



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVIII

#### RECOGNISED INVESTMENT EXCHANGES AND CLEARING HOUSES

#### CHAPTER I

#### EXEMPTION

##### *General*

#### **285 Exemption for recognised investment exchanges and clearing houses.**

- (1) In this Act—
  - (a) “recognised investment exchange” means an investment exchange in relation to which a recognition order is in force; and
  - (b) “recognised clearing house” means a clearing house in relation to which a recognition order is in force.
- (2) A recognised investment exchange is exempt from the general prohibition as respects any regulated activity—
  - (a) which is carried on as a part of the exchange’s business as an investment exchange; or
  - (b) which is carried on for the purposes of, or in connection with, the provision of clearing services by the exchange.
- (3) A recognised clearing house is exempt from the general prohibition as respects any regulated activity which is carried on for the purposes of, or in connection with, the provision of clearing services by the clearing house.

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## 286 Qualification for recognition.

- (1) The Treasury may make regulations setting out the requirements—
  - (a) which must be satisfied by an investment exchange or clearing house if it is to qualify as a body in respect of which the Authority may make a recognition order under this Part; and
  - (b) which, if a recognition order is made, it must continue to satisfy if it is to remain a recognised body.
- (2) But if regulations contain provision as to the default rules of an investment exchange or clearing house, or as to proceedings taken under such rules by such a body, they require the approval of the Secretary of State.
- (3) “Default rules” means rules of an investment exchange or clearing house which provide for the taking of action in the event of a person’s appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange or clearing house.
- (4) “Market contract” means—
  - (a) a contract to which Part VII of the <sup>M1</sup>Companies Act 1989 applies as a result of section 155 of that Act or a contract to which Part V of the <sup>M2</sup>Companies (No. 2)(Northern Ireland) Order 1990 applies as a result of Article 80 of that Order; and
  - (b) such other kind of contract as may be prescribed.
- (5) Requirements resulting from this section are referred to in this Part as “recognition requirements”.

### Marginal Citations

**M1** 1989 c. 40.

**M2** S.I. 1990/1504 (N.I. 10).

### *Applications for recognition*

## 287 Application by an investment exchange.

- (1) Any body corporate or unincorporated association may apply to the Authority for an order declaring it to be a recognised investment exchange for the purposes of this Act.
- (2) The application must be made in such manner as the Authority may direct and must be accompanied by—
  - (a) a copy of the applicant’s rules;
  - (b) a copy of any guidance issued by the applicant;
  - (c) the required particulars; and
  - (d) such other information as the Authority may reasonably require for the purpose of determining the application.
- (3) The required particulars are—
  - (a) particulars of any arrangements which the applicant has made, or proposes to make, for the provision of clearing services in respect of transactions effected on the exchange;

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- (b) if the applicant proposes to provide clearing services in respect of transactions other than those effected on the exchange, particulars of the criteria which the applicant will apply when determining to whom it will provide those services.

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**Commencement Information**

- I1** S. 287 wholly in force at 3.9.2001; s. 287 not in force at Royal Assent see s. 431(2); s. 287(2) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820, art. 2, Sch.](#); s. 287 in so far as not already in force at 3.9.2001 by [S.I. 2001/2632, art. 2, Sch. Pt. 2](#)

**288 Application by a clearing house.**

- (1) Any body corporate or unincorporated association may apply to the Authority for an order declaring it to be a recognised clearing house for the purposes of this Act.
- (2) The application must be made in such manner as the Authority may direct and must be accompanied by—
- (a) a copy of the applicant’s rules;
  - (b) a copy of any guidance issued by the applicant;
  - (c) the required particulars; and
  - (d) such other information as the Authority may reasonably require for the purpose of determining the application.
- (3) The required particulars are—
- (a) if the applicant makes, or proposes to make, clearing arrangements with a recognised investment exchange, particulars of those arrangements;
  - (b) if the applicant proposes to provide clearing services for persons other than recognised investment exchanges, particulars of the criteria which it will apply when determining to whom it will provide those services.

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**Commencement Information**

- I2** S. 288 wholly in force at 3.9.2001; s. 288 not in force at Royal Assent see s. 431(2); s. 288(2) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820, art. 2, Sch.](#); s. 288 in force in so far as not already in force at 3.9.2001 by [S.I. 2001/2632, art. 2 Sch. Pt. 2](#)

**289 Applications: supplementary.**

- (1) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.
- (2) Information which the Authority requires in connection with an application must be provided in such form, or verified in such manner, as the Authority may direct.
- (3) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

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## 290 Recognition orders.

- (1) If it appears to the Authority that the applicant satisfies the recognition requirements applicable in its case, the Authority may make a recognition order declaring the applicant to be—
  - (a) a recognised investment exchange, if the application is made under section 287;
  - (b) a recognised clearing house, if it is made under section 288.
- (2) The Treasury’s approval of the making of a recognition order is required under section 307.
- (3) In considering an application, the Authority may have regard to any information which it considers is relevant to the application.
- (4) A recognition order must specify a date on which it is to take effect.
- (5) Section 298 has effect in relation to a decision to refuse to make a recognition order—
  - (a) as it has effect in relation to a decision to revoke such an order; and
  - (b) as if references to a recognised body were references to the applicant.
- (6) Subsection (5) does not apply in a case in which the Treasury have failed to give their approval under section 307.

### Commencement Information

- I3** S. 290 wholly in force at 1.12.2001; s. 290 not in force at Royal Assent see s. 431(2); s. 290 in force for specified purposes at 3.9.2001 by [S.I. 2001/2632](#), art. 2(2), [Sch. Pt. 2](#); s. 290 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), art. 2(1)

VALID FROM 20/12/2006

<sup>F1</sup>  
<sup>F1</sup>

### **Refusal of recognition on ground of excessive regulatory provision**

**290A**

- (1) The Authority must not make a recognition order if it appears to the Authority that an existing or proposed regulatory provision of the applicant in connection with—
  - (a) the applicant's business as an investment exchange, or
  - (b) the provision by the applicant of clearing services,
 imposes or will impose an excessive requirement on the persons affected (directly or indirectly) by it.
- (2) The reference in section 290(1) (making of recognition order) to satisfying the applicable recognition requirements shall be read accordingly.
- (3) Expressions used in subsection (1) above that are defined for the purposes of section 300A (power of Authority to disallow excessive regulatory provision) have the same meaning as in that section.
- (4) The provisions of section 300A(3) and (4) (determination whether regulatory provision excessive) apply for the purposes of this section as for the purposes of section 300A.

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- (5) Section 298 has effect in relation to a decision under this section to refuse a recognition order—
- (a) as it has effect in relation to a decision to revoke such an order, and
  - (b) as if references to a recognised body were references to the applicant.
- (6) This section does not apply to an application for recognition as an overseas investment exchange or overseas clearing house.]]

#### Textual Amendments

- F1** S. 290A inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\)](#), **ss. 4, 5(2)**

### 291 Liability in relation to recognised body’s regulatory functions.

- (1) A recognised body and its officers and staff are not to be liable in damages for anything done or omitted in the discharge of the recognised body’s regulatory functions unless it is shown that the act or omission was in bad faith.
- (2) But subsection (1) does not prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the <sup>M3</sup>Human Rights Act 1998.
- (3) “Regulatory functions” means the functions of the recognised body so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of this Act.

#### Modifications etc. (not altering text)

- C1** S. 291 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), **art. 20**
- C2** S. 291 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), **art. 39**

#### Marginal Citations

- M3** 1998 c. 42.

