

**2001 No. 995**

**FINANCIAL SERVICES AND MARKETS**

**The 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(a), and with the approval of the Secretary of State under section 286(2) of that Act, hereby make the following Regulations:

**Citation**

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

**Commencement**

2. 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.

**Interpretation**

3.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000;

“the Companies Act” means the Companies Act 1989(b);

“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;

“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 crime” is to be construed in accordance with section 6(3) and (4) of the Act;

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(a) 2000 c.8.  
(b) 1989 c.40.

“the Financial Services Act” means the Financial Services Act 1986(a);

“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;

“the Northern Ireland Order” means the Companies (No. 2) (Northern Ireland) Order 1990(b); and

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

(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.

#### **Recognition requirements for investment exchanges**

4. 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.

#### **Recognition requirements for clearing houses**

5. 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.

#### **Method of satisfying recognition requirements**

6.—(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.

#### **Dealings and transactions not involving investments**

7. 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.

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(a) 1986 c.60.

(b) S.I. 1990/1504 (N.I. 10).

## **Exchanges and clearing houses which do not enter into market contracts**

8. 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.

## **Effect of recognition under the Financial Services Act 1986**

9.—(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.

## **Revocation of recognition: action taken before commencement**

10.—(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<sup>(a)</sup> (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<sup>(b)</sup> (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).

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<sup>(a)</sup> The functions of the Secretary of State under sections 37, 39 and 40 of the Financial Services Act were transferred to the Financial Services Authority (previously known as the Securities and Investments Board Limited) by S.I. 1987/942, except in relation to bodies or associations of the kind described in section 40(1) of the Financial Services Act 1986 (overseas investment exchanges and clearing houses). In relation to such bodies, these functions of the Secretary of State were transferred to the Treasury by S.I. 1992/1315.

<sup>(b)</sup> The effect of sections 37(7) and 39(7) of the Financial Services Act is modified by section 40(4)(b) of that Act (in relation to overseas investment exchanges and clearing houses), and section 156 of the Companies Act (in all cases).

(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.

*David Clelland*  
*Clive Betts*

15th March 2001

Two of the Lords Commissioners of Her Majesty's Treasury

Approved,

*Kim Howells*  
Parliamentary Under Secretary of State  
for Consumers and Corporate Affairs,  
Department of Trade and Industry

9th April 2001

## PART I

**Recognition requirements for investment exchanges***Financial resources*

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

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

*Suitability*

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

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

*Systems and controls*

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

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

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

*Safeguards for investors*

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

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

- (a) access to the exchange's facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors;
- (b) dealings in investments on the exchange are limited to investments in which there is a proper market;
- (c) appropriate arrangements are made for relevant information to be made available (whether by the exchange or, where appropriate, by issuers of the investments) to persons engaged in dealing in investments on the exchange;
- (d) satisfactory arrangements are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on the exchange (being rights and liabilities in relation to those transactions);
- (e) satisfactory arrangements are made for recording transactions effected on the exchange, and transactions (whether or not effected on the exchange) which are cleared or to be cleared by means of its facilities;
- (f) appropriate measures are adopted to reduce the extent to which the exchange's facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence; and

- (g) where the exchange's facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose.

(3) In sub-paragraph (2)(c), "relevant information" means information which is relevant in determining the current value of the investments.

#### *Disclosure by issuers of securities*

5.—(1) In this paragraph—

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

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

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

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

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

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

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

#### *Promotion and maintenance of standards*

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

(2) The exchange must be able and willing to cooperate, by the sharing of information or otherwise, with the Authority, with any other authority, body or person having responsibility in the United Kingdom for the supervision or regulation of any regulated activity or other financial service, or with an overseas regulator within the meaning of section 195 of the Act.

#### *Rules and consultation*

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

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

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

#### *Discipline*

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

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

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

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(a) S.I. 1994/188.

- (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.

## **PART II**

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

#### *Default rules in respect of market contracts*

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

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

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

#### *Content of rules*

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

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

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

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

- (2) The rules mentioned in paragraph 10 must provide—
- (a) for all rights and liabilities of the defaulter under or in respect of unsettled market contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules;
  - (b) for the sums so payable by or to the defaulter in respect of different contracts to be aggregated or set off so as to produce a net sum;
  - (c) for that sum—
    - (i) if payable by the defaulter to the exchange, to be set off against any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) so as to produce a further net sum;
    - (ii) if payable by the exchange to the defaulter, to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property); and
  - (d) for the certification by or on behalf of the exchange of the sum finally payable or, as the case may be, of the fact that no sum is payable.



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

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

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

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

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

#### *Notification to other parties affected*

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

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

#### *Cooperation with other authorities*

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

#### *Margin*

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

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

### **PART III**

#### **Recognition requirements for clearing houses**

##### *Financial resources*

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

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

##### *Suitability*

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

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

#### *Systems and controls*

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

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

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

#### *Safeguards for investors*

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

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

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

#### *Promotion and maintenance of standards*

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

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

### *Discipline*

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

(2) The arrangements must include procedures for—

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

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

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

### *Complaints*

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

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

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

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

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

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

or takes both of those steps.

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

## **PART IV**

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

#### *Default rules in respect of market contracts*

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

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

#### *Content of rules*

25.—(1) The rules must provide—

- (a) for all rights and liabilities of the defaulter under or in respect of unsettled market contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules;

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

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

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

(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.

## 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 (S.I. 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 (S.I. 1990/1504, N.I. 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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The Financial Services and Markets Act 2000 (Recognition  
Requirements for Investment Exchanges and Clearing  
Houses) Regulations 2001

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