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Financial Services Act 1986 (Repealed)

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

CHAPTER IV

EXEMPTED PERSONS

Modifications etc. (not altering text)

C1 Chapters III–XI (ss. 7–111): certain functions transferred by [S.I. 1990/354](#), [art. 5](#)

The Bank of England

35 The Bank of England.

The Bank of England is an exempted person.

Recognised investment exchanges and clearing houses

36 Investment exchanges.

- (1) A recognised investment exchange is an exempted person as respects anything done in its capacity as such which constitutes investment business.
- (2) In this Act references to the rules of an investment exchange are references to the rules made or conditions imposed by it with respect to the matters dealt with in Schedule 4 to this Act, with respect to the admission of persons to or their exclusion from the use of its facilities or otherwise relating to its constitution.

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- (3) In this Act references to guidance issued by an investment exchange are references to guidance issued or any recommendation made by it to all or any class of its members or users or persons seeking to become members of the exchange or to use its facilities and which would, if it were a rule, fall within subsection (2) above.

37 Grant and revocation of recognition.

- (1) Any body corporate or unincorporated association may apply to the Secretary of State for an order declaring it to be a recognised investment exchange for the purposes of this Act.
- (2) Subsections (2) to (5) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section; and every application under subsection (1) above shall be accompanied by—
- (a) a copy of the applicant's rules;
 - (b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form; and
 - (c) particulars of any arrangements which the applicant has made or proposes to make for the provision of clearing services.
- (3) The Secretary of State may, on an application duly made in accordance with subsection (1) above and after being furnished with all such information as he may require in connection with the application, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised investment exchange for the purposes of this Act.
- (4) Subject to Chapter XIV of this Part of this Act, the Secretary of State may make a recognition order if it appears to him from the information furnished by the exchange making the application and having regard to any other information in his possession that the requirements of Schedule 4 to this Act are satisfied as respects that exchange.
- (5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect stating the reasons for the refusal.
- (6) A recognition order shall state the date on which it takes effect.
- (7) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
- (a) that any requirement of Schedule 4 to this Act is not satisfied in the case of the exchange to which the recognition order relates; or
 - (b) that the exchange has failed to comply with any obligation to which it is subject by virtue of this Act;
- and subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.
- (8) Section 12 above shall have effect in relation to a recognised investment exchange and the requirements and obligations referred to in subsection (7) above as it has effect in relation to the requirements and obligations there mentioned.

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Modifications etc. (not altering text)

- C2 S. 37(7)(a) modified (1.3.1994) by S.I. 1994/188, reg. 4(b)
C3 Ss. 37(7)(b), 39(7)(b) applied (25.4.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 154, 155, 169(2)

38 Clearing houses.

- (1) A recognised clearing house is an exempted person as respects anything done by it in its capacity as a person providing clearing services for the transaction of investment business.
- (2) In this Act references to the rules of a clearing house are references to the rules made or conditions imposed by it with respect to the provision by it or its members of clearing services under clearing arrangements, that is to say, arrangements with a recognised investment exchange for the provision of clearing services in respect of transactions effected on the exchange.
- (3) In this Act references to guidance issued by a clearing house are references to guidance issued or any recommendation made by it to all or any class of its members or persons using or seeking to use its services and which would, if it were a rule, fall within subsection (2) above.

39 Grant and revocation of recognition.

- (1) Any body corporate or unincorporated association may apply to the Secretary of State for an order declaring it to be a recognised clearing house for the purposes of this Act.
- (2) Subsections (2) to (5) of section 9 above shall have effect in relation to an application under subsection (1) above as they have effect in relation to an application under subsection (1) of that section; and any application under subsection (1) above shall be accompanied by—
 - (a) a copy of the applicant's rules;
 - (b) a copy of any guidance issued by the applicant which is intended to have continuing effect and is issued in writing or other legible form; and
 - (c) particulars of any recognised investment exchange with which the applicant proposes to make clearing arrangements and of any other person (whether or not such an exchange) for whom the applicant provides clearing services.
- (3) The Secretary of State may, on an application duly made in accordance with subsection (1) above and after being furnished with all such information as he may require in connection with the application, make or refuse to make an order ("a recognition order") declaring the applicant to be a recognised clearing house for the purposes of this Act.
- (4) Subject to Chapter XIV of this Part of this Act, the Secretary of State may make a recognition order if it appears to him from the information furnished by the clearing house making the application and having regard to any other information in his possession that the clearing house—
 - (a) has financial resources sufficient for the proper performance of its functions;
 - (b) has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules or, as respects monitoring, arrangements providing for that function to be performed on behalf of the

