

SCHEDULE 1

Regulation 3(1)

AMENDMENTS OF PART 13 OF THE ACT

1. Part 13 of the Act (incoming firms: intervention by Authority) is amended as follows.
2. After section 194 of the Act (general grounds on which power of intervention is exercisable) insert—

“194A Contravention by relevant EEA firm with UK branch of requirement under markets in financial instruments directive: Authority primarily responsible for securing compliance

(1) This section applies if—

- (a) a relevant EEA firm has a branch in the United Kingdom; and
- (b) the Authority ascertains that the firm has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article 62.2 of the markets in financial instruments directive applies).

(2) “Relevant EEA firm” means an EEA firm falling within paragraph 5(a) or (b) of Schedule 3 which is exercising in the United Kingdom an EEA right deriving from the markets in financial instruments directive.

(3) A requirement falls within this subsection if it is imposed on the firm—

- (a) by any provision of or made under this Act which implements the markets in financial instruments directive; or
- (b) by any directly applicable Community regulation made under that directive.

(4) The Authority must give the firm written notice which—

- (a) requires the firm to put an end to the contravention;
- (b) states that the Authority's power of intervention will become exercisable in relation to the firm if the firm continues the contravention; and
- (c) indicates any requirements that the Authority proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.

(5) The Authority may exercise its power of intervention in respect of the firm if—

- (a) a reasonable time has expired since the giving of the notice under subsection (4);
- (b) the firm has failed to put an end to the contravention within that time; and
- (c) the Authority has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.

(6) Subsection (5) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194.

(7) If the Authority exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (5), it must at the earliest opportunity inform the firm's home state regulator and the Commission of—

- (a) the fact that the Authority has exercised that power in respect of the firm; and
- (b) any requirements it has imposed on the firm in exercise of the power.”.

3. After section 195 of the Act (exercise of power in support of overseas regulator) insert—

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

“195A Contravention by relevant EEA firm of requirement under markets in financial instruments directive: home state regulator primarily responsible for securing compliance

(1) This section applies if the Authority has clear and demonstrable grounds for believing that a relevant EEA firm has contravened, or is contravening, a requirement falling within subsection (2) (in a case to which Article 62.1 or 62.3 of the markets in financial instruments directive applies).

(2) A requirement falls within this subsection if it is imposed on the firm—

- (a) by or under any provision adopted in the firm's home state for the purpose of implementing the markets in financial instruments directive; or
- (b) by any directly applicable Community regulation made under that directive.

(3) The Authority must notify the firm's home state regulator of the situation mentioned in subsection (1).

(4) The notice under subsection (3) must—

- (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the firm puts an end to the contravention;
- (b) state that the Authority's power of intervention is likely to become exercisable in relation to the firm if the firm continues the contravention; and
- (c) indicate any requirements that the Authority proposes to impose on the firm in exercise of its power of intervention in the event of the power becoming exercisable.

(5) The Authority may exercise its power of intervention in respect of the firm if—

- (a) a reasonable time has expired since the giving of the notice under subsection (3); and
- (b) conditions A to C are satisfied.

(6) Condition A is that—

- (a) the firm's home state regulator has failed or refused to take measures for the purpose mentioned in subsection (4)(a); or
- (b) any measures taken by the home state regulator have proved inadequate for that purpose.

(7) Condition B is that the firm is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the markets.

(8) Condition C is that the Authority has informed the firm's home state regulator of its intention to exercise its power of intervention in respect of the firm.

(9) Subsection (5) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194 or 195.

(10) If the Authority exercises its power of intervention in respect of a relevant EEA firm by virtue of subsection (5), it must at the earliest opportunity inform the Commission of—

- (a) the fact that the Authority has exercised that power in respect of the firm; and
- (b) any requirements it has imposed on the firm in exercise of the power.

(11) In this section—

“home state”, in relation to a relevant EEA firm, means—

- (a) in the case of a firm which is a body corporate, the EEA State in which the firm has its registered office or, if it has no registered office, its head office; and

(b) in any other case, the EEA State in which the firm has its head office;
“relevant EEA firm” has the same meaning as in section 194A.”.

