

SCHEDULE

Regulations 4 and 5.

PART I

Recognition requirements for investment exchanges

Financial resources

1.—(1) The exchange must have financial resources sufficient for the proper performance of its functions as a recognised investment exchange.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the exchange's connection with any person, and any activity carried on by the exchange, whether or not it is an exempt activity.

Suitability

2.—(1) The exchange must be a fit and proper person to perform the functions of a recognised investment exchange.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the exchange's connection with any person.

Systems and controls

3.—(1) The exchange must ensure that the systems and controls used in the performance of its functions are adequate, and appropriate for the scale and nature of its business.

(2) Sub-paragraph (1) applies in particular to systems and controls concerning—

- (a) the transmission of information;
- (b) the assessment and management of risks to the performance of the exchange's functions;
- (c) the effecting and monitoring of transactions on the exchange;
- (d) the operation of the arrangements mentioned in paragraph 4(2)(d) below; and
- (e) (where relevant) the safeguarding and administration of assets belonging to users of the exchange's facilities.

Safeguards for investors

4.—(1) The exchange must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors.

(2) Without prejudice to the generality of sub-paragraph (1), the exchange must ensure that—

- (a) access to the exchange's facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors;
- (b) dealings in investments on the exchange are limited to investments in which there is a proper market;

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- (c) appropriate arrangements are made for relevant information to be made available (whether by the exchange or, where appropriate, by issuers of the investments) to persons engaged in dealing in investments on the exchange;
 - (d) satisfactory arrangements are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on the exchange (being rights and liabilities in relation to those transactions);
 - (e) satisfactory arrangements are made for recording transactions effected on the exchange, and transactions (whether or not effected on the exchange) which are cleared or to be cleared by means of its facilities;
 - (f) appropriate measures are adopted to reduce the extent to which the exchange's facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence; and
 - (g) where the exchange's facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose.
- (3) In sub-paragraph (2)(c), "relevant information" means information which is relevant in determining the current value of the investments.

Disclosure by issuers of securities

5.—(1) In this paragraph—

"admission to trading", "securities" and "regulated market" are to be construed in accordance with regulation 2 of the Traded Securities (Disclosure) Regulations 1994⁽¹⁾;

"the obligation of disclosure" means the obligation imposed by regulation 3 of those Regulations;

"issuer" means a person who is subject to that obligation whose securities are admitted to trading on a regulated market which the exchange regulates and supervises; and

"the relevant securities" means securities in relation to which the obligation of disclosure arises.

(2) The rules of the exchange must enable the exchange, in the event of a failure by an issuer to comply with the obligation of disclosure,—

- (a) to discontinue the admission of the relevant securities to trading;
- (b) to suspend trading in the relevant securities;
- (c) to publish the fact that the issuer has failed to comply with the obligation of disclosure; and
- (d) to make public itself any information which the issuer has failed to publish.

(3) This paragraph is without prejudice to the requirement in paragraph 4(2)(c) above.

Promotion and maintenance of standards

6.—(1) The exchange must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of regulated activities by persons in the course of using the facilities provided by the exchange.

(2) The exchange must be able and willing to cooperate, by the sharing of information or otherwise, with the Authority, with any other authority, body or person having responsibility in the

(1) [S.I. 1994/188](#).

United Kingdom for the supervision or regulation of any regulated activity or other financial service, or with an overseas regulator within the meaning of section 195 of the Act.

Rules and consultation

7.—(1) The exchange must ensure that appropriate procedures are adopted for it to make rules, for keeping its rules under review and for amending them.

(2) The procedures must include procedures for consulting users of the exchange's facilities in appropriate cases.

(3) The exchange must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 8(3) below (or on any changes which it proposes to make to those arrangements).

Discipline

8.—(1) The exchange must have effective arrangements for monitoring and enforcing compliance with—

- (a) its rules (including rules in relation to the provision of clearing services in respect of transactions other than transactions effected on the exchange); and
- (b) the arrangements made by it as mentioned in paragraph 4(2)(d) above.