### 292 Overseas investment exchanges and overseas clearing houses.

- (1) An application under section 287 or 288 by an overseas applicant must contain the address of a place in the United Kingdom for the service on the applicant of notices or other documents required or authorised to be served on it under this Act.
- (2) If it appears to the Authority that an overseas applicant satisfies the requirements of subsection (3) it may make a recognition order declaring the applicant to be—
- (a) a recognised investment exchange;
  - (b) a recognised clearing house.
- (3) The requirements are that—

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- (a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with recognition requirements;
  - (b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the investment exchange or clearing house;
  - (c) the applicant is able and willing to co-operate with the Authority by the sharing of information and in other ways;
  - (d) adequate arrangements exist for co-operation between the Authority and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.
- (4) In considering whether it is satisfied as to the requirements mentioned in subsection (3) (a) and (b), the Authority is to have regard to—
- (a) the relevant law and practice of the country or territory in which the applicant's head office is situated;
  - (b) the rules and practices of the applicant.
- (5) In relation to an overseas applicant and 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)—
- (a) the reference in section 313(2) to recognition requirements is to be read as a reference to matters corresponding to the matters in respect of which provision is made in the recognition requirements;
  - (b) sections 296(1) and 297(2) have effect as if the requirements mentioned in section 296(1)(a) and section 297(2)(a) were those of subsection (3)(a), (b), and (c) of this section;
  - (c) section 297(2) has effect as if the grounds on which a recognition order may be revoked under that provision included the ground that in the opinion of the Authority arrangements of the kind mentioned in subsection (3)(d) no longer exist.

#### Commencement Information

- I4** S. 292 wholly in force at 1.12.2001; s. 292 not in force at Royal Assent see s. 431(2); s. 292(1) in force and s. 292(2)-(5) in force specified purposes at 3.9.2001 by [S.I. 2001/2632](#), [art. 2\(2\)](#), [Sch. Pt. 2](#); s. 292 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

VALID FROM 01/04/2007

### *F<sup>2</sup>Publication of information by recognised investment exchange*

#### Textual Amendments

- F2** S. 292A and cross-heading inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007](#) (S.I. 2007/126), [regs. 1\(2\), 3\(2\)](#), [Sch. 2 para. 5](#)

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## **292A Publication of information by recognised investment exchange**

- (1) A recognised investment exchange must as soon as practicable after a recognition order is made in respect of it publish such particulars of the ownership of the exchange as the Authority may reasonably require.
- (2) The particulars published under subsection (1) must include particulars of the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.
- (3) If an ownership transfer takes place in relation to a recognised investment exchange, the exchange must as soon as practicable after becoming aware of the transfer publish such particulars relating to the transfer as the Authority may reasonably require.
- (4) "Ownership transfer", in relation to an exchange, means a transfer of ownership which gives rise to a change in the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.
- (5) A recognised investment exchange must publish such particulars of any decision it makes to suspend or remove a financial instrument from trading on a regulated market operated by it as the Authority may reasonably require.
- (6) The Authority may determine the manner of publication under subsections (1), (3) and (5) and the timing of publication under subsection (5).
- (7) This section does not apply to an overseas investment exchange.]

## *Supervision*

### **293 Notification requirements.**

- (1) The Authority may make rules requiring a recognised body to give it—
  - (a) notice of such events relating to the body as may be specified; and
  - (b) such information in respect of those events as may be specified.
- (2) The rules may also require a recognised body to give the Authority, at such times or in respect of such periods as may be specified, such information relating to the body as may be specified.
- (3) An obligation imposed by the rules extends only to a notice or information which the Authority may reasonably require for the exercise of its functions under this Act.
- (4) The rules may require information to be given in a specified form and to be verified in a specified manner.
- (5) If a recognised body—
  - (a) alters or revokes any of its rules or guidance, or
  - (b) makes new rules or issues new guidance,it must give written notice to the Authority without delay.
- (6) If a recognised investment exchange makes a change—
  - (a) in the arrangements it makes for the provision of clearing services in respect of transactions effected on the exchange, or



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- (b) in the criteria which it applies when determining to whom it will provide clearing services,  
it must give written notice to the Authority without delay.
- (7) If a recognised clearing house makes a change—
  - (a) in the recognised investment exchanges for whom it provides clearing services, or
  - (b) in the criteria which it applies when determining to whom (other than recognised investment exchanges) it will provide clearing services,  
it must give written notice to the Authority without delay.
- (8) Subsections (5) to (7) do not apply to an overseas investment exchange or an overseas clearing house.
- (9) “Specified” means specified in the Authority’s rules.

#### Commencement Information

- I5** S. 293 wholly in force at 1.12.2001; s. 293 not in force at Royal Assent see s. 431(2); s. 293 in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); s. 293 in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

VALID FROM 01/04/2007

#### <sup>F3</sup> <sup>F3</sup> **293A Information: compliance of recognised investment exchanges with directly applicable Community regulations**

The Authority may require a recognised investment exchange to give the Authority such information as it reasonably requires in order to satisfy itself that the exchange is complying with any directly applicable Community regulation made under the markets in financial instruments directive.]]

#### Textual Amendments

- F3** S. 293A inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007 \(S.I. 2007/126\)](#), [regs. 1\(2\), 3\(2\)](#), [Sch. 2 para. 6](#)

#### **294 Modification or waiver of rules.**

- (1) The Authority may, on the application or with the consent of a recognised body, direct that rules made under section 293 or 295—
  - (a) are not to apply to the body; or
  - (b) are to apply to the body with such modifications as may be specified in the direction.
- (2) An application must be made in such manner as the Authority may direct.
- (3) Subsections (4) to (6) apply to a direction given under subsection (1).



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- (4) The Authority may not give a direction unless it is satisfied that—
- (a) compliance by the recognised body with the rules, or with the rules as unmodified, would be unduly burdensome or would not achieve the purpose for which the rules were made; and
  - (b) the direction would not result in undue risk to persons whose interests the rules are intended to protect.
- (5) A direction may be given subject to conditions.
- (6) The Authority may—
- (a) revoke a direction; or
  - (b) vary it on the application, or with the consent, of the recognised body to which it relates.

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**Modifications etc. (not altering text)**

**C3** S. 294 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 3(10)**; S.I. 2001/3538, **art. 2(1)**

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**Commencement Information**

**I6** S. 294 wholly in force at 3.9.2001; s. 294 not in force at Royal Assent see s. 431(2); s. 294(2) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2, Sch.**; s. 294 in force in so far as not already in force at 3.9.2001 by S.I. 2001/2632, **art. 2 Sch. Pt. 2**

**295 Notification: overseas investment exchanges and overseas clearing houses.**

- (1) At least once a year, every overseas investment exchange and overseas clearing house must provide the Authority with a report.
- (2) The report must contain a statement as to whether any events have occurred which are likely—
- (a) to affect the Authority’s assessment of whether it is satisfied as to the requirements set out in section 292(3); or
  - (b) to have any effect on competition.
- (3) The report must also contain such information as may be specified in rules made by the Authority.
- (4) The investment exchange or clearing house must provide the Treasury and the [F<sup>4</sup>OFT] with a copy of the report.

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**Textual Amendments**

**F4** Words in s. 295 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(9)**; S.I. 2003/766, **art. 2, Sch.** (with art. 3)

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**Commencement Information**

**I7** S. 295 wholly in force at 1.12.2001; s. 295 not in force at Royal Assent see s. 431(2); s. 295 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, **art. 2, Sch.**; s. 295 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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## 296 Authority’s power to give directions.

- (1) This section applies if it appears to the Authority that a recognised body—
  - (a) has failed, or is likely to fail, to satisfy the recognition requirements; or
  - (b) has failed to comply with any other obligation imposed on it by or under this Act.
- (2) The Authority may direct the body to take specified steps for the purpose of securing the body’s compliance with—
  - (a) the recognition requirements; or
  - (b) any obligation of the kind in question.
- (3) A direction under this section is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the <sup>M4</sup>Court of Session Act 1988.
- (4) The fact that a rule made by a recognised body has been altered in response to a direction given by the Authority does not prevent it from being subsequently altered or revoked by the recognised body.