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- clearing house (and without affecting its responsibility) by another body or person who is able and willing to perform it;
- (c) provides or is able to provide clearing services which would enable a recognised investment exchange to make arrangements with it that satisfy the requirements of Schedule 4 to this Act; and
- (d) is able and willing to comply with duties corresponding to those imposed in the case of a recognised investment exchange by paragraph 5 of that Schedule.
- (5) Where the Secretary of State refuses an application for a recognition order he shall give the applicant a written notice to that effect stating the reasons for the refusal.
- (6) A recognition order shall state the date on which it takes effect.
- (7) A recognition order may be revoked by a further order made by the Secretary of State if at any time it appears to him—
- (a) that any requirement of subsection (4) above is not satisfied in the case of the clearing house; or
- (b) that the clearing house has failed to comply with any obligation to which it is subject by virtue of this Act;
- and subsections (2) to (9) of section 11 above shall have effect in relation to the revocation of a recognition order under this subsection as they have effect in relation to the revocation of such an order under subsection (1) of that section.
- (8) Section 12 above shall have effect in relation to a recognised clearing house and the requirements and obligations referred to in subsection (7) above as it has effect in relation to the requirements and obligations there mentioned.

Modifications etc. (not altering text)

C4 Ss. 37(7)(b), 39(7)(b) applied (25.4.1991) by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 154, 155, 169(2)**

40 Overseas investment exchanges and clearing houses.

- (1) Any application under section 37(1) or 39(1) above by a body or association whose head office is situated in a country outside the United Kingdom shall contain the address of a place in the United Kingdom for the service on that body or association of notices or other documents required or authorised to be served on it under this Act.
- (2) In relation to any such body or association sections 37(4) and 39(4) above shall have effect with the substitution for the requirements there mentioned of the following requirements, that is to say—
- (a) that the body or association is, in the country in which its head office is situated, subject to supervision which, together with the rules and practices of that body or association, is such that investors in the United Kingdom are afforded protection in relation to that body or association at least equivalent to that provided by the provisions of this Act in relation to investment exchanges and clearing houses in respect of which recognition orders are made otherwise than by virtue of this subsection; and
- (b) that the body or association is able and willing to co-operate, by the sharing of information and otherwise, with the authorities, bodies and persons responsible in the United Kingdom for the supervision and regulation of investment business or other financial services; and

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- (c) that adequate arrangements exist for such co-operation between those responsible for the supervision of the body or association in the country mentioned in paragraph (a) above and the authorities, bodies and persons mentioned in paragraph (b) above.
- (3) In determining whether to make a recognition order by virtue of subsection (2) above the Secretary of State may have regard to the extent to which persons in the United Kingdom and persons in the country mentioned in that subsection have access to the financial markets in each others' countries.
- (4) In relation to a body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2) above—
 - (a) the reference in section 36(2) above to the matters dealt with in Schedule 4 to this Act shall be construed as a reference to corresponding matters;
 - (b) sections 37(7) and (8) and 39(7) and (8) above shall have effect as if the requirements mentioned in section 37(7)(a) and in section 39(7)(a) were those of subsection (2)(a) and (b) above; and
 - (c) the grounds on which the order may be revoked under section 37(7) or 39(7) above shall include the ground that it appears to the Secretary of State that revocation is desirable in the interests of investors and potential investors in the United Kingdom.
- (5) In this section “country” includes any territory or any part of a country or territory.
- (6) A body or association declared to be a recognised investment exchange or recognised clearing house by a recognition order made by virtue of subsection (2) above is in this Act referred to as an “overseas investment exchange” or an “overseas clearing house”.

Modifications etc. (not altering text)

C5 S. 40(2) modified (1.3.1994) by S.I. 1994/188, reg. 4(b)

41 Notification requirements.

- (1) The Secretary of State may make regulations requiring a recognised investment exchange or recognised clearing house to give him forthwith notice of the occurrence of such events relating to the exchange or clearing house as are specified in the regulations and such information in respect of those events as is so specified.
- (2) The Secretary of State may make regulations requiring a recognised investment exchange or recognised clearing house to furnish him at such times or in respect of such periods as are specified in the regulations with such information relating to the exchange or clearing house as is so specified.
- (3) The notices and information required to be given or furnished under the foregoing provisions of this section shall be such as the Secretary of State may reasonably require for the exercise of his functions under this Act.
- (4) Regulations under the foregoing provisions of this section may require information to be given in a specified form and to be verified in a specified manner.
- (5) Where a recognised investment exchange—
 - (a) amends, revokes or adds to its rules or guidance; or

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- (b) makes, terminates or varies any clearing arrangements,
it shall within seven days give written notice to the Secretary of State of the amendment, revocation or addition or, as the case may be, of the matters mentioned in paragraph (b) above.
- (6) Where a recognised clearing-house—
- (a) amends, revokes or adds to its rules or guidance; or
- (b) makes a change in the persons for whom it provides clearing services,
it shall within seven days give written notice to the Secretary of State of the amendment, revocation or addition or, as the case may be, of the change.
- (7) Notice need not be given under subsection (5) or (6) above of the revocation of guidance other than such as is mentioned in section 37(2)(b) or 39(2)(b) above or of any amendment of or addition to guidance which does not result in or consist of such guidance as is there mentioned.

