

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)

2001 No 995

FINANCIAL SERVICES AND MARKETS

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

Made 9th April 2001

Laid before Parliament 10th April 2001

Coming into force in accordance with regulation 2

The Treasury, in exercise of the powers conferred on them by sections 286(1), 426, 427 and 428(3) of the Financial Services and Markets Act 2000, and with the approval of the Secretary of State under section 286(2) of that Act, hereby make the following Regulations:

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8 Exchanges and clearing houses which do not enter into market contracts

9 Effect of recognition under the Financial Services Act 1986

10 Revocation of recognition: action taken before commencement

Signature(s)

SCHEDULES

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- Part I Recognition Requirements for Investment Exchanges
- Part II Recognition Requirements for Investment Exchanges: Default Rules in Respect of

Market Contracts

- Part III Recognition Requirements for Clearing Houses
- Part IV Recognition Requirements Applying to Clearing Houses: Default Rules in Respect of Market Contracts
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EXPLANATORY NOTE

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/1 Citation

1 Citation

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

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/2 Commencement

2 Commencement

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.

NOTES

Initial Commencement

To be appointed

To be appointed: see above.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/3 Interpretation

3 Interpretation

(1) In these Regulations--

"the Act" means the Financial Services and Markets Act 2000;

["the appropriate regulator" has the meaning given in section 285A of the Act;]

["branch" in relation to an investment firm has the meaning given in Article 4.1.26 of the markets in financial instruments directive and in relation to a credit institution has the meaning given in Article 4.3 of the banking consolidation directive;

. . .

"the Commission Regulation" means Commission Regulation 1287/2006 of 10 August 2006;]

"the Companies Act" means the Companies Act 1989;

["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;

"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;]

["default fund" means the sum of the default fund contributions by the members or designated non-members of a recognised investment exchange to that exchange or by one recognised investment exchange to another or by the members of a recognised clearing house to that clearing house or by one recognised clearing house to another to the extent those contributions have not been returned or otherwise applied;

"default fund contribution" has the same meaning as in section 188(3A) of the Companies Act;]

"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;

["disorderly trading conditions" has the same meaning as in the markets in financial instruments directive;]

"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 [any of subsections (2) to (3A) of section 285] 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);

["the FCA" means the Financial Conduct Authority;]

["financial instrument" has the meaning given in Article 4.1.17 of the markets in financial instruments directive;]

"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;

"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;

["multilateral trading facility" has the meaning given in Article 4.1.15 of the markets in financial instruments directive;]

"the Northern Ireland Order" means the Companies (No 2) (Northern Ireland) Order 1990; and

["regulated market" has the meaning given in Article 4.1.14 of the markets in financial instruments directive;]

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

["settlement" has the same meaning as in 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].

[(1A) In Part 1 of the Schedule, in paragraph 21A in Part 3 of the Schedule and in paragraph 31 in Part 5 of the Schedule, "clearing" has the same meaning as in the markets in financial instruments directive.]

(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.

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

Amendment

Para (1): definition "the appropriate regulator" inserted by SI 2013/472, art 3, Sch 2, para 36(a).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para (1): definitions "branch", "central counterparty, clearing and settlement" and "the Commission Regulation" inserted by SI 2006/3386, regs 2, 3.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para (1): definition definition "'central counterparty", "clearing" and "settlement"' (omitted) revoked by SI 2013/504, reg 5(1), (2)(a)(i).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

Para (1): definitions "competent authority" and "credit institution" inserted by SI 2006/3386, regs 2, 3.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para (1): definitions "default fund" and "default fund contribution" inserted by SI 2009/853, reg 4(1), (2).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para (1): definition "disorderly trading conditions" inserted by SI 2006/3386, regs 2, 3.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para (1): in definition "exempt activities" words "any of subsections (2) to (3A) of section 285" in square brackets substituted by SI 2013/504, reg 5(1), (2)(a)(ii).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

Para (1): definition "the FCA" inserted by SI 2013/472, art 3, Sch 2, para 36(a).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para (1): definition "financial instrument" inserted by SI 2006/3386, regs 2, 3.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para (1): definition "multilateral trading facility" inserted by SI 2006/3386, regs 2, 3.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para (1): definition "regulated market" inserted by SI 2006/3386, regs 2, 3.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para (1): definition "settlement" inserted by SI 2013/504, reg 5(1), (2)(a)(iii).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

Para (1): definitions "transferable securities" and "UK firm" inserted by SI 2006/3386, regs 2, 3.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para (1A): inserted by SI 2013/504, reg 5(1), (2)(b).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/4 Recognition requirements for investment exchanges

4 Recognition requirements for investment exchanges

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.