### Modifications etc. (not altering text)

**C4** S. 296 amended (*temp.* from 3.9.2001 to 1.12.2001) by [S.I. 2001/2659](#), [arts. 1\(2\)](#), [3\(11\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

### Marginal Citations

**M4** 1988 c. 36.

## 297 Revoking recognition.

- (1) A recognition order may be revoked by an order made by the Authority at the request, or with the consent, of the recognised body concerned.
- (2) If it appears to the Authority that a recognised body—
  - (a) is failing, or has failed, to satisfy the recognition requirements, or
  - (b) is failing, or has failed, to comply with any other obligation imposed on it by or under this Act,
 it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.
- (3) An order under this section (“a revocation order”) must specify the date on which it is to take effect.
- (4) In the case of a revocation order made under subsection (2), the specified date must not be earlier than the end of the period of three months beginning with the day on which the order is made.
- (5) A revocation order may contain such transitional provisions as the Authority thinks necessary or expedient.

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**Modifications etc. (not altering text)**

**C5** S. 297 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 3(11)**; S.I. 2001/3538, **art. 2(1)**

**298 Directions and revocation: procedure.**

- (1) Before giving a direction under section 296, or making a revocation order under section 297(2), the Authority must—
  - (a) give written notice of its intention to do so to the recognised body concerned;
  - (b) take such steps as it considers reasonably practicable to bring the notice to the attention of members (if any) of that body; and
  - (c) publish the notice in such manner as it thinks appropriate for bringing it to the attention of other persons who are, in its opinion, likely to be affected.
- (2) A notice under subsection (1) must—
  - (a) state why the Authority intends to give the direction or make the order; and
  - (b) draw attention to the right to make representations conferred by subsection (3).
- (3) Before the end of the period for making representations—
  - (a) the recognised body,
  - (b) any member of that body, and
  - (c) any other person who is likely to be affected by the proposed direction or revocation order,may make representations to the Authority.
- (4) The period for making representations is—
  - (a) two months beginning—
    - (i) with the date on which the notice is served on the recognised body; or
    - (ii) if later, with the date on which the notice is published; or
  - (b) such longer period as the Authority may allow in the particular case.
- (5) In deciding whether to—
  - (a) give a direction, or
  - (b) make a revocation order,the Authority must have regard to any representations made in accordance with subsection (3).
- (6) When the Authority has decided whether to give a direction under section 296 or to make the proposed revocation order, it must—
  - (a) give the recognised body written notice of its decision; and
  - (b) if it has decided to give a direction or make an order, take such steps as it considers reasonably practicable for bringing its decision to the attention of members of the body or of other persons who are, in the Authority's opinion, likely to be affected.
- (7) If the Authority considers it essential to do so, it may give a direction under section 296—
  - (a) without following the procedure set out in this section; or

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- (b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.
- (8) If the Authority has, in relation to a particular matter, followed the procedure set out in subsections (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under subsection (1).

**Modifications etc. (not altering text)**

**C6** S. 298 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 3(11)**; S.I. 2001/3538, **art. 2(1)**

**Commencement Information**

**I8** S. 298 wholly in force at 1.12.2001; s. 298 not in force at Royal Assent see s. 431(2); s. 298 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2 Sch. Pt. 2**; s. 298 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

**299 Complaints about recognised bodies.**

- (1) The Authority must make arrangements for the investigation of any relevant complaint about a recognised body.
- (2) “Relevant complaint” means a complaint which the Authority considers is relevant to the question of whether the body concerned should remain a recognised body.

**300 Extension of functions of Tribunal.**

- (1) If the Treasury are satisfied that the condition mentioned in subsection (2) is satisfied, they may by order confer functions on the Tribunal with respect to disciplinary proceedings—
- (a) of one or more investment exchanges in relation to which a recognition order under section 290 is in force or of such investment exchanges generally, or
- (b) of one or more clearing houses in relation to which a recognition order under that section is in force or of such clearing houses generally.
- (2) The condition is that it is desirable to exercise the power conferred under subsection (1) with a view to ensuring that—
- (a) decisions taken in disciplinary proceedings with respect to which functions are to be conferred on the Tribunal are consistent with—
- (i) decisions of the Tribunal in cases arising under Part VIII; and
- (ii) decisions taken in other disciplinary proceedings with respect to which the Tribunal has functions as a result of an order under this section; or
- (b) the disciplinary proceedings are in accordance with the Convention rights.
- (3) An order under this section may modify or exclude any provision made by or under this Act with respect to proceedings before the Tribunal.
- (4) “Disciplinary proceedings” means proceedings under the rules of an investment exchange or clearing house in relation to market abuse by persons subject to the rules.

**Status:** Point in time view as at 16/06/2006. This version of this part contains provisions that are not valid for this point in time.  
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- (5) “The Convention rights” has the meaning given in section 1 of the <sup>M5</sup>Human Rights Act 1998.

#### Marginal Citations

M5 1998 c. 42.

VALID FROM 20/12/2006

### *[F5] Power to disallow excessive regulatory provision*

#### Textual Amendments

F5 S. 300A and cross-heading inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\)](#), ss. 1, 5(2) (with s. 5(3))

#### **300A Power of Authority to disallow excessive regulatory provision**

- (1) This section applies where a recognised body proposes to make any regulatory provision in connection with its business as an investment exchange or the provision by it of clearing services.
- (2) If it appears to the Authority—
  - (a) that the proposed provision will impose a requirement on persons affected (directly or indirectly) by it, and
  - (b) that the requirement is excessive,the Authority may direct that the proposed provision must not be made.
- (3) A requirement is excessive if—
  - (a) it is not required under Community law or any enactment or rule of law in the United Kingdom, and
  - (b) either—
    - (i) it is not justified as pursuing a reasonable regulatory objective, or
    - (ii) it is disproportionate to the end to be achieved.
- (4) In considering whether a requirement is excessive the Authority must have regard to all the relevant circumstances, including—
  - (a) the effect of existing legal and other requirements,
  - (b) the global character of financial services and markets and the international mobility of activity,
  - (c) the desirability of facilitating innovation, and
  - (d) the impact of the proposed provision on market confidence.
- (5) In this section “requirement” includes any obligation or burden.
- (6) Any provision made in contravention of a direction under this section is of no effect.

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### **Duty to notify proposal to make regulatory provision**

**F6**  
**F6**  
**300B** (1) A recognised body that proposes to make any regulatory provision must give written notice of the proposal to the Authority without delay.

- (2) The Authority may by rules under section 293 (notification requirements)—
- (a) specify descriptions of regulatory provision in relation to which, or circumstances in which, the duty in subsection (1) above does not apply, or
  - (b) provide that the duty applies only to specified descriptions of regulatory provision or in specified circumstances.
- (3) The Authority may also by rules under that section—
- (a) make provision as to the form and contents of the notice required, and
  - (b) require the body to provide such information relating to the proposal as may be specified in the rules or as the Authority may reasonably require.]

#### **Textual Amendments**

**F6** Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006 \(c. 55\)](#), [ss. 2, 3, 5\(2\)](#) (with [s. 5\(3\)](#))

### **300C Restriction on making provision before Authority decides whether to act**

- (1) Where notice of a proposal to make regulatory provision is required to be given to the Authority under section 300B, the provision must not be made—
- (a) before that notice is given, or
  - (b) subject to the following provisions of this section, before the end of the initial period.
- (2) The initial period is—
- (a) the period of 30 days beginning with the day on which the Authority receives notice of the proposal, or
  - (b) if any consultation period announced by the body in relation to the proposal ends after that 30-day period, the end of the consultation period.
- (3) If before the end of the initial period the Authority notifies the body that it is calling in the proposal, the provisions of section 300D (consideration by Authority whether to disallow proposed provision) apply as to when the provision may be made.
- (4) If—
- (a) before the end of the initial period the Authority notifies the body that it is not calling in the proposal, or
  - (b) the initial period ends without the Authority having notified the body that it is calling in the proposal,
- the body may then make the proposed provision.
- (5) Any provision made in contravention of this section is of no effect.

