



# Financial Services Act 1986

## 1986 CHAPTER 60

### PART I

#### REGULATION OF INVESTMENT BUSINESS

#### CHAPTER IV

#### EXEMPTED PERSONS

##### *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.
- (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.

### **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

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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 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;

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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.

#### **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 cooperate, 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
  - (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)(f) 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 " .

#### **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
  - (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.