

SCHEDULE 2

Regulation 5

Commencement Information

II Sch. 2 in force at 21.3.2009, see [reg. 1](#)

“CHAPTER 1A

CONTROL OVER RECOGNISED INVESTMENT EXCHANGE

Notices of acquisitions of control over recognised investment exchanges

Obligation to notify the Authority: acquisitions of control

301A.—(1) A person who decides to acquire or increase control over a recognised investment exchange must give the Authority notice in writing before making the acquisition.

(2) A person who acquires or increases control over a recognised investment exchange in circumstances where notice is not required under subsection (1) must give the Authority notice in writing before the end of 14 days beginning with—

- (a) the day the person acquired or increased the control; or
- (b) if later, the day on which the person first became aware that the control had been acquired or increased.

(3) For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.

(4) A notice given under this section is a “section 301A notice” and a person giving notice is a “section 301A notice-giver”.

Requirements for section 301A notices

301B.—(1) A section 301A notice must be in such form, include such information and be accompanied by such documents as the Authority may reasonably require.

(2) The Authority must publish a list of its requirements as to the form, information and accompanying documents for a section 301A notice.

(3) The Authority may impose different requirements for different cases and may vary or waive requirements in particular cases.

Acknowledgment of receipt

301C.—(1) The Authority must acknowledge receipt of a section 301A notice in writing before the end of the second working day following receipt.

(2) If the Authority receives an incomplete section 301A notice it must inform the section 301A notice-giver as soon as reasonably practicable.

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Acquiring and increasing control

Acquiring and increasing control

301D.—(1) For the purposes of this Chapter, a person (“A”) acquires control over a recognised investment exchange (“B”) if any of the cases in subsection (2) begin to apply.

(2) The cases are where A holds—

- (a) 20% or more of the shares in B or in a parent undertaking of B (“P”);
- (b) 20% or more of the voting power in B or P; or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

(3) For the purposes of this Chapter, a person (“A”) increases control over a recognised investment exchange (“B”) whenever—

- (a) the percentage of shares which A holds in B or in a parent undertaking of B (“P”) increases from less than 50% to 50% or more;
- (b) the percentage of voting power A holds in B or P increases from less than 50% to 50% or more; or
- (c) A becomes a parent undertaking of B.

Disregarded holdings

301E.—(1) For the purpose of section 301D, shares and voting power that a person holds in a recognised investment exchange (“B”) or in a parent undertaking of B (“P”) are disregarded in the following circumstances.

(2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.

(3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power represented by the shares in accordance with instructions given in writing.

(4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, provided that it—

- (a) holds the shares in the capacity of a market maker (as defined in article 4.1(8) of the markets in financial instruments directive);
- (b) is authorised by its home state regulator under the markets in financial instruments directive; and
- (c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.

(5) Shares held by a credit institution or investment firm in its trading book are disregarded, provided that—

- (a) the shares represent no more than 5% of the total voting power in B or P; and
- (b) the credit institution or investment firm ensures that the voting power is not exercised nor otherwise used to intervene in the management of B or P.

(6) Shares held by a credit institution or an investment firm are disregarded, provided that—

- (a) the shares are held as a result of performing the investment services and activities of—
 - (i) underwriting a share issue; or

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- (ii) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of the markets in financial instruments directive; and
- (b) the credit institution or investment firm—
 - (i) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and
 - (ii) retains the holding for a period of less than one year.
- (7) Where a management company (as defined in Article 1a.2 of the UCITS directive) and its parent undertaking both hold shares or voting power, each may disregard holdings of the other, provided that each exercises its voting power independently of the other.
- (8) But subsection (7) does not apply if the management company—
 - (a) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller;
 - (b) has no discretion as to the exercise of the voting power attached to such holdings; and
 - (c) may only exercise the voting power in relation to such holdings under direct or indirect instruction from—
 - (i) the parent undertaking; or
 - (ii) an undertaking in respect of which of the parent undertaking is a controller.
- (9) Where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking, provided that the investment firm—
 - (a) has permission to provide portfolio management;
 - (b) exercises its voting power independently from the parent undertaking; and
 - (c) may only exercise the voting power under instructions given in writing, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

Assessment procedure

Assessment: general

- 301F.**—(1) Where the Authority receives a section 301A notice, it must—
- (a) determine whether to approve the acquisition to which it relates; or
 - (b) propose to object to the acquisition.
- (2) In making its determination the Authority must—
- (a) consider the suitability of the section 301A notice-giver and the financial soundness of the acquisition in order to ensure the sound and prudent management of the recognised investment exchange in question; and
 - (b) have regard to the likely influence that the section 301A notice-giver will have on the recognised investment exchange.
- (3) The Authority may only object to an acquisition if it is not satisfied that the approval requirement is met.
- (4) The approval requirement is that the acquisition in question by the notice-giver does not pose a threat to the sound and prudent management of any financial market operated by the recognised investment exchange.

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Assessment: Procedure

301G.—(1) The Authority must act under section 301F within a period three months from the date the Authority receives the completed section 301A notice (“the assessment period”).

(2) The Authority must inform the section 301A notice-giver in writing of—

- (a) the duration of the assessment period; and
- (b) its expiry date.

(3) The Authority must, within two working days of acting under section 301F (and in any event no later than the expiry date of the assessment period)—

- (a) notify the section 301A notice-giver that it has determined to approve the acquisition; or
- (b) in the case of a proposed objection to an acquisition, give a warning notice.