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/5 Recognition requirements for clearing houses [which are not central counterparties]

5 Recognition requirements for clearing houses [which are not central counterparties]

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)(c)] of the Act, or which have applied for such an order under [section 288(1A)] of the Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

Amendment

Provision heading: words "which are not central counterparties" in square brackets inserted by SI 2013/504, reg 5(1), (3)(a).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

Words "section 290(1)(c)" in square brackets substituted by SI 2013/504, reg 5(1), (3)(b).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

Words "section 288(1A)" in square brackets substituted by SI 2013/504, reg 5(1), (3)(c).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/[5A Recognition requirements for central counterparties]

[5A Recognition requirements for central counterparties]

[Parts 5 and 6 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(1) of the Act.]

NOTES

Amendment

Inserted by SI 2013/504, reg 5(1), (4).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/6 Method of satisfying recognition requirements

6 Method of satisfying recognition requirements

(1) In considering whether a recognised body or applicant satisfies recognition requirements applying to it under these Regulations, [the appropriate regulator] 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.

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

Amendment

Para (1): words "the appropriate regulator" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(b).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/7 Dealings and transactions not involving investments

7 Dealings and transactions not involving investments

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 clearing house to limit the provision of its clearing services to clearing services in respect of transactions in investments.

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

Amendment

Words omitted revoked by SI 2013/472, art 3, Sch 2, para 36(c).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/8 Exchanges and clearing houses which do not enter into market contracts

8 Exchanges and clearing houses which do not enter into market contracts

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.

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/9 Effect of

recognition under the Financial Services Act 1986

9 Effect of recognition under the Financial Services Act 1986

(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.

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

10 Revocation of recognition: action taken before commencement

- (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 (overseas investment exchanges and clearing houses), the Treasury, or
 - (ii) in any other case, the Authority.
- (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 (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 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.

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/Signature(s)

David Clelland

Clive Betts

Two of the Lords Commissioners of Her Majesty's Treasury

15th March 2001

Approved,

Kim Howells

Parliamentary Under Secretary of State for Consumers and Corporate Affairs,

Department of Trade and Industry

9th April 2001

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/SCHEDULE/Part I Recognition Requirements for Investment Exchanges

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 FCA] [must] (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 FCA] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the exchange's connection with any person.

[(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.]

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[, mitigation] and management of risks to the performance of the exchange's functions;

(c) the effecting and monitoring of transactions on the exchange;

[(ca) the technical operation of the exchange, including contingency arrangements for disruption to

its facilities;]

- (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 [and is in accordance with paragraph 7B];
 - [(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;]
 - (b) . . .
 - (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[, which comply with paragraph 7D,] 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;
 - [(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) appropriate measures [(including the monitoring of transactions effected on the exchange)] 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.

[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 FCA],

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 FCA] 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 FCA],

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 FCA] 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 FCA] 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.]

...

5

...

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 FCA], with any other authority, body or person having responsibility in the 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).

[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); 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) 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,
 - (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,
 - (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, and

(d) [EU] 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 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 FCA] 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.]

Discipline

8

[(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.]

(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.

(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.

[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,
 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).]

NOTES**Initial Commencement***To be appointed*

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

Amendment

Para 1: in sub-para (2) words "the FCA" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(i).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 1: in sub-para (2) word "must" in square brackets substituted by SI 2006/3386, regs 2, 4.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 2: in sub-para (2) words "the FCA" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(i).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 2: sub-paras (3), (4) inserted by SI 2006/3386, regs 2, 5.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 3: in sub-para (2)(b) word ", mitigation" in square brackets inserted by SI 2006/3386, regs 2, 6(a).

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 3: sub-para (2)(ca) inserted by SI 2006/3386, regs 2, 6(b).

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 4: in sub-para (2)(a) words "and is in accordance with paragraph 7B" in square brackets inserted by SI

2006/3386, regs 2, 7(a).

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 4: sub-para (2)(aa) inserted by SI 2006/3386, regs 2, 7(b).

