European investment firm, or European investment firms, carrying on home-regulated investment business in the United Kingdom.

Requirements for recognition of self-regulating organisation

43.—(1) Paragraph 2 of Schedule 2 to the Act (requirements for recognition of self-regulating organisation) shall have effect as if it included provision that the rules and practices of the organisation must be such as to secure that no European investment firm, other than one on which an absolute prohibition has been imposed under regulation 9 of these Regulations, is refused admission to the organisation, or expelled from it, for reasons relating to the firm’s fitness to carry on any home-regulated investment business.

(2) Paragraph 3 of that Schedule(**19**) shall have effect as if it included provision that the rules of the organisation must not include, as respects any European investment firm—

- (a) provision requiring the firm to have and maintain financial resources in respect of any home-regulated investment business carried on by it; or
- (b) provision as to any other matter for which, under the Investment Services Directive, responsibility is reserved to a supervisory authority in the firm’s home State.

(3) That paragraph shall also have effect as if—

- (a) the reference in sub-paragraph (3) to Chapter VI of Part I of the Act included a reference to regulation 10 of these Regulations; and
- (b) it included provision that the rules of the organisation must be such as to secure that, where a power falling within that sub-paragraph is exercisable by virtue of a European investment firm’s contravention of a requirement of any provision made pursuant to any provision of the Investment Services Directive that confers power on host States, the exercise of the power shall be subject to such restrictions as are necessary for the purposes of complying with article 19 of the Investment Services Directive.

(4) Paragraph 7 of that Schedule shall have effect as if it included provision that, for the purposes of complying with the Investment Services Directive, the organisation must be able and willing to co-operate, by the sharing of information and otherwise, with supervisory authorities in other EEA States.

Qualifications of designated agency

44.—(1) Paragraph 4 of Schedule 7 to the Act(**20**) (qualifications of designated agency) shall have effect as if any reference to authorised persons included a reference to European investment firms carrying on home-regulated investment business in the United Kingdom.

(2) Paragraph 5 of that Schedule shall have effect as if it included provision that, for the purposes of complying with the Investment Services Directive, the agency must be able and willing to co-operate, by the sharing of information and otherwise, with supervisory authorities in other EEA States.

(19) Paragraph 3 has been amended by section 203 of the Companies Act 1989 (c. 40).

(20) Schedule 7 has been amended by sections 204 and 206 of, and Schedule 23 to, the Companies Act 1989.

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Principles applicable to designated agency's legislative provisions

45. Schedule 8 to the Act⁽²¹⁾ (principles applicable to designated agency's legislative provisions) shall have effect as if any reference to an authorised person included a reference to a European investment firm carrying on home-regulated investment business in the United Kingdom.

⁽²¹⁾ Schedule 8 has been amended by section 206 of, and Schedule 23 to, the Companies Act 1989.