(4) The Authority is treated as having approved the acquisition if, at the expiry of the assessment period, it has neither—

- (a) given notice under subsection (3); nor
- (b) informed the section 301A notice-giver that the notice is incomplete.

(5) If the Authority decides to object to an acquisition it must give the section 301A notice-giver a decision notice.

(6) Following receipt of a decision notice under this section, the section 301A notice-giver may refer the Authority’s decision to the Tribunal.

Duration of approval

301H.—(1) Approval of an acquisition is effective for such period as the Authority may specify in writing.

(2) Where the Authority has specified a period under subsection (1), it may extend the period.

(3) Where the Authority has not specified a period, the approval is effective for one year beginning with the date—

- (a) of the notice given under section 301G(3)(a);
- (b) on which the Authority is treated as having given approval under section 301G(5); or
- (c) of a decision on a reference to the Tribunal which results in the person receiving approval.

Enforcement procedures

Objections by the Authority

301I.—(1) The Authority may object to a person’s control over a recognised investment exchange in any of the circumstances specified in subsection (2).

(2) The circumstances are that the Authority reasonably believes that—

- (a) the person acquired or increased control without giving notice under section 301A in circumstances where notice was required; and
- (b) there are grounds for objecting to control on the basis of the approval requirement in section 301F(4).

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(3) If the Authority proposes to object to a person's control over a recognised investment exchange, it must give that person a warning notice.

(4) If the Authority decides to object to a person's control over a UK authorised person, it must give that person a decision notice.

(5) A person to whom the Authority gives a decision notice under this section may refer the matter to the Tribunal.

Restriction notices

301J.—(1) The Authority may give notice in writing (a "restriction notice") to a person in the following circumstances.

(2) The circumstances are that—

- (a) the person has control over a recognised investment exchange by virtue of holding shares or voting power; and
- (b) in relation to the shares or voting power, the Authority has given the person a warning notice or a decision notice under section 301G or 301I or a final notice which confirms a decision notice given under section 301G or 301I.

(3) In a restriction notice, the Authority may direct that shares or voting power to which the notice relates are, until further notice, subject to one or more of the following restrictions—

- (a) except by court order, an agreement to transfer or a transfer of any such shares or voting power or, in the case of unissued shares, any agreement to transfer or transfer of the right to be issued with them, is void;
- (b) no voting power is to be exercisable;
- (c) no further shares are to be issued in pursuance of any right of the holder of any such shares or voting power or in pursuance of any offer made to their holder;
- (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on any such shares, whether in respect of capital or otherwise.

(4) A restriction notice takes effect—

- (a) immediately; or
- (b) on such date as may be specified in the notice.

(5) A restriction notice does not extinguish rights which would be enjoyable but for the notice.

(6) A copy of the restriction notice must be served on—

- (a) the recognised investment exchange in question; and
- (b) in the case of shares or voting power held in a parent undertaking of a recognised investment exchange, the parent undertaking.

(7) A person to whom the Authority gives a restriction notice may refer the matter to the Tribunal.

Orders for sale of shares

301K.—(1) The court may, on the application of the Authority, order the sale of shares or the disposition of voting power in the following circumstances.

(2) The circumstances are that—

- (a) a person has control over a recognised investment exchange by virtue of holding the shares or voting power; and

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- (b) the acquisition or continued holding of the shares or voting power by that person is in contravention of a final notice which confirms a decision notice given under section 301G or section 301I.
- (3) Where the court orders the sale of shares or disposition of voting power it may—
 - (a) if a restriction notice has been given in relation to the shares or voting power, order that the restrictions cease to apply; and
 - (b) make any further order.
- (4) Where the court makes an order under this section, it must take into account the level of holding that the person would have been entitled to acquire, or to continue to hold, without contravening the final notice.
- (5) If shares are sold or voting power disposed of in pursuance of an order under this section, any proceeds, less the costs of the sale or disposition, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for payment of a whole or part of the proceeds.
- (6) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

Offences

Offences under this Chapter

- 301L.**—(1) A person who fails to comply with an obligation to notify the Authority under section 301A(1) or (2) is guilty of an offence.
- (2) A person who gives notice to the Authority under section 301A(1) and makes the acquisition to which the notice relates before the expiry date of the assessment period is guilty of an offence unless the Authority has approved the acquisition.
 - (3) A person who makes an acquisition in contravention of a warning notice or a decision notice given under section 301G or a final notice which confirms a decision notice under that section is guilty of an offence.
 - (4) A person who makes an acquisition after the Authority's approval for the acquisition has ceased to be effective by virtue of section 301H is guilty of an offence.
 - (5) A person who provides information to the Authority which is false in a material particular is guilty of an offence.
 - (6) A person who breaches a direction contained in a restriction notice given under section 301J is guilty of an offence.
 - (7) A person guilty of an offence under subsection (1), (2) or (4) to (6) is liable—
 - (a) on summary conviction to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.
 - (8) A person guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
 - (9) It is a defence for a person charged with an offence under subsection (1) in relation to section 301A(2) to show that the person had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.

Interpretation

Interpretation

301M.—(1) In this Chapter—

“acquisition” means the acquisition of control or of an increase in control over a recognised investment exchange;

“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; and

“shares” and “voting power” have the same meaning as in section 422.

(2) For the purposes of this Chapter, a “working day” is a day other than—

- (a) a Saturday or a Sunday; or
- (b) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.”

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Changes and effects yet to be applied to :

- Regulations power to modify conferred by [2023 c. 29 s. 3 Sch. 1 Pt. 2](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)