Other exemptions

42 Lloyd’s.

The Society of Lloyd’s and persons permitted by the Council of Lloyd’s to act as underwriting agents at Lloyd’s are exempted persons as respects investment business carried on in connection with or for the purpose of insurance business at Lloyd’s.

43 Listed money market institutions.

- (1) A person for the time being included in a list maintained by the Bank of England for the purposes of this section (“a listed institution”) is an exempted person in respect of, and of anything done for the purposes of, any transaction to which Part I or Part II of Schedule 5 to this Act applies and in respect of any arrangements made by him with a view to other persons entering into a transaction to which Part III of that Schedule applies.
- (2) The conditions imposed by the Bank of England for admission to the list referred to in this section and the arrangements made by it for a person’s admission to and removal from the list shall require the approval of the Treasury; and this section shall cease to have effect if that approval is withdrawn but without prejudice to its again having effect if approval is given for fresh conditions or arrangements.
- (3) The Bank of England shall publish the list as for the time being in force and provide a certified copy of it at the request of any person wishing to refer to it in legal proceedings.
- (4) Such a certified copy shall be evidence or, in Scotland, sufficient evidence of the contents of the list; and a copy purporting to be certified by or on behalf of the Bank shall be deemed to have been duly certified unless the contrary is shown.

Modifications etc. (not altering text)

- C6** S. 43 amended by SI 1990/696, art. 2
S. 43 amended (1.1.1993) by S.I. 1992/3218, **reg.52**.
s. 43 extended (1.1.1996) by S.I. 1995/3275, **reg. 26(1)**

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s. 43 applied (with modifications) (18.7.1996) by S.I. 1996/1669, reg. 9(3)

44 Appointed representatives.

- (1) An appointed representative is an exempted person as respects investment business carried on by him as such a representative.
- (2) For the purposes of this Act an appointed representative is a person—
 - (a) who is employed by an authorised person (his “principal”) under a contract for services which—
 - (i) requires or permits him to carry on investment business to which this section applies; and
 - (ii) complies with subsections (4) and (5) below; and
 - (b) for whose activities in carrying on the whole or part of that investment business his principal has accepted responsibility in writing;
and the investment business carried on by an appointed representative as such is the investment business for which his principal has accepted responsibility.
- (3) This section applies to investment business carried on by an appointed representative which consists of—
 - (a) procuring or endeavouring to procure the persons with whom he deals to enter into investment agreements with his principal or (if not prohibited by his contract) with other persons;
 - (b) giving advice to the persons with whom he deals about entering into investment agreements with his principal or (if not prohibited by his contract) with other persons; or
 - (c) giving advice as to the sale of investments issued by his principal or as to the exercise of rights conferred by an investment whether or not issued as aforesaid.
- (4) If the contract between an appointed representative and his principal does not prohibit the representative from procuring or endeavouring to procure persons to enter into investment agreements with persons other than his principal it must make provision for enabling the principal either to impose such a prohibition or to restrict the kinds of investment to which those agreements may relate or the other persons with whom they may be entered into.
- (5) If the contract between an appointed representative and his principal does not prohibit the representative from giving advice about entering into investment agreements with persons other than his principal it must make provision for enabling the principal either to impose such a prohibition or to restrict the kinds of advice which the representative may give by reference to the kinds of investment in relation to which or the persons with whom the representative may advise that investment agreements should be made.
- (6) The principal of an appointed representative shall be responsible, to the same extent as if he had expressly authorised it, for anything said or done or omitted by the representative in carrying on the investment business for which he has accepted responsibility.
- (7) In determining whether an authorised person has complied with—
 - (a) any provision contained in or made under this Act; or

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- (b) any rules of a recognised self-regulating organisation or recognised professional body,
 anything which a person who at the material time is or was an appointed representative of the authorised person has said, done or omitted as respects investment business for which the authorised person has accepted responsibility shall be treated as having been said, done or omitted by the authorised person.
- (8) Nothing in subsection (7) above shall cause the knowledge or intentions of an appointed representative to be attributed to his principal for the purpose of determining whether the principal has committed a criminal offence unless in all the circumstances it is reasonable for them to be attributed to him.
- (9) In this Act “investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any paragraph of Part II of Schedule 1 to this Act or would do so apart from Parts III and IV of that Schedule.

