

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:

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\(1\)](#).

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\(1\)](#).

3 Interpretation

(1) In these Regulations—

“the Act” means the [Financial Services and Markets Act 2000](#);

[“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;

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

“the Commission Regulation” means [Commission Regulation 1287/2006](#) of 10 August 2006;]

“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;]

“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 section 285(2) or (3) of the Act;

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

[“financial 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;

["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].

(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): 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): 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): 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): 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): 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](#).

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\(1\)](#).

5 Recognition requirements for clearing houses

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

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\(1\)](#).

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 Authority may take into account all relevant circumstances including the constitution of the person concerned and its regulatory provisions and practices within the meaning of section 302(1) of the Act.

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

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

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\(1\)](#).

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 investment exchange or 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\(1\)](#).

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\(1\)](#).

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\(1\)](#).

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

SCHEDULE

Regulations 4 and 5

Part I

Recognition Requirements for Investment Exchanges

Financial resources

1

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

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

[(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 Authority,

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

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

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

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

Provision of post-trade information about share trading

4B

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

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

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

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

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

- (a) in the case of shares traded on a multilateral trading facility operated by an exchange, in Article 30.2 of the markets in financial instruments directive and Chapter IV of the Commission Regulation; or
- (b) in the case of shares traded on a regulated market operated by an exchange, in Article 45.2 of that directive and Chapter IV of the Commission Regulation.
- (4) If the Authority permits exchanges to defer the publication required by sub-paragraph (1), those exchanges must ensure that the existence of and the terms of the permission are disclosed to users and members of their facilities and to investors.
- (5) In this paragraph, "shares" means shares admitted to trading on a regulated market.]

...

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 Authority, 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) Community legislation made under the provisions mentioned in paragraphs (a) to (c).

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

Access to the exchange's facilities

7B

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

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

(a) the constitution and administration of the exchange;

(b) rules relating to transactions on the market;

(c) its professional standards for staff of any investment firm or credit institution having access to or membership of a financial market operated by the exchange;

(d) conditions established under sub-paragraph (3)(c) for access to or membership of a financial market operated by the exchange by persons other than investment firms or credit institutions; and

(e) the rules and procedures for clearing and settlement of transactions concluded on a financial market operated by the exchange.

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

(a) an investment firm,

(b) a credit institution, or

(c) a person who—

(i) is fit and proper,

(ii) has a sufficient level of trading ability and competence,

(iii) where applicable, has adequate organisational arrangements, and

(iv) has sufficient resources for the role he is to perform, taking account of the exchange's arrangements under paragraph 4(2)(d).

(4) Rules under this paragraph must enable—

(a) an investment firm authorised under Article 5 of the markets in financial instruments directive, or

(b) a credit institution authorised under the banking consolidation directive,

by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have direct or remote access to, or membership of, any financial market operated by the exchange on the same terms as a UK firm.

(5) The exchange must make arrangements regularly to provide the Authority with a list

of the users or members of its facilities.

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

Access to central counterparty, clearing and settlement facilities

7C

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

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

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

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

Choice of settlement facilities

7D

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

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

(a) such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction; and

(b) the exchange is satisfied that the smooth and orderly functioning of the financial markets will be maintained.

Suspension and removal of financial instruments from trading

7E

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

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) 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: 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)(a) 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 (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 5: revoked by [SI 2005/381, reg 11](#).

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

Paras 7A–7E: inserted by [SI 2006/3386, regs 2, 9](#).

Date in force: 1 November 2007: see [SI 2006/3386, reg 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](#).

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.

Content of rules

11

(1) This paragraph applies as regards contracts falling within section 155(2)(a) of the

Companies Act.

- (2) The rules mentioned in paragraph 10 must provide—
- (a) for all rights and liabilities between those party as principal to unsettled market contracts to which the defaulter is party as principal to be discharged and for there to be paid by one party to the other such sum of money (if any) as may be determined in accordance with the rules;
 - (b) for the sums so payable in respect of different contracts between the same parties to be aggregated or set off so as to produce a net sum; and
 - (c) for the certification by or on behalf of the exchange of the net sum payable or, as the case may be, of the fact that no sum is payable.
- (3) The reference in sub-paragraph (2) to rights and liabilities between those party as principal to unsettled market contracts does not include rights and liabilities—
- (a) in respect of margin; or
 - (b) arising out of a failure to perform a market contract.
- (4) The rules may make the same or similar provision, in relation to non-members designated in accordance with the procedures mentioned in sub-paragraph (5), as in relation to members of the exchange.
- (5) If such provision is made as is mentioned in sub-paragraph (4), the exchange must have adequate procedures—
- (a) for designating the persons, or descriptions of person, in respect of whom action may be taken;
 - (b) for keeping under review the question which persons or descriptions of person should be or remain so designated; and
 - (c) for withdrawing such designation.
- (6) The procedures must be designed to secure that—
- (a) a person is not, or does not remain, designated if failure by him to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market; and
 - (b) a description of persons is not, or does not remain, designated if failure by a person of that description to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market.
- (7) The exchange must have adequate arrangements—
- (a) for bringing a designation or withdrawal of designation to the attention of the person or description of persons concerned; and
 - (b) where a description of persons is designated, or the designation of a description of persons is withdrawn, for ascertaining which persons fall within that description.