(2) Arrangements made pursuant to sub-paragraph (1) must include procedures for—

- (a) investigating complaints made to the exchange about the conduct of persons in the course of using the exchange's facilities; and
- (b) the fair, independent and impartial resolution of appeals against decisions of the exchange.

(3) Where arrangements made pursuant to sub-paragraph (1) include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways—

- (a) towards meeting expenses incurred by the exchange in the course of the investigation of the breach in respect of which the penalty is paid, or in the course of any appeal against the decision of the exchange in relation to that breach;
- (b) for the benefit of users of the exchange's facilities;
- (c) for charitable purposes.

Complaints

9.—(1) The exchange must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its regulatory functions.

(2) But sub-paragraph (1) does not extend to—

- (a) complaints about the content of rules made by the exchange, or
- (b) complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in paragraph 8(2)(b) above.

(3) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a person independent of the exchange, and for him to report on the result of his investigation to the exchange and to the complainant.

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(4) The arrangements must confer on the person mentioned in sub-paragraph (3) the power to recommend, if he thinks it appropriate, that the exchange—

- (a) makes a compensatory payment to the complainant,
- (b) remedies the matter complained of,

or takes both of those steps.

(5) Sub-paragraph (3) is not to be taken as preventing the exchange from making arrangements for the initial investigation of a complaint to be conducted by the exchange.

PART II

Recognition requirements for investment exchanges: default rules in respect of market contracts

Default rules in respect of market contracts

10.—(1) The exchange must have default rules which, in the event of a member of the exchange being or appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which he is a party.

(2) The rules may authorise the taking of the same or similar action in relation to a member who appears to be likely to become unable to meet his obligations in respect of one or more market contracts.

(3) The rules must enable action to be taken in respect of all unsettled market contracts, other than those entered into by a recognised clearing house for the purposes of or in connection with the provision of clearing services for the exchange.

Content of rules

11.—(1) This paragraph applies as regards contracts falling within section 155(2)(a) of the Companies Act.

(2) The rules mentioned in paragraph 10 must provide—

- (a) for all rights and liabilities between those party as principal to unsettled market contracts to which the defaulter is party as principal to be discharged and for there to be paid by one party to the other such sum of money (if any) as may be determined in accordance with the rules;
- (b) for the sums so payable in respect of different contracts between the same parties to be aggregated or set off so as to produce a net sum; and
- (c) for the certification by or on behalf of the exchange of the net sum payable or, as the case may be, of the fact that no sum is payable.

(3) The reference in sub-paragraph (2) to rights and liabilities between those party as principal to unsettled market contracts does not include rights and liabilities—

- (a) in respect of margin; or
- (b) arising out of a failure to perform a market contract.

(4) The rules may make the same or similar provision, in relation to non-members designated in accordance with the procedures mentioned in sub-paragraph (5), as in relation to members of the exchange.

(5) If such provision is made as is mentioned in sub-paragraph (4), the exchange must have adequate procedures—

- (a) for designating the persons, or descriptions of person, in respect of whom action may be taken;
- (b) for keeping under review the question which persons or descriptions of person should be or remain so designated; and
- (c) for withdrawing such designation.

(6) The procedures must be designed to secure that—

- (a) a person is not, or does not remain, designated if failure by him to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market; and
- (b) a description of persons is not, or does not remain, designated if failure by a person of that description to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market.

(7) The exchange must have adequate arrangements—

- (a) for bringing a designation or withdrawal of designation to the attention of the person or description of persons concerned; and
- (b) where a description of persons is designated, or the designation of a description of persons is withdrawn, for ascertaining which persons fall within that description.

12.—(1) This paragraph applies as regards contracts falling within section 155(2)(b) of the Companies Act.