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#### Textual Amendments

**F6** Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006](#) (c. 55), [ss. 2, 3, 5\(2\)](#) (with [s. 5\(3\)](#))

### **300D Consideration by Authority whether to disallow proposed provision**

- (1) This section applies where the Authority notifies a recognised body that it is calling in a proposal to make regulatory provision.
- (2) The Authority must publish a notice—
  - (a) giving details of the proposed provision,
  - (b) stating that it has called in the proposal in order to consider whether to disallow it, and
  - (c) specifying a period during which representations with respect to that question may be made to it.
- (3) The Authority may extend the period for making representations.
- (4) The Authority must notify the body of its decision whether to disallow the provision not later than 30 days after the end of the period for making representations, and must publish the decision and the reasons for it.
- (5) The body must not make the provision unless and until—
  - (a) the Authority notifies it of its decision not to disallow it, or
  - (b) the 30-day period specified in subsection (4) ends without the Authority having notified any decision.
- (6) If the Authority notifies the body of its decision to disallow the provision and that decision is questioned in legal proceedings—
  - (a) the body must not make the provision until those proceedings, and any proceedings on appeal, are finally determined,
  - (b) if the Authority's decision is quashed and the matter is remitted to it for reconsideration, the court may give directions as to the period within which the Authority is to complete its reconsideration, and
  - (c) the body must not make the provision until—
    - (i) the Authority notifies it of its decision on reconsideration not to disallow the provision, or
    - (ii) the period specified by the court ends without the Authority having notified any decision.
- (7) Any provision made in contravention of subsection (5) or (6) is of no effect.

#### Textual Amendments

**F6** Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006](#) (c. 55), [ss. 2, 3, 5\(2\)](#) (with [s. 5\(3\)](#))

### **300E Power to disallow excessive regulatory provision: supplementary**

- (1) In sections 300A to 300D—



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- (a) “regulatory provision” means any rule, guidance, arrangements, policy or practice, and
  - (b) references to making provision shall be read accordingly as including, as the case may require, issuing guidance, entering into arrangements or adopting a policy or practice.
- (2) For the purposes of those sections a variation of a proposal is treated as a new proposal.
- (3) Those sections do not apply to an overseas investment exchange or overseas clearing house.]]

#### Textual Amendments

**F6** Ss. 300B-300E inserted (20.12.2006) by [Investment Exchanges and Clearing Houses Act 2006](#) (c. 55), [ss. 2, 3, 5\(2\)](#) (with [s. 5\(3\)](#))

#### *Other matters*

### **301 Supervision of certain contracts.**

- (1) The Secretary of State and the Treasury, acting jointly, may by regulations provide for—
- (a) Part VII of the <sup>M6</sup>Companies Act 1989 (financial markets and insolvency), and
  - (b) Part V of the <sup>M7</sup>Companies (No. 2)(Northern Ireland) Order 1990,
- to apply to relevant contracts as it applies to contracts connected with a recognised body.
- (2) “Relevant contracts” means contracts of a prescribed description in relation to which settlement arrangements are provided by a person for the time being included in a list (“the list”) maintained by the Authority for the purposes of this section.
- (3) Regulations may be made under this section only if the Secretary of State and the Treasury are satisfied, having regard to the extent to which the relevant contracts concerned are contracts of a kind dealt in by persons supervised by the Authority, that it is appropriate for the arrangements mentioned in subsection (2) to be supervised by the Authority.
- (4) The approval of the Treasury is required for—
- (a) the conditions set by the Authority for admission to the list; and
  - (b) the arrangements for admission to, and removal from, the list.
- (5) If the Treasury withdraw an approval given by them under subsection (4), all regulations made under this section and then in force are to be treated as suspended.
- (6) But if—
- (a) the Authority changes the conditions or arrangements (or both), and
  - (b) the Treasury give a fresh approval under subsection (4),
- the suspension of the regulations ends on such date as the Treasury may, in giving the fresh approval, specify.
- (7) The Authority must—

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- (a) publish the list as for the time being in force; and
  - (b) provide a certified copy of it to any person who wishes to refer to it in legal proceedings.
- (8) A certified copy of the list is evidence (or in Scotland sufficient evidence) of the contents of the list.
- (9) A copy of the list which purports to be certified by or on behalf of the Authority is to be taken to have been duly certified unless the contrary is shown.
- (10) Regulations under this section may, in relation to a person included in the list—
- (a) apply (with such exceptions, additions and modifications as appear to the Secretary of State and the Treasury to be necessary or expedient) such provisions of, or made under, this Act as they consider appropriate;
  - (b) provide for the provisions of Part VII of the <sup>M8</sup>Companies Act 1989 and Part V of the <sup>M9</sup>Companies (No. 2)(Northern Ireland) Order 1990 to apply (with such exceptions, additions or modifications as appear to the Secretary of State and the Treasury to be necessary or expedient).

#### Marginal Citations

- M6** 1989 c. 40.
- M7** S.I. 1990/1504 (N.I. 10).
- M8** 1989 c. 40.
- M9** S.I. 1990/1504 (N.I. 10).

VALID FROM 01/04/2007

## CHAPTER 1A

### CONTROL OVER RECOGNISED INVESTMENT EXCHANGE

#### *Notice of control*

#### **301A Obligation to notify the Authority of acquisition of or increase in control**

- (1) If a step which a person proposes to take would result in his acquiring—
- (a) control over a recognised investment exchange,
  - (b) an additional kind of control over an exchange, or
  - (c) an increase in a relevant kind of control which he already has over an exchange,
- he must notify the Authority of his proposal.
- (2) A person who, without himself taking any such step, acquires any such control or additional or increased control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.

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- (3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give notice to the Authority on acquiring, or increasing, the control in question.
- (4) A notice under subsection (1) or (2) is referred to in this Chapter as a “notice of control”.
- (5) Section 182 applies to a notice of control under this Chapter as it applies to a notice of control under Part 12.
- (6) Nothing in this Chapter applies to an overseas investment exchange.

### *Acquiring and increasing control*

#### **301B Acquiring and increasing control**

- (1) For the purposes of this Chapter, a person (“the acquirer”) acquires control over a recognised investment exchange (“E”) on first falling within any of the cases in subsection (2).
- (2) The cases are where the acquirer—
  - (a) holds 20% or more of the shares in E;
  - (b) is able to exercise significant influence over the management of E by virtue of his shareholding in E;
  - (c) holds 20% or more shares in a parent undertaking (“P”) of E;
  - (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;
  - (e) is entitled to exercise, or control the exercise of, 20% or more of the voting power in E;
  - (f) is able to exercise significant influence over the management of E by virtue of his voting power in E;
  - (g) is entitled to exercise, or to control the exercise of, 20% or more of the voting power in P; or
  - (h) is able to exercise significant influence over the management of P by virtue of his voting power in P.
- (3) In subsection (2) “the acquirer” means—
  - (a) the acquirer,
  - (b) any of his associates, or
  - (c) the acquirer and any of his associates.
- (4) For the purposes of this Chapter, each of the following is to be regarded as a kind of control—
  - (a) control arising as a result of the holding of shares in E;
  - (b) control arising as a result of the holding of shares in P;
  - (c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in E;
  - (d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in P.
- (5) For the purposes of this Chapter, a controller of E increases his control over E if—

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- (a) the percentage of shares held by the controller in E increases by the step mentioned in subsection (6);
  - (b) the percentage of shares held by the controller in P increases by the step mentioned in subsection (6);
  - (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in E increases by the step mentioned in subsection (6);
  - (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P increases by the step mentioned in subsection (6);  
or
  - (e) the controller becomes a parent undertaking of E.
- (6) The step is from 20% or more (but less than 50%) to 50% or more.
- (7) In the rest of this Chapter “acquiring control” or “having control” includes—
- (a) acquiring or having an additional kind of control; or
  - (b) acquiring an increase in a relevant kind of control, or having increased control of a relevant kind.