4. In section 199 of the Act (additional procedure for EEA firms in certain cases), in subsections (2)(b) and (8)(b), after “directives” insert “ (other than the markets in financial instruments directive) ”.

SCHEDULE 2

Regulation 3(2)

AMENDMENTS OF PART 18 OF THE ACT

1. Part 18 of the Act (recognised investment exchanges and clearing houses) is amended as follows.

2. In section 286 (qualification for recognition), after subsection (5) insert—

“(6) In the case of an investment exchange, requirements resulting from this section are in addition to requirements which must be satisfied by the exchange as a result of section 290(1A) before the Authority may make a recognition order declaring the exchange to be a recognised investment exchange.”.

3. In section 287 (application by an investment exchange)—

(a) in subsection (3), after paragraph (b) insert—

“;

(c) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant's proposed organisational structure;

(d) such particulars of the persons who effectively direct the business and operations of the exchange as the Authority may reasonably require;

(e) such particulars of the ownership of the exchange, and in particular 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, as the Authority may reasonably require.”;

(b) after subsection (3) insert—

“(4) Subsection (3)(c) to (e) does not apply to an application by an overseas applicant.”.

4. In section 290 of the Act (recognition orders), after subsection (1), insert—

“(1A) In the case of an application for an order declaring the applicant to be a recognised investment exchange, the reference in subsection (1) to the recognition requirements applicable in its case includes a reference to requirements contained in any directly applicable Community regulation made under the markets in financial instruments directive.

(1B) In the case mentioned in subsection (1A), the application must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.

(1C) Subsection (1B) does not apply in the case of an application by an overseas applicant.”.

5. After section 292 (overseas investment exchanges and overseas clearing houses) insert—

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

“Publication of information by recognised investment exchange

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.”.

6. After section 293 (notification requirements) insert—

“293A Information: compliance of recognised investment exchanges with directly applicable Community regulations

293A. 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.”.

7. In section 296 (Authority's power to give directions)—

(a) after subsection (1) insert—

“(1A) This section also applies in the case of a recognised body which is a recognised investment exchange if it appears to the Authority that the body has failed, or is likely to fail, to comply with any obligation imposed on it by any directly applicable Community regulation made under the markets in financial instruments directive.”;

(b) after subsection (2) insert—

“(2A) In the case of a recognised investment exchange other than an overseas investment exchange, those steps may include—

(a) the granting to the Authority of access to the premises of the exchange for the purpose of inspecting—

(i) those premises; or

(ii) any documents on the premises which appear to the Authority to be relevant for the purpose mentioned in subsection (2);

(b) the suspension of the carrying on of any regulated activity by the exchange for the period specified in the direction.”.

8. In section 297 (revoking recognition)—

(a) after subsection (2) insert—

“(2A) If it appears to the Authority that a recognised body which is a recognised investment exchange—

- (a) has not carried on the business of an investment exchange during the period of twelve months beginning with the day on which the recognition order took effect in relation to it,
- (b) has not carried on the business of an investment exchange at any time during the period of six months ending with the relevant day, or
- (c) has failed, or is likely to fail, to comply with any obligation imposed on it by a directly applicable Community regulation made under the markets in financial instruments directive,

it may make an order revoking the recognition order for that body even though the body does not wish the order to be made.

(2B) The “relevant day”, for the purposes of paragraph (b) of subsection (2A), is the day on which the power to make an order under that subsection is exercised.

(2C) Subsection (2A) does not apply to an overseas investment exchange.”;

(b) in subsection (4) after “(2)” insert “ or (2A) ”.

9. In section 298 of the Act (directions and revocations: procedure), in subsection (1), after “section 297(2)” insert “ or (2A) ”.

10. After section 301 (supervision of certain contracts) insert—

“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.

(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.

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

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—

- (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.

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

- (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.

(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.

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

(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;
- (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.

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.

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

(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.

Interpretation

301G Interpretation of Chapter 1A

301G. 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).”.

11. In section 302 of the Act (interpretation), in subsection (1), in paragraph (c) of the definition of “regulatory provisions”, for “287(3)” substitute “ 287(3)(a) and (b) ”.