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 4: sub-para (2)(b) revoked by SI 2006/3386, regs 2, 7(c).

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 4: in sub-para (2)(d) words ", which comply with paragraph 7D," in square brackets inserted by SI 2006/3386, regs 2, 7(d).

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 4: sub-para (2)(ea) inserted by SI 2006/3386, regs 2, 7(e).

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 4: in sub-para (2)(f) words "(including the monitoring of transactions effected on the exchange)" in square brackets inserted by SI 2006/3386, regs 2, 7(f).

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Paras 4A, 4B: inserted by SI 2006/3386, regs 2, 8.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 4A: in sub-para (2)(b) words "the FCA" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(i).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 4A: in sub-para (3) words "The FCA" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(i).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 4B: in sub-para (2)(b) words "the FCA" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(i).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 4B: in sub-para (3) words "The FCA" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(i).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 4B: in sub-para (4) words "the FCA" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(i).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 5: revoked by SI 2005/381, reg 11.

Date in force: 1 July 2005: see SI 2005/381, reg 1(2).

Para 6: in sub-para (2) words "the FCA" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(i).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Paras 7A-7E: inserted by SI 2006/3386, regs 2, 9.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 7A: in sub-para (10) in definition "the relevant articles" in para (d) reference to "EU" in square brackets substituted by SI 2011/1043, art 6(2)(b).

Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Para 7B: in sub-para (5) words "the FCA" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(i).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 8: sub-para (1) substituted by SI 2006/3386, regs 2, 10.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 9A: inserted by SI 2006/3386, regs 2, 11.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/SCHEDULE/Part II Recognition Requirements for Investment Exchanges: Default Rules in Respect of Market Contracts

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 . . . for the purposes of or in connection with the provision of clearing services for the exchange.

[(4) Sub-paragraph (5) applies where the exchange has arrangements for transacting business with, or in relation to common members of, a recognised clearing house or another recognised investment exchange.

(5) A recognised investment exchange must have default rules which in the event of the clearing house or the investment exchange being or appearing to be unable to meet its obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which that person is a party.]

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) [or (c)] 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 [entered into by the defaulter in one capacity for the purposes of section 187 of the Companies Act] to be aggregated or set off so as to produce a net sum;

[(bb) if relevant, for that sum to be aggregated with, or set off against, any sum owed by or to the investment exchange by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate so as to produce a net sum;]

[(c) for the net sum referred to in paragraph (b) or, if relevant, the net sum referred to in paragraph (bb)--

(i) if payable by the defaulter to the exchange, to be set off against--

(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);

(bb) to the extent (if any) that any sum remains after set off under paragraph (aa), any default fund contribution provided by the defaulter remaining after any application of such contribution;

(ii) to the extent (if any) that any sum remains after set off under paragraph (i), to be paid from such other funds, including the default fund, or resources as the exchange may apply under its default rules;

(iii) if payable by the exchange to the defaulter, to be aggregated with--

(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);

(bb) any default fund contribution provided by the defaulter remaining after any application of such contribution;]

(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.

[(2A) In sub-paragraph (2), "margin set off agreement" means an agreement between the exchange and AP permitting any eligible position to which the Participant Member is party with the exchange and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to either the exchange or AP and/or margin to be provided to, either or both, the exchange and AP.

(2B) In sub-paragraph (2)--

"AP" means a recognised clearing house or another recognised investment exchange of whom a Participant Member is a member;

"eligible position" means any position which may be included in the set off calculation;

"Participant Member" means a person who--

- (a) is a member of the exchange;
- (b) is a member or participant of AP; and
- (c) chooses to participate, in accordance with the rules of the exchange, in such agreement.

(2C) The property, contribution, funds or resources referred to in paragraph (2)(c), against which the net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.]

(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.

(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.

[12A

The rules of the exchange must provide that, in the event of a default, any default fund contribution provided by the defaulter shall only be used in accordance with paragraph 12(2)(c)(i) or (ii).]

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 [or the default of a recognised clearing house or another recognised investment exchange].

...

15

...