*Acquiring or increasing control: procedure*

**301C Duty of Authority in relation to notice of control**

- (1) The Authority must, before the end of the period of three months beginning with the date on which it receives a notice of control, determine whether—
  - (a) to approve of the person concerned having the control to which the notice relates; or
  - (b) to give a warning notice under subsection (7).
- (2) If the Authority decides to approve of the person concerned having the control to which the notice relates it must notify that person of its approval in writing without delay.
- (3) If the Authority fails to comply with subsection (1) it is to be treated as having given its approval and notified the person concerned at the end of the period fixed by that subsection.
- (4) The Authority's approval remains effective only if the person to whom it relates acquires the control in question—
  - (a) before the end of such period as may be specified in the notice of approval under subsection (2); or
  - (b) if no period is specified, before the end of the period of one year beginning with the date—
    - (i) of the notice of approval under subsection (2);
    - (ii) on which the Authority is treated as having given approval under subsection (3); or
    - (iii) of a decision on a reference to the Tribunal which results in the person concerned receiving approval.
- (5) The Authority may give a decision notice under this subsection unless it is satisfied that the approval requirement is met.

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- (6) The approval requirement is that the acquisition of control by the person who gave the notice of control does not pose a threat to the sound and prudent management of any financial market operated by the recognised investment exchange.
- (7) If the Authority proposes to give the person concerned a decision notice under subsection (5), it must give him a warning notice.
- (8) A person to whom a decision notice is given under subsection (5) may refer the matter to the Tribunal.

### **301D Objection to existing control**

- (1) If the Authority is not satisfied that the approval requirement is met, it may give a decision notice under this section to a person if he has failed to comply with a duty to notify imposed by section 301A.
- (2) If the failure relates to subsection (1) or (2) of that section, the Authority may (instead of giving a notice under subsection (1)) approve the acquisition of control in question by the person concerned as if he had given it a notice of control.
- (3) The Authority may also give a decision notice under this section to a person who is a controller of a recognised investment exchange if the Authority becomes aware of matters as a result of which it is satisfied that the approval requirement is not met with respect to the controller.
- (4) If the Authority proposes to give a decision notice under subsection (1) or (3) to a person, it must give him a warning notice before the end of the period of three months beginning—
  - (a) in the case of a notice to be given under subsection (1), with the date on which it became aware of the failure to comply with the duty in question;
  - (b) in the case of a notice to be given under subsection (3), with the date on which it became aware of the matters in question.
- (5) A person to whom a decision notice is given under this section may refer the matter to the Tribunal.
- (6) "Approval requirement" has the same meaning as in section 301C.

### *Improperly acquired shares*

### **301E Improperly acquired shares**

- (1) The powers conferred by this section are exercisable if a person has acquired, or has continued to hold, any shares in contravention of a decision notice given under section 301C(5) or 301D(1) or (3).
- (2) The Authority may by notice in writing given to the person concerned ("a restriction notice") direct that any such shares which are specified in the notice are, until further notice, subject to one or more of the following restrictions—
  - (a) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares any transfer of (or agreement to transfer) the right to be issued with them, is void;
  - (b) no voting rights are to be exercisable in respect of the shares;

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- (c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;
  - (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.
- (3) The court may, on the application of the Authority, order the sale of any shares to which this section applies and, if they are for the time being subject to any restriction under subsection (2), that they are to cease to be subject to that restriction.
- (4) No order may be made under subsection (3)—
- (a) until the end of the period within which a reference may be made to the Tribunal in respect of the decision notice in question; and
  - (b) if a reference is made, until the matter has been determined or the reference withdrawn.
- (5) If an order has been made under subsection (3), the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.
- (7) This section applies—
- (a) in the case of an acquirer falling within section 301A(1), to all the shares—
    - (i) in the recognised investment exchange which the acquirer has acquired,
    - (ii) which are held by him or an associate of his, and
    - (iii) which were not so held immediately before he became a person having control over the exchange;
  - (b) in the case of an acquirer falling within section 301A(2), to all the shares held by him or an associate of his at the time when he first became aware that he had acquired control over the exchange; and
  - (c) to all the shares in an undertaking (“C”)—
    - (i) which are held by the acquirer or an associate of his, and
    - (ii) which were not so held before he became a person with control in relation to the exchange,where C is the undertaking in which shares were acquired by the acquirer (or an associate of his) and, as a result, he became a person with control in relation to that exchange.
- (8) A copy of the restriction notice must be given to—
- (a) the recognised investment exchange to whose shares it relates; and
  - (b) if it relates to shares held by an associate of that exchange, that associate.
- (9) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.



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## *Offences*

### **301F Offences in relation to acquisition of control**

- (1) A person who fails to comply with the duty to notify the Authority imposed on him by section 301A(1) is guilty of an offence.
- (2) A person who fails to comply with the duty to notify the Authority imposed on him by section 301A(2) is guilty of an offence.
- (3) If a person who has given a notice of control to the Authority carries out the proposal to which the notice relates, he is guilty of an offence if—
  - (a) the period of three months beginning with the date on which the Authority received the notice is still running; and
  - (b) the Authority has not responded to the notice by either giving its approval or giving him a warning notice under section 301C(7).
- (4) A person to whom the Authority has given a warning notice under subsection (7) of section 301C is guilty of an offence if he carries out the proposal to which the notice relates before the Authority has decided whether to give him a decision notice under subsection (5) of that section.
- (5) A person to whom a decision notice under section 301C(5) or 301D(1) or (3) has been given is guilty of an offence if he acquires or retains the control to which the notice applies at a time when the notice is still in force.
- (6) A person guilty of an offence under subsection (1), (2), (3) or (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A person guilty of an offence under subsection (5) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both.
- (8) It is a defence for a person charged with an offence under subsection (1) to show that he had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.
- (9) If a person—
  - (a) was under the duty to notify the Authority imposed by section 301A(1) but had no knowledge of the act or circumstances by virtue of which that duty arose, but
  - (b) subsequently becomes aware of that act or those circumstances,
 he must notify the Authority before the end of the period of 14 days beginning with the day on which he first became so aware.
- (10) A person who fails to comply with the duty to notify the Authority imposed by subsection (9) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.



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### Interpretation

#### **301G Interpretation of Chapter 1A**

In this Chapter—

“associate”, “shares” and “voting power” have the same meaning as in section 422;

“controller”, in relation to a recognised investment exchange, means a person who falls within any of the cases in section 301B(2);

“notice of control” has the meaning given in section 301A(4).

## CHAPTER II

### COMPETITION SCRUTINY

#### **302 Interpretation.**

(1) In this Chapter and Chapter III—

“practices” means—

- (a) in relation to a recognised investment exchange, the practices of the exchange in its capacity as such; and
- (b) in relation to a recognised clearing house, the practices of the clearing house in respect of its clearing arrangements;

“regulatory provisions” means—

- (a) the rules of an investment exchange or a clearing house;
- (b) any guidance issued by an investment exchange or clearing house;
- (c) in the case of an investment exchange, the arrangements and criteria mentioned in section 287(3);
- (d) in the case of a clearing house, the arrangements and criteria mentioned in section 288(3).

(2) For the purposes of this Chapter, regulatory provisions or practices have a significantly adverse effect on competition if—

- (a) they have, or are intended or likely to have, that effect; or
- (b) the effect that they have, or are intended or likely to have, is to require or encourage behaviour which has, or is intended or likely to have, a significantly adverse effect on competition.

(3) If regulatory provisions or practices have, or are intended or likely to have, the effect of requiring or encouraging exploitation of the strength of a market position they are to be taken, for the purposes of this Chapter, to have an adverse effect on competition.

(4) In determining under this Chapter whether any regulatory provisions have, or are intended or likely to have, a particular effect, it may be assumed that persons to whom the provisions concerned are addressed will act in accordance with them.