Modifications etc. (not altering text)

- C7** S. 44 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.7.**
C8 S. 44(2) applied (1.4.1994) by S.I. 1993/1933, **reg. 13(6).**
 s. 44 extended (1.1.1997) by S.I. 1995/3275, **reg. 27**
 s. 44 modified (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 7**

45 Miscellaneous exemptions.

- (1) Each of the following persons is an exempted person to the extent specified in relation to that person—
- (a) the President of the Family Division of the High Court when acting in the exercise of his functions under section 9 of the ^{M1}Administration of Estates Act 1925;
 - (b) the Probate Judge of the High Court of Northern Ireland when acting in the exercise of his functions under section 3 of the ^{M2}Administration of Estates Act (Northern Ireland) 1955;
 - (c) the Accountant General of the Supreme Court when acting in the exercise of his functions under Part VI of the ^{M3}Administration of Justice Act 1982;
 - (d) the Accountant of Court when acting in the exercise of his functions in connection with the consignment or deposit of sums of money;
 - (e) the Public Trustee when acting in the exercise of his functions under the ^{M4}Public Trustee Act 1906;
 - (f) the Master of the Court of Protection when acting in the exercise of his functions under Part VII of the ^{M5}Mental Health Act 1983;
 - (g) the Official Solicitor to the Supreme Court when acting as judicial trustee under the ^{M6}Judicial Trustees Act 1896;
 - (h) a registrar of a county court when managing funds paid into court;
 - (i) a sheriff clerk when acting in the exercise of his functions in connection with the consignment or deposit of sums of money;
 - (j) a person acting in his capacity as manager of a fund established under section 22 of the ^{M7}Charities Act 1960, section 25 of the ^{M8}Charities Act (Northern Ireland) 1964, section 11 of the ^{M9}Trustee Investments Act 1961 or section 42 of the ^{M10}Administration of Justice Act 1982;

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- (k) the Central Board of Finance of the Church of England or a Diocesan Authority within the meaning of the ^{M11}Church Funds Investment Measure 1958 when acting in the exercise of its functions under that Measure;
 - (l) a person acting in his capacity as an official receiver within the meaning of section 399 of the ^{M12}Insolvency Act 1986 or in that capacity within the meaning of any corresponding provision in force in Northern Ireland.
- (2) Where a bankruptcy order is made in respect of an authorised person or of a person whose authorisation is suspended under section 28 above or who is the subject of a direction under section 33(1)(b) above or a winding-up order is made in respect of a partnership which is such a person, the trustee in bankruptcy or liquidator acting in his capacity as such is an exempted person but—
- (a) sections 48 to 71 below and, so far as relevant to any of those provisions, Chapter IX of this Part of this Act; and
 - (b) sections 104, 105 and 106 below,
- shall apply to him to the same extent as they applied to the bankrupt or partnership and, if the bankrupt or partnership was subject to the rules of a recognised self-regulating organisation or recognised professional body, he shall himself also be subject to those rules.
- (3) In the application of subsection (2) above to Scotland—
- (a) for the reference to a bankruptcy order being made in respect of a person there shall be substituted a reference to the estate of that person being sequestrated;
 - (b) the reference to a winding-up order in respect of a partnership is a reference to such an order made under section 72 below;
 - (c) for the reference to the trustee in bankruptcy there shall be substituted a reference to the interim trustee or permanent trustee within the meaning of the ^{M13}Bankruptcy (Scotland) Act 1985; and
 - (d) for the references to the bankrupt there shall be substituted references to the debtor.
- (4) In the application of subsection (2) above to Northern Ireland for the reference to a bankruptcy order there shall be substituted a reference to an order of adjudication of bankruptcy and the reference to a trustee in bankruptcy shall include a reference to an assignee in bankruptcy.

Marginal Citations

- M1** 1925 c. 23.
- M2** 1955 c. 24 (N.I.).
- M3** 1982 c. 53.
- M4** 1906 c. 55.
- M5** 1983 c. 20.
- M6** 1896 c. 35.
- M7** 1960 c. 58.
- M8** 1964 c. 33. (N.I.).
- M9** 1961 c. 62.
- M10** 1982 c. 53.
- M11** 1958 No. 1.
- M12** 1986 c. 45.
- M13** 1985 c. 66.

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Supplemental

46 Power to extend or restrict exemptions.

(1) The Secretary of State may by order provide—

- (a) for exemptions additional to those specified in the foregoing provisions of this Chapter; or
- (b) for removing or restricting any exemption conferred by section 42, 43 or 45 above;

and any such order may contain such transitional provisions as the Secretary of State thinks necessary or expedient.

(2) An order making such provision as is mentioned in paragraph (a) of subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament; and no order making such provision as is mentioned in paragraph (b) of that subsection shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

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