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

Amendment

Para 10: in sub-para (3) words omitted revoked by SI 2006/3386, regs 2, 12.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 10: sub-paras (4), (5) inserted by SI 2009/853, reg 4(1), (3)(a).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 12: in sub-para (1) words "or (c)" in square brackets inserted by SI 2009/853, reg 4(1), (3)(b)(i).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 12: in sub-para (2)(b) words from "entered into by" to "the Companies Act" in square brackets inserted by SI 2009/853, reg 4(1), (3)(b)(ii).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 12: sub-para (2)(bb) inserted by SI 2009/853, reg 4(1), (3)(b)(iii).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 12: sub-para (2)(c) substituted by SI 2009/853, reg 4(1), (3)(b)(iv).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 12: sub-paras (2A)-(2C) inserted by SI 2009/853, reg 4(1), (3)(b)(v).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 12A: inserted by SI 2009/853, reg 4(1), (3)(c).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 14: words from "or the default" to "recognised investment exchange" in square brackets inserted by SI 2009/853, reg 4(1), (3)(d).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 15: revoked by SI 2013/472, art 3, Sch 2, para 36(d)(ii).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/SCHEDULE/Part III Recognition Requirements for Clearing Houses

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 Bank of England] 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 Bank of England] 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 Bank of England], with any other authority, body or person having responsibility in the 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

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).

[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 . . . 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.]

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.

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

Amendment

Para 16: in sub-para (2) words "the Bank of England" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(iii).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 17: in sub-para (2) words "the Bank of England" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(iii).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 20: in sub-para (2) words "the Bank of England" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(iii).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 21A: inserted by SI 2006/3386, regs 2, 13.

Date in force: 1 November 2007: see SI 2006/3386, reg 1.

Para 21A: words omitted revoked by SI 2013/504, reg 5(1), (5).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into

force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/SCHEDULE/Part IV Recognition Requirements Applying to Clearing Houses: Default Rules in Respect of Market Contracts

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.

[(3) Sub-paragraph (4) applies where the clearing house has arrangements for transacting business with, or in relation to common members of, a recognised investment exchange or another recognised clearing house.

(4) A recognised clearing house must have default rules which in the event of the investment exchange or the clearing house being or appearing to be unable to meet its obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which that person is a party.]

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 [entered into by the defaulter in one capacity for the purposes of section 187 of the Companies Act] to be aggregated or set off so as to produce a net sum;

[(bb) if relevant, for that sum to be aggregated with, or set off against, any sum owed by or to the clearing house by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate so as to produce a net sum;]

[(c) for the net sum referred to in paragraph (b) or, if relevant, the net sum referred to in paragraph (bb)--

(i) if payable by the defaulter to the clearing house, to be set off against--

(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);

(bb) to the extent (if any) that any sum remains after set off under paragraph (aa), any default fund contribution provided by the defaulter remaining after any application of such contribution;

(ii) to the extent (if any) that any sum remains after set off under paragraph (i), to be paid from such other funds, including the default fund, or resources as the clearing house may apply under its default rules;

(iii) if payable by the clearing house to the defaulter, to be aggregated with--

(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);

(bb) any default fund contribution provided by the defaulter remaining after any application of such contribution; 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.

[(1A) In sub-paragraph (1), "margin set off agreement" means an agreement between the clearing house and AP permitting any eligible position to which the Participant Member is party with the clearing house and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to or by either the clearing house or AP and/or margin to be provided to, either or both, the clearing house and AP.

(1B) In sub-paragraph (1A)--

"AP" means a recognised investment exchange or another recognised clearing house of whom a Participant Member is a member;

"eligible position" means any position which may be included in the set off calculation;

"Participant Member" means a person who--

(a) is a member of the clearing house;

(b) is a member or participant of AP; and

(c) chooses to participate, in accordance with the rules of the clearing house, in such agreement.

(1C) The property, contribution, funds or resources referred to in paragraph (1)(c), against which the net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.]

(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.

(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.

[25A

The rules of the clearing house must provide that in the event of a default, any default fund contribution provided by the defaulter shall only be used in accordance with paragraph 25(1)(c)(i) or (ii).]

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 [or the default of a recognised investment exchange or another recognised 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 [other than a client account of the defaulter].

(2) This paragraph is without prejudice to the requirements of any rules relating to clients' money made by [the FCA under sections 137A and 137B of the Act].

[(3) For the purposes of this paragraph, "client account of the defaulter" means an account held by the clearing house in the name of the defaulter in which relevant transactions effected by the defaulter have been recorded.