12

- (1) This paragraph applies as regards contracts falling within section 155(2)(b) of the Companies Act.
- (2) The rules mentioned in paragraph 10 must provide—
- (a) for all rights and liabilities of the defaulter under or in respect of unsettled market

contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules;

(b) for the sums so payable by or to the defaulter in respect of different contracts to be aggregated or set off so as to produce a net sum;

(c) for that sum—

(i) if payable by the defaulter to the exchange, to be set off against any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) so as to produce a further net sum;

(ii) if payable by the exchange to the defaulter, to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and

(d) for the certification by or on behalf of the exchange of the sum finally payable or, as the case may be, of the fact that no sum is payable.

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

(a) the effecting by the exchange of corresponding contracts in relation to unsettled market contracts to which the defaulter is party;

(b) the transfer of the defaulter's position under an unsettled market contract to another member of the exchange;

(c) the exercise by the exchange of any option granted by an unsettled market contract.

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

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

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

Notification to other parties affected

13

The exchange must have adequate arrangements for ensuring that—

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

(b) in the case of unsettled market contracts with a defaulter acting as agent, parties to the contract and the defaulter's principals are notified as soon as reasonably practicable of the default and of the identity of the other parties to the contract.

Cooperation with other authorities

14

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

Margin

15

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

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

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](#).

Part III

Recognition Requirements for Clearing Houses

Financial resources

16

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

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

Suitability

17

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

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

Systems and controls

18

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

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

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

Safeguards for investors

19

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

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

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

Promotion and maintenance of standards

20

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

of using the facilities provided by the clearing house.

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

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

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

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 21A: inserted by [SI 2006/3386, regs 2, 13](#).

Date in force: 1 November 2007: see [SI 2006/3386, reg 1](#).

Part IV

Recognition Requirements Applying to Clearing Houses: Default Rules in Respect of Market Contracts

Default rules in respect of market contracts

24

- (1) The clearing house must have default rules which, in the event of a member of the clearing house being or appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken to close out his position in relation to all unsettled market contracts to which he is a party.
- (2) The rules may authorise the taking of the same or similar action where a member appears to be likely to become unable to meet his obligations in respect of one or more market contracts.

Content of rules

25

- (1) The rules must provide—
 - (a) for all rights and liabilities of the defaulter under or in respect of unsettled market contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules;
 - (b) for the sums so payable by or to the defaulter in respect of different contracts to be aggregated or set off so as to produce a net sum;
 - (c) for that sum—
 - (i) if payable by the defaulter to the clearing house, to be set off against any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) so as to produce a further net sum;
 - (ii) if payable by the clearing house to the defaulter, to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and
 - (d) for the certification by or on behalf of the clearing house of the sum finally payable or, as the case may be, of the fact that no sum is payable.
- (2) The reference in sub-paragraph (1) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the rules authorising—
 - (a) the effecting by the clearing house of corresponding contracts in relation to unsettled market contracts to which the defaulter is party;
 - (b) the transfer of the defaulter's position under an unsettled market contract to another member of the clearing house;
 - (c) the exercise by the clearing house of any option granted by an unsettled market contract.
- (3) A "corresponding contract" means a contract on the same terms (except as to price or premium) as the market contract but under which the person who is the buyer under the market contract agrees to sell and the person who is the seller under the market contract agrees to buy.
- (4) Sub-paragraph (3) applies with any necessary modifications in relation to a market contract which is not an agreement to sell.
- (5) The reference in sub-paragraph (1) to the rights and liabilities of a defaulter under or

in respect of an unsettled market contract does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.

Notification to other parties affected

26

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

Cooperation with other authorities

27

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

Margin

28

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

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

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\(1\)](#).

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.

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