(2) The rules mentioned in paragraph 10 must provide—

- (a) for all rights and liabilities of the defaulter under or in respect of unsettled market contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules;
- (b) for the sums so payable by or to the defaulter in respect of different contracts to be aggregated or set off so as to produce a net sum;
- (c) for that sum—
 - (i) if payable by the defaulter to the exchange, to be set off against any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) so as to produce a further net sum;
 - (ii) if payable by the exchange to the defaulter, to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and
- (d) for the certification by or on behalf of the exchange of the sum finally payable or, as the case may be, of the fact that no sum is payable.

(3) The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the rules authorising—

- (a) the effecting by the exchange of corresponding contracts in relation to unsettled market contracts to which the defaulter is party;
- (b) the transfer of the defaulter's position under an unsettled market contract to another member of the exchange;
- (c) the exercise by the exchange of any option granted by an unsettled market contract.

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(4) A “corresponding contract” means a contract on the same terms (except as to price or premium) as the market contract but under which the person who is the buyer under the market contract agrees to sell and the person who is the seller under the market contract agrees to buy.

(5) Sub-paragraph (4) applies with any necessary modifications in relation to a market contract which is not an agreement to sell.

(6) The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.

Notification to other parties affected

13. The exchange must have adequate arrangements for ensuring that—

- (a) in the case of unsettled market contracts with a defaulter acting as principal, parties to the contract are notified as soon as reasonably practicable of the default and of any decision taken under the rules in relation to contracts to which they are a party; and
- (b) in the case of unsettled market contracts with a defaulter acting as agent, parties to the contract and the defaulter’s principals are notified as soon as reasonably practicable of the default and of the identity of the other parties to the contract.

Cooperation with other authorities

14. The exchange must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any relevant office-holder within the meaning of section 189 of the Companies Act, and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a member of the exchange or any non-member designated in accordance with the procedures mentioned in paragraph 11(5) above.

Margin

15.—(1) Where the exchange provides clearing services, the rules of the exchange must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account.

(2) This paragraph is without prejudice to the requirements of any rules relating to clients' money made by the Authority under sections 138 and 139 of the Act.

PART III

Recognition requirements for clearing houses

Financial resources

16.—(1) The clearing house must have financial resources sufficient for the proper performance of its functions as a recognised clearing house.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the clearing house’s connection with any person, and any activity carried on by the clearing house, whether or not it is an exempt activity.

Suitability

17.—(1) The clearing house must be a fit and proper person to perform the functions of a recognised clearing house.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the clearing house's connection with any person.

Systems and controls

18.—(1) The clearing house must ensure that the systems and controls used in the performance of its functions are adequate, and appropriate for the scale and nature of its business.

(2) This requirement applies in particular to systems and controls concerning—

- (a) the transmission of information;
- (b) the assessment and management of risks to the performance of the clearing house's functions;
- (c) the operation of the matters mentioned in paragraph 19(2)(b) below; and
- (d) (where relevant) the safeguarding and administration of assets belonging to users of the clearing house's facilities.

Safeguards for investors

19.—(1) The clearing house must ensure that its facilities are such as to afford proper protection to investors.

(2) Without prejudice to the generality of sub-paragraph (1), the clearing house must ensure that—

- (a) access to the clearing house's facilities is subject to criteria designed to protect the orderly functioning of those facilities and the interests of investors;
- (b) its clearing services involve satisfactory arrangements for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions in respect of which it provides such services (being rights and liabilities in relation to those transactions);
- (c) satisfactory arrangements are made for recording transactions which are cleared or to be cleared by means of its facilities;
- (d) appropriate measures are adopted to reduce the extent to which the clearing house's facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence; and
- (e) where the clearing house's facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose.

Promotion and maintenance of standards

20.—(1) The clearing house must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of regulated activities by persons in the course of using the facilities provided by the clearing house.

(2) The clearing house must be able and willing to cooperate, by the sharing of information or otherwise, with the Authority, with any other authority, body or person having responsibility in the

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Rules

21.—(1) The clearing house must ensure that appropriate procedures are adopted for it to make rules, for keeping its rules under review and for amending them.

