

2006 No. 3386

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006

<i>Made</i> - - - -	<i>18th December 2006</i>
<i>Laid before Parliament</i>	<i>18th December 2006</i>
<i>Coming into force</i> - -	<i>1st November 2007</i>

The Treasury make these Regulations in exercise of the powers conferred on them by sections 286(1), (4A), (4B), (4C) and (4D), 292(3)(a) and 428(3) of the Financial Services and Markets Act 2000(a):

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) (Amendment) Regulations 2006 and come into force on 1st November 2007.

Amendment of the Recognition Requirements for Investment Exchanges and Clearing Houses Regulations

2. The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001(b) are amended as follows.

3. In regulation 3(1), at the appropriate place, insert—

““branch” in relation to an investment firm has the meaning given in Article 4.1.26 of the markets in financial instruments directive(c) and in relation to a credit institution has the meaning given in Article 4.3 of the banking consolidation directive(d);

“central counterparty”, “clearing” and “settlement” have the same meaning as in the markets in financial instruments directive;

“the Commission Regulation” means Commission Regulation 1287/2006 of 10 August 2006(e);

“competent authority”, in relation to an investment firm or credit institution, means the competent authority in relation to that firm or institution for the purposes of the markets in financial instruments directive;

(a) 2000 c.8; section 286(4A) – (4D) was inserted, and section 292(3)(a) was amended, by S.I. 2006/2975.
(b) S.I. 2001/995.
(c) OJ No L 145, 30.4.2004, p.1.
(d) OJ No L 177, 30.6.2006, p.1.
(e) OJ No L 241, 2.9.2006, p.1.

“credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive, or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;

“disorderly trading conditions” has the same meaning as in the markets in financial instruments directive;

“financial instrument” has the meaning given in Article 4.1.17 of the markets in financial instruments directive;

“multilateral trading facility” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;

“regulated market” has the meaning given in Article 4.1.14 of the markets in financial instruments directive;

“transferable securities” has the meaning given in Article 4.1.18 of the markets in financial instruments directive;

“UK firm” means an investment firm or credit institution which has a Part IV permission to carry on one or more regulated activities.”.

4. In paragraph 1(2) of the Schedule for “may” substitute “must”.

5. In paragraph 2 of the Schedule, after sub-paragraph (2), insert—

“(3) The persons who effectively direct the business and operations of the exchange must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it.

(4) The persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly, must be suitable.”.

6. In paragraph 3(2) of the Schedule—

- (a) in paragraph (b) after “assessment” insert “, mitigation”;
- (b) after paragraph (c) insert—

“(ca) the technical operation of the exchange, including contingency arrangements for disruption to its facilities;”.

7. In paragraph 4(2) of the Schedule—

- (a) in paragraph (a), after “investors” insert “and is in accordance with paragraph 7B”;
- (b) after paragraph (a) insert—

“(aa) it has transparent and non-discretionary rules and procedures—

- (i) to provide for fair and orderly trading, and
- (ii) to establish objective criteria for the efficient execution of orders;”;

- (c) paragraph (b) is revoked;
- (d) in paragraph (d) after “arrangements” insert “, which comply with paragraph 7D,”;
- (e) after paragraph (e) insert—

“(ea) appropriate arrangements are made to—

- (i) identify conflicts between the interests of the exchange, its owners and operators and the interests of the persons who make use of its facilities or the interests of the financial markets operated by it, and
- (ii) manage such conflicts so as to avoid adverse consequences for the operation of the financial markets operated by the exchange and for the persons who make use of its facilities;”;

- (f) in paragraph (f) after “measures” insert “(including the monitoring of transactions effected on the exchange)”.

8. After paragraph 4 of the Schedule insert—

“Provision of pre-trade information about share trading

4A.—(1) The exchange must make arrangements for—

- (a) current bid and offer prices for shares, and
- (b) the depth of trading interest in shares at the prices which are advertised through its systems,

to be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours, subject to the requirements contained in Chapter IV of the Commission Regulation.