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### *Role of [F<sup>7</sup>Office of Fair Trading]*

#### **Textual Amendments**

- F7** S. 303: cross-heading substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(f\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))

#### **303 Initial report by [F<sup>8</sup>OFT].**

- (1) The Authority must send to the Treasury and to the [F<sup>9</sup>OFT] a copy of any regulatory provisions with which it is provided on an application for recognition under section 287 or 288.
- (2) The Authority must send to the [F<sup>10</sup>OFT] such information in its possession as a result of the application for recognition as it considers will assist [F<sup>11</sup>the OFT] in discharging [F<sup>12</sup>its] functions in connection with the application.
- (3) The [F<sup>13</sup>OFT] must issue a report as to whether—
  - (a) a regulatory provision of which a copy has been sent to [F<sup>14</sup>it] under subsection (1) has a significantly adverse effect on competition; or
  - (b) a combination of regulatory provisions so copied to [F<sup>14</sup>it] have such an effect.
- (4) If the [F<sup>15</sup>OFT's] conclusion is that one or more provisions have a significantly adverse effect on competition, [F<sup>16</sup>it] must state [F<sup>17</sup>its] reasons for that conclusion.
- (5) When the [F<sup>18</sup>OFT] issues a report under subsection (3), [F<sup>19</sup>the OFT] must send a copy of it to the Authority, the Competition Commission and the Treasury.

#### **Textual Amendments**

- F8** S. 303: words in sidenote substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(f\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F9** Words in s. 303(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(a\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F10** Words in s. 303(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(b\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F11** Words in s. 303(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(b\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F12** Word in s. 303(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(b\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F13** Words in s. 303(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(c\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F14** Word in s. 303(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(c\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F15** Words in s. 303(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(d\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F16** Word in s. 303(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(d\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F17** Word in s. 303(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(d\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))
- F18** Words in s. 303(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(10\)\(e\)](#); S.I. 2003/766, [art. 2](#), [Sch.](#) (with [art. 3](#))

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**F19** Words in s. 303(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(10)(e); S.I. 2003/766, art. 2, Sch. (with art. 3)

### 304 Further reports by [F20OFT].

- (1) The [F20OFT] must keep under review the regulatory provisions and practices of recognised bodies.
- (2) If at any time the [F20OFT] considers that—
  - (a) a regulatory provision or practice has a significantly adverse effect on competition, or
  - (b) regulatory provisions or practices, or a combination of regulating provisions and practices have such an effect,[F21the OFT] must make a report.
- (3) If at any time the [F20OFT] considers that—
  - (a) a regulatory provision or practice does not have a significantly adverse effect on competition, or
  - (b) regulatory provisions or practices, or a combination of regulatory provisions and practices do not have any such effect,[F21the OFT] may make a report to that effect.
- (4) A report under subsection (2) must contain details of the adverse effect on competition.
- (5) If the [F20OFT] makes a report under subsection (2), [F21the OFT] must—
  - (a) send a copy of it to the Treasury, to the Competition Commission and to the Authority; and
  - (b) publish it in the way appearing to [F22the OFT] to be best calculated to bring it to the attention of the public.
- (6) If the [F20OFT] makes a report under subsection (3)—
  - (a) [F21the OFT] must send a copy of it to the Treasury, to the Competition Commission and to the Authority; and
  - (b) [F21the OFT] may publish it.
- (7) Before publishing a report under this section, the [F20OFT] must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the [F20OFT], would or might seriously and prejudicially affect his interests.
- (8) Before publishing such a report, the [F20OFT] must exclude any matter which relates to the affairs of a particular body the publication of which, in the opinion of the [F20OFT], would or might seriously and prejudicially affect its interests.
- (9) Subsections (7) and (8) do not apply to the copy of a report which the [F20OFT] is required to send to the Treasury, the Competition Commission and the Authority under subsection (5)(a) or (6)(a).
- (10) For the purposes of the law of defamation, absolute privilege attaches to any report of the [F20OFT] under this section.

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#### Textual Amendments

- F20** Words in s. 304 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(11)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F21** Words in s. 304 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(11)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F22** Words in s. 304(5)(b) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(11)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

### 305 Investigations by <sup>F23</sup>OFT].

- (1) For the purpose of investigating any matter with a view to its consideration under section 303 or 304, the <sup>F23</sup>OFT] may exercise the powers conferred on <sup>F24</sup>it] by this section.
- (2) The <sup>F23</sup>OFT] may by notice in writing require any person to produce to <sup>F24</sup>it] or to a person appointed by <sup>F24</sup>it] for the purpose, at a time and place specified in the notice, any document which—
  - (a) is specified or described in the notice; and
  - (b) is a document in that person’s custody or under his control.
- (3) The <sup>F23</sup>OFT] may by notice in writing—
  - (a) require any person carrying on any business to provide <sup>F24</sup>it] with such information as may be specified or described in the notice; and
  - (b) specify the time within which, and the manner and form in which, any such information is to be provided.
- (4) A requirement may be imposed under subsection (2) or (3)(a) only in respect of documents or information which relate to any matter relevant to the investigation.
- (5) If a person (“the defaulter”) refuses, or otherwise fails, to comply with a notice under this section, the <sup>F23</sup>OFT] may certify that fact in writing to the court and the court may enquire into the case.
- (6) If, after hearing any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence, the court is satisfied that the defaulter did not have a reasonable excuse for refusing or otherwise failing to comply with the notice, the court may deal with the defaulter as if he were in contempt.
- (7) In this section, “the court” means—
  - (a) the High Court; or
  - (b) in Scotland, the Court of Session.

#### Textual Amendments

- F23** Words in s. 305 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(12)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)
- F24** Word in s. 305 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(12)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

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#### Commencement Information

- 19** S. 305 wholly in force at 1.12.2001; s. 305 not in force at Royal Assent see s. 431(2); s. 305 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 305 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### Role of Competition Commission

#### 306 Consideration by Competition Commission.

- (1) If subsection (2) or (3) applies, the Commission must investigate the matter which is the subject of the [F<sup>25</sup>OFT's] report.
- (2) This subsection applies if the [F<sup>26</sup>OFT] sends to the Competition Commission a report—
  - (a) issued by [F<sup>27</sup>the OFT] under section 303(3) which concludes that one or more regulatory provisions have a significantly adverse effect on competition, or
  - (b) made by [F<sup>27</sup>the OFT] under section 304(2).
- (3) This subsection applies if the [F<sup>26</sup>OFT] asks the Commission to consider a report—
  - (a) issued by [F<sup>27</sup>the OFT] under section 303(3) which concludes that one or more regulatory provisions do not have a significantly adverse effect on competition, or
  - (b) made by [F<sup>27</sup>the OFT] under section 304(3).
- (4) The Commission must then make its own report on the matter unless it considers that, as a result of a change of circumstances, no useful purpose would be served by a report.
- (5) If the Commission decides in accordance with subsection (4) not to make a report, it must make a statement setting out the change of circumstances which resulted in that decision.
- (6) A report made under this section must state the Commission's conclusion as to whether—
  - (a) the regulatory provision or practice which is the subject of the report has a significantly adverse effect on competition, or
  - (b) the regulatory provisions or practices or combination of regulatory provisions and practices which are the subject of the report have such an effect.
- (7) A report under this section stating the Commission's conclusion that there is a significantly adverse effect on competition must also—
  - (a) state whether the Commission considers that that effect is justified; and
  - (b) if it states that the Commission considers that it is not justified, state its conclusion as to what action, if any, the Treasury ought to direct the Authority to take.
- (8) Subsection (9) applies whenever the Commission is considering, for the purposes of this section, whether a particular adverse effect on competition is justified.
- (9) The Commission must ensure, so far as that is reasonably possible, that the conclusion it reaches is compatible with the obligations imposed on the recognised body concerned by or under this Act.

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- (10) A report under this section must contain such an account of the Commission's reasons for its conclusions as is expedient, in the opinion of the Commission, for facilitating proper understanding of them.
- (11) The provisions of Schedule 14 (except paragraph 2(b)) apply for the purposes of this section as they apply for the purposes of section 162.
- (12) If the Commission makes a report under this section it must send a copy to the Treasury, the Authority and the [<sup>F26</sup>OFT].