12. In section 303 of the Act ^{M1} (initial report by OFT), after subsection (5) insert—

“(6) In the case of an application for recognition under section 287, the OFT must issue its report under subsection (3) before the end of the period of 12 weeks beginning with the date on which it receives the copy sent to it under subsection (1).

(7) Subsection (6) does not apply if the application is made by an overseas investment exchange.”.

Marginal Citations

M1 Section 303 was amended by the [Enterprise Act 2002 \(c. 40\)](#), [section 278](#) and Schedule 25.

13. In section 306 of the Act ^{M2} (consideration by the Competition Commission), after subsection (12) insert—

“(13) Subsection (14) applies if—

- (a) the case relates to an application for recognition under section 287, other than an application by an overseas applicant; and

- (b) subsection (2)(a) or (3)(a) of this section applies.
- (14) The Commission must —
 - (a) make a report under this section, or a statement under subsection (5), before the end of the period of 12 weeks beginning with the date on which it receives a copy of the OFT's report under section 303(3); and
 - (b) if it makes a statement under subsection (5), send a copy to the Authority and the Treasury.”.

Marginal Citations

M2 Section 306 was amended by the [Enterprise Act 2002 \(c. 40\)](#), [section 278](#) and Schedule 25.

14. In section 307 of the Act ^{M3} (recognition orders: role of the Treasury), after subsection (4) insert—

“(5) Subsection (6) applies in the case of an application for recognition under section 287, other than an application by an overseas applicant.

(6) The Treasury must decide whether to approve the application before the end of the period of 10 days beginning with—

- (a) in a case falling within subsection (2)(a) or (3)(a) of section 306, the date on which they receive a copy of the report under that section or, if no such report was made, of the statement under subsection (5) of that section;
- (b) in any other case, the date on which they receive a copy of the report from the OFT under section 303.”.

Marginal Citations

M3 Section 307 was amended by the [Enterprise Act 2002 \(c. 40\)](#), [section 278](#) and Schedule 25.

15. After section 312 (the Chapter II prohibition) insert—

“CHAPTER 3A

PASSPORT RIGHTS

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—

- (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).

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

- (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—

- (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.
- (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.

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

Interpretation

312D Interpretation of Chapter 3A

312D. 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.”.

- 16.** In section 313 (interpretation of Part 18), in subsection (1) at the appropriate place insert—
- ““multilateral trading facility” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;”
- ““regulated market” has the meaning given in Article 4.1.14 of the markets in financial instruments directive;”.

SCHEDULE 3

Regulation 3(3)

PART 18A OF THE ACT

- 1.** After section 313 of the Act (interpretation of Part 18) insert—

“Part 18A

SUSPENSION AND REMOVAL OF FINANCIAL INSTRUMENTS FROM TRADING

313A Authority's power to require suspension or removal of financial instruments from trading

- (1) The Authority may, for the purpose of protecting—
 - (a) the interests of investors, or
 - (b) the orderly functioning of the financial markets,

require an institution to suspend or remove a financial instrument from trading.

(2) If the Authority exercises the power conferred by subsection (1), the institution concerned or, if any, the issuer of the financial instrument concerned may refer the matter to the Tribunal.

(3) In this section, “trading” includes trading otherwise than on a regulated market or a multilateral trading facility.

313B Suspension or removal of financial instruments from trading: procedure

(1) A requirement imposed on an institution under section 313A (a “relevant requirement”) takes effect—

- (a) immediately, if the notice given under subsection (2) states that this is the case;
- (b) in any other case, on such date as may be specified in the notice.

(2) If the Authority proposes to impose a relevant requirement on an institution, or imposes such a requirement with immediate effect, it must give written notice to—

- (a) the institution, and
- (b) if any, the issuer of the financial instrument in question.

(3) The notice must—

- (a) give details of the relevant requirement;
- (b) state the Authority's reasons for imposing the requirement and choosing the date on which it took effect or takes effect;
- (c) inform the recipient that he may make representations to the Authority within such period as may be specified by the notice (whether or not he has referred the matter to the Tribunal);
- (d) inform him of the date on which the requirement took effect or takes effect; and
- (e) inform him of his right to refer the matter to the Tribunal and give an indication of the procedure on such a reference.

(4) The Authority may extend the period within which representations may be made to it.