(2) If an exchange decides to give investment firms and credit institutions required to publish their quotes in shares—

- (a) in accordance with Article 27 of the markets in financial instruments directive, or
- (b) by the Authority,

access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.

(3) The Authority may waive the requirements of sub-paragraph (1) in the circumstances specified—

- (a) in the case of shares to be traded on a multilateral trading facility operated by the exchange, in Article 29.2 of the markets in financial instruments directive and Chapter IV of the Commission Regulation; or
- (b) in the case of shares to be traded on a regulated market operated by the exchange, in Article 44.2 of that directive and Chapter IV of the Commission Regulation.

(4) In this paragraph, “shares” means shares admitted to trading on a regulated market.

Provision of post-trade information about share trading

4B.—(1) The exchange must make arrangements for the price, volume and time of transactions executed in shares to be made available to the public as soon as possible after the time of the transaction on reasonable commercial terms, subject to the requirements contained in Chapter IV of the Commission Regulation.

(2) If an exchange decides to give investment firms and credit institutions required to make public details of their transactions in shares—

- (a) in accordance with Article 28 of the markets in financial instruments directive, or
- (b) by the Authority,

access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.

(3) The Authority may permit exchanges to defer the publication required by sub-paragraph (1) in the circumstances specified, and subject to the requirements contained—

- (a) in the case of shares traded on a multilateral trading facility operated by an exchange, in Article 30.2 of the markets in financial instruments directive and Chapter IV of the Commission Regulation; or
- (b) in the case of shares traded on a regulated market operated by an exchange, in Article 45.2 of that directive and Chapter IV of the Commission Regulation.

(4) If the Authority permits exchanges to defer the publication required by sub-paragraph (1), those exchanges must ensure that the existence of and the terms of the permission are disclosed to users and members of their facilities and to investors.

(5) In this paragraph, “shares” means shares admitted to trading on a regulated market.”.

9. After paragraph 7 of the Schedule insert—

“Admission of financial instruments to trading

7A.—(1) The exchange must make clear and transparent rules concerning the admission of financial instruments to trading on any financial market operated by it.

(2) The rules must ensure that all financial instruments admitted to trading on a regulated market operated by the exchange are capable of being traded in a fair, orderly and efficient manner (in accordance with Chapter V of the Commission Regulation, where applicable).

(3) The rules must ensure that—

(a) all transferable securities admitted to trading on a regulated market operated by the exchange are freely negotiable (in accordance with Chapter V of the Commission Regulation, where applicable); and

(b) all contracts for derivatives admitted to trading on a regulated market operated by the exchange are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.

(4) The exchange must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable the users of a multilateral trading facility operated by it to form investment judgments, taking into account both the nature of the users and the types of instrument traded.

(5) The exchange must maintain effective arrangements to verify that issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations.

(6) The exchange must maintain arrangements to assist users of a regulated market operated by it to obtain access to information made public under the disclosure obligations.

(7) The exchange must maintain arrangements regularly to review whether the financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.

(8) The rules must provide that where an exchange, without obtaining the consent of the issuer, admits to trading on a regulated market operated by it a transferable security which has been admitted to trading on another regulated market, the exchange—

(a) must inform the issuer of that security as soon as is reasonably practicable, and

(b) may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(9) The rules must provide that where an exchange, without obtaining the consent of the issuer, admits to trading on a multilateral trading facility operated by it a transferable security which has been admitted to trading on a regulated market, it may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(10) In this paragraph—

“derivatives” has the same meaning as in the markets in financial instruments directive;

“the disclosure obligations” are the initial, ongoing and ad hoc disclosure requirements contained in the relevant articles and given effect—

(a) in the UK by Part 6 of the Act and Part 6 rules (within the meaning of section 73A of the Act^(a)); or

(b) in another EEA State by legislation transposing the relevant articles in that State.

