
STATUTORY INSTRUMENTS

2001 No. 995

The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

Citation

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001.

Commencement

2. These Regulations come into force on the day on which sections 290(1) and 292(2) of the Act (which relate to the making of recognition orders) come into force.

Interpretation

3.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000;

“the Companies Act” means the Companies Act 1989⁽¹⁾;

“defaulter” and “default” are to be construed in accordance with section 188(2) of the Companies Act, and references to action taken under the default rules of an exchange or clearing house are to be construed in accordance with section 188(4) of that Act;

“exempt activities”, in relation to a recognised body, means the regulated activities in respect of which the body is exempt from the general prohibition as a result of section 285(2) or (3) of the Act;

“facilities”, in relation to a recognised body, means the facilities and services it provides in the course of carrying on exempt activities, and references to the use of the facilities of an exchange is to be construed in accordance with paragraph (2);

“financial crime” is to be construed in accordance with section 6(3) and (4) of the Act;

“the Financial Services Act” means the Financial Services Act 1986⁽²⁾;

“investments” means investments of a kind specified for the purposes of section 22 of the Act;

“market contract” has the meaning given in section 286(4) of the Act (with reference, in the case of a recognised investment exchange, to section 155(2) of the Companies Act or article 80(2) of the Northern Ireland Order, or in the case of a recognised clearing house, to section 155(3) of the Companies Act or article 80(3) of the Northern Ireland Order) and references to a party to a market contract are to be construed in accordance with section 187 of the Companies Act;

(1) 1989 c. 40.

(2) 1986 c. 60.

“the Northern Ireland Order” means the Companies (No. 2) (Northern Ireland) Order 1990(3); and

“regulatory functions”, in relation to a recognised body, has the meaning given in section 291(3) of the Act.

(2) In these Regulations, references to dealings on an exchange, or transactions effected on an exchange, are references to dealings or transactions which are effected by means of the exchange’s facilities or which are governed by the rules of the exchange, and references to the use of the facilities of an exchange include use which consists of any such dealings or entering into any such transactions.

(3) In these Regulations, except in regulation 6, references to the performance of the functions of a recognised body are references to the carrying on by it of exempt activities together with the performance of its regulatory functions.

Recognition requirements for investment exchanges

4. Parts I and II of the Schedule set out recognition requirements applying to bodies in respect of which a recognition order has been made under section 290(1)(a) of the Act, or which have applied for such an order under section 287 of the Act.

Recognition requirements for clearing houses

5. Parts III and IV of the Schedule set out recognition requirements applying to bodies in respect of which a recognition order has been made under section 290(1)(b) of the Act, or which have applied for such an order under section 288 of the Act.

Method of satisfying recognition requirements

6.—(1) In considering whether a recognised body or applicant satisfies recognition requirements applying to it under these Regulations, the Authority may take into account all relevant circumstances including the constitution of the person concerned and its regulatory provisions and practices within the meaning of section 302(1) of the Act.

(2) Without prejudice to the generality of paragraph (1), a recognised body or applicant may satisfy recognition requirements applying to it under these Regulations by making arrangements for functions to be performed on its behalf by any other person.

(3) Where a recognised body or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by the Act on the recognised body or applicant to satisfy recognition requirements applying to it under these Regulations, but it is in addition a recognition requirement applying to the recognised body or applicant that the person who performs (or is to perform) the functions is a fit and proper person who is able and willing to perform them.

Dealings and transactions not involving investments

7. Nothing in these Regulations is to be construed as requiring a recognised investment exchange to limit dealings on the exchange to dealings in investments, or as requiring a recognised investment exchange or recognised clearing house to limit the provision of its clearing services to clearing services in respect of transactions in investments.

Exchanges and clearing houses which do not enter into market contracts

8. Nothing in Parts II or IV of the Schedule is to be taken as requiring a recognised investment exchange or recognised clearing house which does not enter into such contracts as are mentioned in section 155(2)(b) or (3) of the Companies Act to have default rules, or to make any arrangements, relating to such contracts.

Effect of recognition under the Financial Services Act 1986

9.—(1) In this regulation, “commencement” means the beginning of the day on which subsections (2) and (3) of section 285 of the Act (exemption from the general prohibition for recognised investment exchanges and clearing houses) come into force.

(2) Subject to paragraph (3), an order under section 37(3) of the Financial Services Act which was in force immediately before commencement has effect after commencement as if it were a recognition order made under section 290(1)(a) of the Act following an application under section 287 of the Act, declaring the body or association to which it relates to be a recognised investment exchange.

(3) But if the order was made by virtue of section 40(2) of the Financial Services Act (recognition requirements for overseas investment exchanges and clearing houses), it has effect as if it were a recognition order made under section 292(2)(a) of the Act.

(4) Subject to paragraph (5), an order under section 39(3) of the Financial Services Act which was in force immediately before commencement has effect after commencement as if it were a recognition order made under section 290(1)(b) of the Act following an application under section 288 of the Act, declaring the body or association to which it relates to be a recognised clearing house.