(2) The procedures must include procedures for consulting users of the clearing house's facilities in appropriate cases.

(3) The clearing house must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 22(3) below (or on any changes which it proposes to make to those arrangements).

Discipline

22.—(1) The clearing house must have effective arrangements for monitoring and enforcing compliance with its rules.

(2) The arrangements must include procedures for—

- (a) investigating complaints made to the clearing house about the conduct of persons in the course of using the clearing house's facilities; and
- (b) the fair, independent and impartial resolution of appeals against decisions of the clearing house.

(3) Where the arrangements include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways—

- (a) towards meeting expenses incurred by the clearing house in the course of the investigation of the breach in respect of which the penalty is paid, or in the course of any appeal against the decision of the clearing house in relation to that breach;
- (b) for the benefit of users of the clearing house's facilities;
- (c) for charitable purposes.

Complaints

23.—(1) The clearing house must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its regulatory functions.

(2) But sub-paragraph (1) does not extend to—

- (a) complaints about the content of rules made by the clearing house, or
- (b) complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in paragraph 22(2)(b) above.

(3) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a person independent of the clearing house, and for him to report on the result of his investigation to the clearing house and to the complainant.

(4) The arrangements must confer on the person mentioned in sub-paragraph (3) the power to recommend, if he thinks it appropriate, that the clearing house—

- (a) makes a compensatory payment to the complainant,

(b) remedies the matter complained of,
or takes both of those steps.

(5) Sub-paragraph (3) is not to be taken as preventing the clearing house from making arrangements for the initial investigation of a complaint to be conducted by the clearing house.

PART IV

Recognition requirements applying to clearing houses: default rules in respect of market contracts

Default rules in respect of market contracts

24.—(1) The clearing house must have default rules which, in the event of a member of the clearing house being or appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken to close out his position in relation to all unsettled market contracts to which he is a party.

(2) The rules may authorise the taking of the same or similar action where a member appears to be likely to become unable to meet his obligations in respect of one or more market contracts.

Content of rules

25.—(1) The rules must provide—

- (a) for all rights and liabilities of the defaulter under or in respect of unsettled market contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules;
- (b) for the sums so payable by or to the defaulter in respect of different contracts to be aggregated or set off so as to produce a net sum;
- (c) for that sum—
 - (i) if payable by the defaulter to the clearing house, to be set off against any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) so as to produce a further net sum;
 - (ii) if payable by the clearing house to the defaulter, to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and
- (d) for the certification by or on behalf of the clearing house of the sum finally payable or, as the case may be, of the fact that no sum is payable.

(2) The reference in sub-paragraph (1) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the rules authorising—

- (a) the effecting by the clearing house of corresponding contracts in relation to unsettled market contracts to which the defaulter is party;
- (b) the transfer of the defaulter's position under an unsettled market contract to another member of the clearing house;
- (c) the exercise by the clearing house of any option granted by an unsettled market contract.

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(3) A “corresponding contract” means a contract on the same terms (except as to price or premium) as the market contract but under which the person who is the buyer under the market contract agrees to sell and the person who is the seller under the market contract agrees to buy.

(4) Sub-paragraph (3) applies with any necessary modifications in relation to a market contract which is not an agreement to sell.

(5) The reference in sub-paragraph (1) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.

Notification to other parties affected

26. The clearing house must have adequate arrangements for ensuring that parties to unsettled market contracts with a defaulter are notified as soon as reasonably practicable of the default and of any decision taken under the rules in relation to contracts to which they are a party.

Cooperation with other authorities

27. The clearing house must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any relevant office-holder within the meaning of section 189 of the Companies Act, and any other authority or body having responsibility for any matter arising out of or connected with the default of a member of the clearing house.

Margin

28.—(1) The rules of the clearing house must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account.

(2) This paragraph is without prejudice to the requirements of any rules relating to clients' money made by the Authority under sections 138 and 139 of the Act.