#### Textual Amendments

- F25** Words in s. 306 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(13); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F26** Words in s. 306 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(13); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F27** Words in s. 306 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(13); S.I. 2003/766, art. 2, Sch. (with art. 3)

#### Commencement Information

- I10** S. 306 wholly in force at 1.12.2001; s. 306 not in force at Royal Assent see s. 431(2); s. 306 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), Sch. Pt. 2; s. 306 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### *Role of the Treasury*

#### **307 Recognition orders: role of the Treasury.**

- (1) Subsection (2) applies if, on an application for a recognition order—
  - (a) the [<sup>F28</sup>OFT] makes a report under section 303 but does not ask the Competition Commission to consider it under section 306;
  - (b) the Competition Commission concludes—
    - (i) that the applicant's regulatory provisions do not have a significantly adverse effect on competition; or
    - (ii) that if those provisions do have that effect, the effect is justified.
- (2) The Treasury may refuse to approve the making of the recognition order only if they consider that the exceptional circumstances of the case make it inappropriate for them to give their approval.
- (3) Subsection (4) applies if, on an application for a recognition order, the Competition Commission concludes—
  - (a) that the applicant's regulatory provisions have a significantly adverse effect on competition; and
  - (b) that that effect is not justified.
- (4) The Treasury must refuse to approve the making of the recognition order unless they consider that the exceptional circumstances of the case make it inappropriate for them to refuse their approval.



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### Textual Amendments

**F28** Words in s. 307 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 40(14)(a); S.I. 2003/766, art. 2, Sch. (with art. 3)

## 308 Directions by the Treasury.

- (1) This section applies if the Competition Commission makes a report under section 306(4) (other than a report on an application for a recognition order) which states the Commission's conclusion that there is a significantly adverse effect on competition.
- (2) If the Commission's conclusion, as stated in the report, is that the adverse effect on competition is not justified, the Treasury must give a remedial direction to the Authority.
- (3) But subsection (2) does not apply if the Treasury consider—
  - (a) that, as a result of action taken by the Authority or the recognised body concerned in response to the Commission's report, it is unnecessary for them to give a direction; or
  - (b) that the exceptional circumstances of the case make it inappropriate or unnecessary for them to do so.
- (4) In considering the action to be specified in a remedial direction, the Treasury must have regard to any conclusion of the Commission included in the report because of section 306(7)(b).
- (5) Subsection (6) applies if—
  - (a) the Commission's conclusion, as stated in its report, is that the adverse effect on competition is justified; but
  - (b) the Treasury consider that the exceptional circumstances of the case require them to act.
- (6) The Treasury may give a direction to the Authority requiring it to take such action—
  - (a) as they consider to be necessary in the light of the exceptional circumstances of the case; and
  - (b) as may be specified in the direction.
- (7) If the action specified in a remedial direction is the giving by the Authority of a direction—
  - (a) the direction to be given must be compatible with the recognition requirements applicable to the recognised body in relation to which it is given; and
  - (b) subsections (3) and (4) of section 296 apply to it as if it were a direction given under that section.
- (8) "Remedial direction" means a direction requiring the Authority—
  - (a) to revoke the recognition order for the body concerned; or
  - (b) to give such directions to the body concerned as may be specified in it.



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### **309 Statements by the Treasury.**

- (1) If, in reliance on subsection (3)(a) or (b) of section 308, the Treasury decline to act under subsection (2) of that section, they must make a statement to that effect, giving their reasons.
- (2) If the Treasury give a direction under section 308 they must make a statement giving—
  - (a) details of the direction; and
  - (b) if the direction is given under subsection (6) of that section, their reasons for giving it.
- (3) The Treasury must—
  - (a) publish any statement made under this section in the way appearing to them best calculated to bring it to the attention of the public; and
  - (b) lay a copy of it before Parliament.

### **310 Procedure on exercise of certain powers by the Treasury.**

- (1) Subsection (2) applies if the Treasury are considering—
  - (a) whether to refuse their approval under section 307;
  - (b) whether section 308(2) applies; or
  - (c) whether to give a direction under section 308(6).
- (2) The Treasury must—
  - (a) take such steps as they consider appropriate to allow the exchange or clearing house concerned, and any other person appearing to the Treasury to be affected, an opportunity to make representations—
    - (i) about any report made by the [F<sup>29</sup>OFT] under section 303 or 304 or by the Competition Commission under section 306;
    - (ii) as to whether, and if so how, the Treasury should exercise their powers under section 307 or 308; and
  - (b) have regard to any such representations.

#### **Textual Amendments**

**F29** Words in s. 310 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(14)(b)**; S.I. 2003/766, **art. 2**, **Sch.** (with art. 3)

#### **Commencement Information**

**I11** S. 310 wholly in force at 1.12.2001; s. 310 not in force at Royal Assent see s. 431(2); s. 310 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2(2)**, **Sch. Pt. 2**; s. 310 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

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## CHAPTER III

### EXCLUSION FROM THE COMPETITION ACT 1998

#### 311 The Chapter I prohibition.

- (1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised body to the extent to which the agreement relates to the regulatory provisions of that body.
- (2) If the conditions set out in subsection (3) are satisfied, the Chapter I prohibition does not apply to an agreement for the constitution of—
  - (a) an investment exchange which is not a recognised investment exchange, or
  - (b) a clearing house which is not a recognised clearing house,to the extent to which the agreement relates to the regulatory provisions of that body.
- (3) The conditions are that—
  - (a) the body has applied for a recognition order in accordance with the provisions of this Act; and
  - (b) the application has not been determined.
- (4) The Chapter I prohibition does not apply to a recognised body’s regulatory provisions.
- (5) The Chapter I prohibition does not apply to a decision made by a recognised body to the extent to which the decision relates to any of that body’s regulatory provisions or practices.
- (6) The Chapter I prohibition does not apply to practices of a recognised body.
- (7) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
  - (a) a recognised body, or
  - (b) a person who is subject to the rules of a recognised body,to the extent to which the agreement consists of provisions the inclusion of which is required or encouraged by any of the body’s regulatory provisions or practices.
- (8) If a recognised body’s recognition order is revoked, this section is to have effect as if that body had continued to be recognised until the end of the period of six months beginning with the day on which the revocation took effect.
- (9) “The Chapter I prohibition” means the prohibition imposed by section 2(1) of the <sup>M10</sup>Competition Act 1998.
- (10) Expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.

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**Modifications etc. (not altering text)**

C7 S. 311(1)(4)(5)(7)(8) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, arts. 1(2), 3(11); S.I. 2001/3538, art. 2(1)

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**Marginal Citations**

M10 1998 c. 41.

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### 312 The Chapter II prohibition.

- (1) The Chapter II prohibition does not apply to—
- (a) practices of a recognised body;
  - (b) the adoption or enforcement of such a body’s regulatory provisions;
  - (c) any conduct which is engaged in by such a body or by a person who is subject to the rules of such a body to the extent to which it is encouraged or required by the regulatory provisions of the body.
- (2) The Chapter II prohibition means the prohibition imposed by section 18(1) of the <sup>M11</sup>Competition Act 1998.