(4) In sub-paragraph (3) "relevant transaction" has the same meaning as in regulation 16(1) of the Financial Markets and Insolvency Regulations 1991.]

NOTES

Initial Commencement

To be appointed

To be appointed: see art 2.

Appointment

Appointment (for certain purposes): 3 September 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came partly into force): see SI 2001/2632, art 2(2), Schedule, Pt 2.

Appointment (for remaining purposes): 1 December 2001 (being the date on which the Financial Services and Markets Act 2000, ss 290(1), 292(2) came fully into force): see SI 2001/3538, art 2(1).

Amendment

Para 24: sub-paras (3), (4) inserted by SI 2009/853, reg 4(1), (3)(g).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 25: in sub-para (1)(b) words from "entered into by" to "the Companies Act" in square brackets inserted by SI 2009/853, reg 4(1), (3)(h)(i).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 25: sub-para (1)(bb) inserted by SI 2009/853, reg 4(1), (3)(h)(ii).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 25: sub-para (1)(c) substituted by SI 2009/853, reg 4(1), (3)(h)(iii).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 25: sub-paras (1A)-(1C) inserted by SI 2009/853, reg 4(1), (3)(h)(iv).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 25A: inserted by SI 2009/853, reg 4(1), (3)(i).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 27: words from "or the default" to "recognised clearing house" in square brackets inserted by SI 2009/853, reg 4(1), (3)(j).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 28: in sub-para (1) words "other than a client account of the defaulter" in square brackets inserted by SI 2009/853, reg 4(1), (3)(k).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

Para 28: in sub-para (2) words "the FCA under sections 137A and 137B of the Act" in square brackets substituted by SI 2013/472, art 3, Sch 2, para 36(d)(iv).

Date in force: 1 April 2013: see SI 2013/472, art 1(1).

Para 28: sub-paras (3), (4) inserted by SI 2009/853, reg 4(1), (3)(l).

Date in force: 15 June 2009: see SI 2009/853, reg 1(1).

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/SCHEDULE/[Part 5 Recognition Requirements for Central Counterparties]

[Part 5

Recognition Requirements for Central Counterparties]

NOTES

Amendment

Inserted by SI 2013/504, reg 5(1), (6).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

[Requirements of the EMIR regulation

29

A central counterparty providing clearing services must meet the requirements set out in the EMIR regulation (within the meaning of section 313 of the Act).

Market abuse or financial crime

30

The central counterparty must ensure that appropriate measures are adopted to reduce the extent to which its facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence.

Access to central counterparty, clearing and settlement facilities

31

(1) The central counterparty 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 central counterparty may refuse access to those facilities on legitimate commercial grounds.]

NOTES

Amendment

Inserted by SI 2013/504, reg 5(1), (6).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition

Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/SCHEDULE/[Part 6 Recognition Requirements Applying to Central Counterparties: Default Rules]

[Part 6

Recognition Requirements Applying to Central Counterparties: Default Rules]

NOTES

Amendment

Inserted by SI 2013/504, reg 5(1), (6).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

[Introduction

32

This Part sets out recognition requirements which apply to the default rules of a central counterparty.

Interpretation

33

In this Part--

- (a) "assets" has the meaning given by Article 39(10) of the EMIR Level 1 Regulation;
- (b) "clearing member" has the meaning given by Article 2(14) of the EMIR Level 1 Regulation;
- (c) "client" has the meaning given by section 190(1) of the Companies Act 1989;
- (d) "default rules" has the meaning given by section 188(1) of the Companies Act 1989;
- (e) "defaulting" has the meaning given by section 188(2) of the Companies Act 1989;
- (f) "EMIR Level 1 Regulation" means Regulation (EU) No 648/2012 of 4 July 2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;
- (g) "indirect client" has the meaning given by section 190(1) of the Companies Act 1989;
- (h) "position" has the has the meaning given by section 190(1) of the Companies Act 1989.

Portability of accounts: default rules going beyond requirements of EMIR

34

- (1) Sub-paragraph (2) applies to any provisions of the default rules which--
 - (a) provide for the transfer of the positions or assets of a defaulting clearing member;
 - (b) are not necessary for the purposes of complying with the minimum requirements of Articles 48(5) and (6) of the EMIR Level 1 Regulation; and
 - (c) may be relevant to a question falling to be determined in accordance with the law of a part of the

United Kingdom.