“issuer” has the same meaning as in the markets in financial instruments directive;

“the relevant articles” means—

(a) Section 73A was inserted by S.I. 2006/381, and is prospectively amended by Schedule 15 to the Companies Act 2006 (c. 46).

- (a) Article 6.1 to 6.4 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation(a),
 - (b) Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading(b),
 - (c) Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market(c), and
 - (d) Community legislation made under the provisions mentioned in paragraphs (a) to (c).
- (11) This paragraph is without prejudice to the generality of paragraph 4.

Access to the exchange's facilities

7B.—(1) The exchange must make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its facilities.

(2) In particular those rules must specify the obligations for users or members of its facilities arising from—

- (a) the constitution and administration of the exchange;
- (b) rules relating to transactions on the market;
- (c) its professional standards for staff of any investment firm or credit institution having access to or membership of a financial market operated by the exchange;
- (d) conditions established under sub-paragraph (3)(c) for access to or membership of a financial market operated by the exchange by persons other than investment firms or credit institutions; and
- (e) the rules and procedures for clearing and settlement of transactions concluded on a financial market operated by the exchange.

(3) Rules of the exchange about access to, or membership of, a financial market operated by it must permit the exchange to give access to or admit to membership (as the case may be) only—

- (a) an investment firm,
- (b) a credit institution, or
- (c) a person who—
 - (i) is fit and proper,
 - (ii) has a sufficient level of trading ability and competence,
 - (iii) where applicable, has adequate organisational arrangements, and
 - (iv) has sufficient resources for the role he is to perform, taking account of the exchange's arrangements under paragraph 4(2)(d).

(4) Rules under this paragraph must enable—

- (a) an investment firm authorised under Article 5 of the markets in financial instruments directive, or
- (b) a credit institution authorised under the banking consolidation directive,

by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have direct or remote access to, or

(a) OJ No L 96, 12.4.2003, p.16.
 (b) OJ No L 345, 31.12.2003, p. 64.
 (c) OJ No L 390, 31.12.2004, p.38.

membership of, any financial market operated by the exchange on the same terms as a UK firm.

(5) The exchange must make arrangements regularly to provide the Authority with a list of the users or members of its facilities.

(6) This paragraph is without prejudice to the generality of paragraph 4.

Access to central counterparty, clearing and settlement facilities

7C.—(1) This paragraph applies to an exchange which provides central counterparty, clearing or settlement facilities.

(2) The exchange must make transparent and non-discriminatory rules, based on objective criteria, governing access to those facilities.

(3) The rules under sub-paragraph (2) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(4) The exchange may refuse access to those facilities on legitimate commercial grounds.

Choice of settlement facilities

7D.—(1) The rules of the exchange must permit a user or member of a regulated market operated by it to use whatever settlement facility he chooses for a transaction.

(2) Sub-paragraph (1) only applies where—

- (a) such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction; and
- (b) the exchange is satisfied that the smooth and orderly functioning of the financial markets will be maintained.

Suspension and removal of financial instruments from trading

7E. The rules of the exchange must provide that the exchange must not exercise its power to suspend or remove from trading on a regulated market operated by it any financial instrument which no longer complies with its rules, where such step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.”.

10. In paragraph 8 of the Schedule for sub-paragraph (1) substitute—

“(1) The exchange must have—

- (a) effective arrangements (which include the monitoring of transactions effected on the exchange) for monitoring and enforcing compliance with its rules, including rules in relation to the provision of clearing services in respect of transactions other than transactions effected on the exchange;
- (b) effective arrangements for monitoring and enforcing compliance with the arrangements made by it as mentioned in paragraph 4(2)(d); and
- (c) effective arrangements for monitoring transactions effected on the exchange in order to identify disorderly trading conditions.”.

11. After paragraph 9 of the Schedule insert—

“Operation of a multilateral trading facility

9A.—(1) An exchange operating a multilateral trading facility must also operate a regulated market.