#### Modifications etc. (not altering text)

**C8** S. 312(1)(b) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2), 3(11)**; S.I. 2001/3538, **art. 2(1)**

#### Marginal Citations

**M11** 1998 c. 41.

VALID FROM 01/04/2007

## [<sup>F30</sup> CHAPTER 3A

### PASSPORT RIGHTS

#### Textual Amendments

**F30** Pt. 18 Ch. 3A (ss. 312A-312D) inserted (1.4.2007 for certain purposes and 1.11.2007 otherwise) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2007](#) (S.I. 2007/126), regs. 1(2), 3(2), **Sch. 2 para. 15** (with reg. 5)

#### Modifications etc. (not altering text)

**C9** Pt. 18 Ch. 3A applied (with modifications) (12.12.2011) by [The Recognised Auction Platforms Regulations 2011](#) (S.I. 2011/2699), **reg. 8, Sch. 3** (as amended (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017](#) (S.I. 2017/701), reg. 1(2)(3)(4)(6), **Sch. 5 para. 14(1)** (with reg. 7))

*EEA market operators in United Kingdom*

### 312A Exercise of passport rights by EEA market operator

- (1) An EEA market operator may, in pursuance of the right under the applicable provision, make arrangements in the United Kingdom to facilitate access to, or use of, a specified regulated market or specified multilateral trading facility operated by it if—

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- (a) the operator has given its home state regulator notice of its intention to make such arrangements; and
  - (b) the home state regulator has given the Authority notice of the operator's intention.
- (2) In making arrangements under subsection (1), the operator is exempt from the general prohibition as respects any regulated activity which is carried on as a part of its business of operating the market or facility in question, or in connection with, or for the purposes of, that business.
- (3) "Specified" means specified in the notice referred to in subsection (1)(a).
- (4) This section does not apply to an overseas investment exchange.

### **312B Removal of passport rights from EEA market operator**

- (1) The Authority may prohibit an EEA market operator from making or, as the case may be, continuing arrangements in the United Kingdom, in pursuance of the applicable provision, to facilitate access to, or use of, a regulated market or multilateral trading facility operated by the operator if—
- (a) the Authority has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
  - (b) the Authority has first complied with subsections (3) to (9).
- (2) A requirement is relevant if it is imposed—
- (a) by the operator's home state regulator in the implementation of the markets in financial instruments directive or any Community legislation made under that directive;
  - (b) by provision implementing that directive, or any Community legislation made under it, in the operator's home state; or
  - (c) by any directly applicable Community regulation made under that directive.
- (3) The Authority must notify the operator and its home state regulator of its finding under subsection (1)(a).
- (4) The notice to the home state regulator under subsection (3) must—
- (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the operator puts an end to the contravention; and
  - (b) state that the Authority proposes to exercise the power under subsection (1) if the operator continues the contravention.
- (5) The Authority may not exercise the power under subsection (1) unless satisfied—
- (a) either—
    - (i) that the home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
    - (ii) that the measures taken by the home state regulator have proved inadequate for that purpose; and
  - (b) that the operator is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the financial markets.
- (6) If the Authority is satisfied as mentioned in subsection (5), it must give written notice to—

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- (a) the operator, and
  - (b) the home state regulator,
- of its intention to exercise the power under subsection (1).
- (7) A notice under subsection (6) must—
- (a) state why the Authority intends to exercise its power under subsection (1), and
  - (b) in the case of the notice to the operator, inform the operator that it may make representations to the Authority before the end of the representation period.
- (8) The representation period is—
- (a) the period of two months beginning with the date on which the notice is given to the operator; or
  - (b) such longer period as the Authority may allow in a particular case.
- (9) If, having considered any representations made by the operator, the Authority decides to exercise the power under subsection (1), it must—
- (a) notify the operator in writing that it will be prohibited from making or, as the case may be, continuing the arrangements mentioned in that subsection from the date specified in the notice; and
  - (b) notify the home state regulator of the action to be taken in relation to the operator.
- (10) If the Authority exercises the power under subsection (1) it must at the earliest opportunity notify the Commission of the action taken in relation to the operator.
- (11) The exemption conferred on an operator by section 312A(2) ceases to apply if the Authority exercises the power under subsection (1) in relation to the operator.
- (12) The right to make the arrangements mentioned in subsection (1) may be reinstated in relation to the operator (together with the exemption mentioned in subsection (11)) if the Authority is satisfied that the contravention which led to the Authority exercising the power under subsection (1) has been remedied.

*Recognised investment exchanges operating in  
 EEA States (other than the United Kingdom)*

### **312C Exercise of passport rights by recognised investment exchange**

- (1) Subject to subsection (4), a recognised investment exchange may, in pursuance of the right under the applicable provision, make arrangements in an EEA State (other than the United Kingdom) to facilitate access to, or use of, a regulated market or multilateral trading facility operated by the exchange (“the relevant arrangements”).
- (2) The exchange must give the Authority written notice of its intention to make the relevant arrangements which—
  - (a) describes the arrangements, and
  - (b) identifies the EEA State in which it intends to make them.
- (3) The Authority must, within one month of receiving a notice under subsection (2), send a copy of it to the host state regulator.

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- (4) The exchange may not make the relevant arrangements until the Authority has complied with subsection (3).
- (5) Subsection (6) applies if the Authority receives a request for information—
  - (a) under the second sub-paragraph of Article 31.6 of the markets in financial instruments directive (in the case of relevant arrangements relating to a multilateral trading facility), or
  - (b) under the third sub-paragraph of Article 42.6 of that directive (in the case of relevant arrangements relating to a regulated market),from the host state regulator.
- (6) The Authority must, as soon as reasonably practicable, comply with the request.
- (7) “Host state regulator” means the competent authority (within the meaning of Article 4.1.22 of the markets in financial instruments directive) of the EEA State in which the exchange intends to make, or has made, the relevant arrangements.
- (8) This section does not apply to an overseas investment exchange.

#### *Interpretation*

### **312D Interpretation of Chapter 3A**

In this Chapter—

“the applicable provision” means—

- (a) in the case of arrangements relating to a multilateral trading facility, Article 31.5 of the markets in financial instruments directive; and
- (b) in the case of arrangements relating to a regulated market, the first sub-paragraph of Article 42.6 of that directive;

“EEA market operator” means a person who is a market operator (within the meaning of Article 4.1.13 of the markets in financial instruments directive) whose home state is an EEA State other than the United Kingdom;

“home state”, in relation to an EEA market operator, means the EEA State in which it has its registered office, or if it has no registered office, its head office;

“home state regulator” means the competent authority (within the meaning of Article 4.1.22 of the markets in financial instruments directive) of the EEA State which is the home state in relation to the EEA market operator concerned.]

## **CHAPTER IV**

### *Interpretation*

### **313 Interpretation of Part XVIII.**

(1) In this Part—

“application” means an application for a recognition order made under section 287 or 288;

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“applicant” means a body corporate or unincorporated association which has applied for a recognition order;

[<sup>F31</sup>“OFT” means the Office of Fair Trading;]

“overseas applicant” means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and which has applied for a recognition order;

“overseas investment exchange” means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;

“overseas clearing house” means a body corporate or association which has neither its head office nor its registered office in the United Kingdom and in relation to which a recognition order is in force;

“recognised body” means a recognised investment exchange or a recognised clearing house;

“recognised clearing house” has the meaning given in section 285;

“recognised investment exchange” has the meaning given in section 285;

“recognition order” means an order made under section 290 or 292;

“recognition requirements” has the meaning given by section 286;

“remedial direction” has the meaning given in section 308(8);

“revocation order” has the meaning given in section 297.

- (2) References in this Part to rules of an investment exchange (or a clearing house) are to rules made, or conditions imposed, by the investment exchange (or the clearing house) with respect to—
- (a) recognition requirements;
  - (b) admission of persons to, or their exclusion from the use of, its facilities; or
  - (c) matters relating to its constitution.
- (3) References in this Part to guidance issued by an investment exchange are references to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the investment exchange to—
- (a) all or any class of its members or users, or
  - (b) persons seeking to become members of the investment exchange or to use its facilities,
- with respect to any of the matters mentioned in subsection (2)(a) to (c).
- (4) References in this Part to guidance issued by a clearing house are to guidance issued, or any recommendation made, in writing or other legible form and intended to have continuing effect, by the clearing house to—
- (a) all or any class of its members, or
  - (b) persons using or seeking to use its services,
- with respect to the provision by it or its members of clearing services.

#### Textual Amendments

- F31** S. 313(1): definition substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 40\(15\)](#); [S.I. 2003/766](#), [art. 2](#), [Sch.](#) (with [art. 3](#))



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