- (2) Where this sub-paragraph applies to any provisions of the default rules, the default rules must--
- (a) include a summary of how a transfer under the provisions will work and its main legal implications (including information on the applicable insolvency law in the relevant jurisdictions), or a clear and prominent reference to the place where such a summary can be directly and easily accessed by the public;
 - (b) ensure that a position or asset cannot be transferred under the provisions without the consent of--
 - (i) the person for whose account the position or asset is held; and
 - (ii) the clearing member to whom the position or asset is transferred;
 - (c) ensure that any transfer under the provisions is fair to clients and indirect clients; and
 - (d) specify a pre-defined transfer period within which a transfer under the provisions must take place.
- (3) For the purposes of sub-paragraph (2)(a), a clear and prominent reference to a place where a summary can be directly and easily accessed by the public may be provided by way of a direct internet link to an appropriate internet site.
- (4) For the purposes of sub-paragraph (2)(b), consent may be given in advance of a default (such as by means of suitable provision in the default rules).

Liquidation of accounts

35

The default rules must contain provision ensuring that, after the liquidation of an account and the return of any collateral to clients or to a clearing member for the account of the clearing member's clients, the amount of any other net sum payable or, as the case may be, the fact that no other net sum is payable, in respect of that account will be certified for the purposes of section 163 of the Companies Act 1989.]

NOTES

Amendment

Inserted by SI 2013/504, reg 5(1), (6).

Date in force: 1 April 2013 (immediately after the Financial Services Act 2012, s 6 comes into force): see SI 2013/504, reg 1(2); for transitional and saving provisions see reg 52 thereof.

UK Parliament SIs 2000-2009/2001/951-1000/Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)/EXPLANATORY NOTE

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the recognition requirements which investment exchanges and clearing houses must satisfy in order to be or remain recognised by the Financial Services Authority under section 290 of the Financial Services and Markets Act 2000 (c 8) ("the Act"). Recognised investment exchanges and

clearing houses have an exemption under section 285(2) of the Act, permitting them to carry on certain activities which would otherwise require authorisation by the Authority under Part IV of the Act.

The recognition requirements are listed in the Schedule to the Regulations, which applies in accordance with regulations 4 and 5. Regulation 6 indicates that in assessing compliance with the requirements the Financial Services Authority may take account, for example, of the body's constitution and practices, as well as its rules, guidance, and the arrangements which it makes for the provision of clearing services (see the definition of "regulatory provisions" in section 302(1) of the Act). Regulation 6 also permits a body to satisfy the requirements by delegating the performance of a function to another person, provided that person is fit and proper.

Part I of the Schedule sets out various requirements applying to investment exchanges, covering matters such as the sufficiency of its financial resources, the protection afforded to investors, and its willingness to maintain high standards of integrity and fair dealing. Part III of the Schedule sets out a similar range of requirements for clearing houses. Some requirements in Part I refer to "investments", which is defined in regulation 3(1) by reference to section 22 of the Act. At the time these Regulations were made, the investments specified for the purposes of that section were contained in Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).

Parts II and IV of the Schedule set out requirements formerly contained in Parts I and II of Schedule 21 of the Companies Act 1989 (c 40) ("the Companies Act"). These provisions require recognised investment exchanges and clearing houses to have default rules applying where a person defaults on obligations under a market contract. "Market contract" (see regulation 1) is defined in section 286 of the Act as a contract to which Part VII of the Companies Act (or Part V of the Companies (No 2) (Northern Ireland) Order 1990 (SI 1990/1504, NI 10)) applies. However under regulation 8 (which replaces section 156(3A) of the Companies Act) a recognised investment exchange or recognised clearing house is not required to have default rules relating to particular types of market contract if it does not enter into any such contracts. "Market contract" also includes any other categories of contract prescribed by the Treasury under section 286 of the Act, but no such additional categories are currently prescribed.

Regulations 9 and 10 contain transitional provisions. Regulation 9 ensures that investment exchanges and clearing houses which were recognised under the Financial Services Act 1986 (c 60) continue to be recognised under the Act. Regulation 10 ensures that any action taken with a view to the revocation of such recognition under the Financial Services Act can be continued. However regulations 9(6) and 10(7) contain safeguards to ensure that recognised bodies have sufficient time to comply with new requirements which did not previously apply to them.