(5) But if the order was made by virtue of section 40(2) of the Financial Services Act (recognition requirements for overseas investment exchanges and clearing houses), it has effect as if it were a recognition order made under section 292(2)(b) of the Act.

(6) Where a recognition order has effect by virtue of this regulation, the Authority may not give a notice under section 298(1)(a) of the Act, giving notice of its intention to give a direction under section 296 or to make a revocation order under section 297(2) in relation to the recognised body concerned, earlier than one month after commencement.

(7) Paragraph (6) is without prejudice to section 298(7) of the Act (which permits the Authority to give a direction under section 296 of the Act without following the procedure set out in section 298, if the Authority considers it essential to do so), or to the continued effect of any notice which has effect as a notice given under section 298(1)(a) of the Act by virtue of regulation 10(4) below.

Revocation of recognition: action taken before commencement

10.—(1) In this regulation—

(a) “commencement” has the same meaning as in regulation 9 above, and

(b) “relevant person” means—

(i) in relation to action taken in respect of a body or association of the kind described in section 40(1) of the Financial Services Act⁽⁴⁾ (overseas investment exchanges and clearing houses), the Treasury, or

(ii) in any other case, the Authority.

(4) The functions of the Secretary of State under sections 37, 39 and 40 of the Financial Services Act were transferred to the Financial Services Authority (previously known as the Securities and Investments Board Limited) by [S.I. 1987/942](#), except in relation to bodies or associations of the kind described in section 40(1) of the Financial Services Act 1986 (overseas investment exchanges and clearing houses). In relation to such bodies, these functions of the Secretary of State were transferred to the Treasury by [S.I. 1992/1315](#).

(2) This regulation applies to action taken by a relevant person before commencement pursuant to section 37(7) or 39(7) of the Financial Services Act⁽⁵⁾ (which relate to revocation of recognition orders under that Act), or pursuant to subsections (2) to (9) of section 11 of that Act as they had effect by virtue of section 37(7) or 39(7).

(3) Paragraphs (4) to (8) apply where a relevant person has given notice to a body or association under section 11(3) of the Financial Services Act of its intention to revoke a recognition order made under that Act in relation to that body or association, but has not notified the body or association of its determination whether to proceed to revoke that recognition order.

(4) The notice has effect after commencement as if it were a notice given by the Authority under section 298(1)(a) of the Act, giving notice of the Authority's intention to revoke the recognition order which is treated as having effect in relation to the body or association by virtue of regulation 9 above.

(5) If before commencement the relevant person has complied with—

- (a) the requirement in subsection (3) of section 11 of the Financial Services Act to bring the notice to the attention of members of the body or association in question, or
- (b) the requirement in that subsection to publish the notice to other persons likely to be affected,

the Authority is to be treated as having complied with the equivalent requirement in section 298(1)(b) or (as the case may be) (c) of the Act, in relation to the notice under section 298(1)(a) which has effect by virtue of paragraph (4).

(6) Nothing in paragraph (4) or in the Act is to be treated as changing the length or affecting the continuity of the period within which, in accordance with the notice as originally given, representations might be made by any person to the relevant person pursuant to section 11(5) of the Financial Services Act, but any such representations are to be considered by the Authority as if they were representations made to it pursuant to section 298(3) of the Act.

(7) For the purposes of the Authority's consideration whether to proceed to exercise the power to make a revocation order under subsection (2) of section 297 of the Act (but without prejudice to any exercise by the Authority of that power where it has given a new notice under section 298(1)(a) after commencement), that subsection is to be read as if the reference in paragraph (a) to recognition requirements were a reference to recognition requirements other than new recognition requirements, and as if the reference in paragraph (b) to obligations were a reference to obligations other than new obligations.

(8) A recognition requirement or obligation is to be treated as a new recognition requirement or obligation if its effect is not substantially the same as the effect of a requirement or obligation of the kind mentioned (or having effect as if mentioned) in section 37(7) (in the case of an investment exchange) or 39(7) (in the case of a clearing house) of the Financial Services Act (as those provisions had effect immediately before commencement).

(9) Paragraph (10) applies where a relevant person has made an order ("the revoking order") under section 37(7) or 39(7) of the Financial Services Act, revoking a recognition order made in relation to a body or association under that Act, but either—

- (a) the revoking order has not taken effect in accordance with section 11(2) of the Financial Services Act, or
- (b) the revoking order has taken effect but contains transitional provisions pursuant to section 11(7) of the Financial Services Act which continued to have effect immediately before commencement.

(10) The revoking order has effect after commencement as if it were a revocation order made by the Authority under section 297 of the Act, revoking (with effect from the date specified in the

(5) The effect of sections 37(7) and 39(7) of the Financial Services Act is modified by section 40(4)(b) of that Act (in relation to overseas investment exchanges and clearing houses), and section 156 of the Companies Act (in all cases).

revoking order) the recognition order which is treated as having effect in relation to the body or association by virtue of regulation 9 above, and as if any such transitional provisions were included in the revocation order by virtue of section 297(5) of the Act.

15th March 2001

David Clelland
Clive Betts
Two of the Lords Commissioners of Her
Majesty's Treasury

Approved,

9th April 2001

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Consumers and Corporate Affairs,
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