(2) An exchange operating a multilateral trading facility must comply with those requirements of—

- (a) Chapter I of Title II of the markets in financial instruments directive, and
- (b) Commission Directive 2006/73/EC of 10 August 2006^(a),

which are applicable to a market operator (within the meaning of the directive) operating such a facility.

(3) The requirements of this paragraph do not apply for the purposes of section 292(3)(a) of the Act (requirements for overseas investment exchanges and overseas clearing houses).”

12. In paragraph 10(3) of the Schedule omit “by a recognised clearing house”.

13. After paragraph 21 of the Schedule insert—

“Access to central counterparty, clearing and settlement facilities

21A.—(1) The clearing house must make transparent and non-discriminatory rules, based on objective criteria, governing access to central counterparty, clearing or settlement facilities provided by it.

(2) The rules under sub-paragraph (1) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(3) The clearing house may refuse access to those facilities on legitimate commercial grounds.”.

*Kevin Brennan
Dave Watts*

18th December 2006

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) OJ No L 241, 2.9.2006, p.26.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1) (“the Directive”). The Directive is also implemented by other statutory instruments including the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations (S.I. 2006/....), the Financial Services and Markets Act 2000 (Exemption) (Amendment) Order 2006 (S.I. 2006/....), the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006 (S.I. 2006/3384) and the Financial Services and Markets Act 2000 (EEA Passport Rights) (Amendment) Regulations 2006 (S.I. 2006/3385), and by the Financial Services Authority (“FSA”) using powers under the Financial Services and Markets Act 2000 (c. 8).

The Regulations amend the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (S.I. 2001/995) (“the principal Regulations”). The main amendments are as follows.

- New requirements concerning the suitability of the persons who effectively direct the business and operations of an exchange and persons who are in a position to exercise significant influence over the management of an exchange are added into paragraph 2 of the Schedule to the principal Regulations (transposing obligations in Articles 37(1) and 38(1) of the Directive).
- New paragraphs 4A and 4B of the Schedule to the principal Regulations contain requirements for exchanges to make information available to the public about transactions in shares in accordance with the Directive and Commission Regulation 1287/2006 of 10 August 2006 (OJ No L 241, 2.9.2006, p.1). They also enable the FSA to waive or defer the publication requirements as permitted in the Directive and Commission Regulation (transposing Articles 29, 30, 44 and 45 of the Directive).
- New paragraph 7A of the Schedule to the principal Regulations contains requirements for exchanges’ rules governing admission of financial instruments to trading and requirements for exchanges relating to information disclosure obligations (transposing obligations in Articles 14 and 40 of the Directive).
- New paragraph 7B of the Schedule to the principal Regulations contains requirements for exchanges’ rules about access to, or membership of, their facilities (transposing Article 42 of the Directive).
- New paragraphs 7C and 21A of the Schedule to the principal Regulations contain requirements for exchanges and clearing houses providing central counterparty, clearing or settlement services. Exchanges and clearing houses must secure that investment firms and credit institutions established in other EEA States have access to the facilities on equal terms to UK firms and institutions (transposing Article 34(1) of the Directive).
- New paragraph 7D of the Schedule to the principal Regulations requires exchanges’ rules to permit users and members to have a choice of settlement facilities, as required by Article 34(2) of the Directive, and subject to the limitations in that Article.
- New paragraph 7E of the Schedule to the principal Regulations restricts the power of exchanges to suspend or remove financial instruments from trading (transposing Article 41(1) of the Directive).
- New paragraph 9A of the Schedule to the principal Regulations requires exchanges operating a multilateral trading facility also to operate a regulated market. Exchanges operating a multilateral trading facility are also required to comply with the applicable requirements of Chapter I of Title II of the Directive and Community legislation made under that Chapter (transposing Article 5(2) of the Directive).

The Regulations also contain other amendments transposing the Directive, making consequential amendments and inserting definitions for the purposes of the amendments.

A transposition note has been prepared which sets out how the main elements of the Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument and the other instruments transposing the Directive on the costs of business has been prepared. Both may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury's website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.

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