(5) If, having considered any representations made to it by the institution or any issuer, the Authority decides—

- (a) to impose the relevant requirement proposed, or
- (b) if it has been imposed, not to revoke it,

it must give the institution and any issuer written notice.

(6) If, having considered any representations made to it by the institution or any issuer, the Authority decides—

- (a) not to impose the relevant requirement proposed, or
- (b) to revoke a requirement which has been imposed,

it must give the institution and any issuer written notice.

(7) A notice given under subsection (5) must inform the recipient of his right to refer the matter to the Tribunal.

(8) Subsections (9) and (10) apply if—

- (a) the Authority has imposed a relevant requirement on an institution, and
- (b) the institution or any issuer of the financial instrument in question has applied for the revocation of the requirement.

(9) If the Authority decides to grant the application, it must give the institution and any issuer written notice of its decision.

(10) If the Authority proposes to refuse the application, it must give the institution and any issuer a warning notice.

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

(11) If, having considered any representations made in response to the warning notice, the Authority decides to refuse the application, it must give the institution and any issuer a decision notice.

(12) If the Authority gives a decision notice under subsection (11), the recipient may refer the matter to the Tribunal.

313C Notification in relation to suspension or removal of a financial instrument from trading

(1) If the Authority exercises the power under section 313A(1) in relation to a financial instrument traded on a regulated market, it must as soon as reasonably practicable—

- (a) publish its decision in such manner as it considers appropriate, and
- (b) inform the competent authorities of all other EEA States of its decision.

(2) If the Authority receives notice from a recognised investment exchange that the exchange has suspended or removed a financial instrument from trading on a regulated market operated by it, the Authority must inform the competent authorities of all other EEA States of the action taken by the exchange.

(3) Subsections (4) and (5) apply if the Authority receives notice from the competent authority of another EEA State that that authority, pursuant to Article 41.2 of the markets in financial instruments directive—

- (a) has required the suspension of a financial instrument from trading, or
- (b) has required the removal of a financial instrument from trading.

(4) In the case of a notice under subsection (3)(a), the Authority—

- (a) must require each recognised investment exchange to suspend the instrument from trading on any regulated market operated by the exchange, and
- (b) must require each institution operating a multilateral trading facility to suspend the instrument from trading on that facility,

unless such a step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

(5) In the case of a notice under subsection (3)(b), the Authority—

- (a) must require each recognised investment exchange to remove the instrument from trading on any regulated market operated by the exchange, and
- (b) must require each institution operating a multilateral trading facility to remove the instrument from trading on that facility,

unless such a step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

(6) "Competent authority" has the meaning given in Article 4.1.22 of the markets in financial instruments directive.

313D Interpretation of Part 18A

313D. In this Part—

"financial instrument" has the meaning given in Article 4.1.17 of the markets in financial instruments directive;

"institution" means—

- (a) a recognised investment exchange, other than an overseas investment exchange (within the meaning of Part 18);

- (b) an investment firm;
 - (c) a credit institution authorised under the banking consolidation directive, when carrying on investment services and activities; or
 - (d) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State, but does not include an EEA firm qualifying for authorisation under Schedule 3;
- “issuer”, in relation to a financial instrument, means the person who issued the instrument;
- “multilateral trading facility” has the meaning given in Article 4.1.15 of the markets in financial instruments directive;
- “regulated market” has the meaning given in Article 4.1.14 of the markets in financial instruments directive.”.

SCHEDULE 4

Regulation 3(4)

AMENDMENTS OF SCHEDULE 3 TO THE ACT

1. Schedule 3 to the Act (EEA passport rights) is amended as follows.
2. In paragraph 1(d) for “investment services directive” substitute “ markets in financial instruments directive ”.
3. Paragraph 4 is repealed.
4. In paragraph 5(a)—
 - (a) for “Article 1.2 of the investment services directive” substitute “ Article 4.1.1 of the markets in financial instruments directive ”;
 - (b) for “Article 3” substitute “ Article 5 ”.
5. After paragraph 10A ^{M4} insert—

“UK investment firm

- 10B.** “UK investment firm” means a UK firm—
- (a) which is an investment firm, and
 - (b) whose EEA right derives from the markets in financial instruments directive.”.

Marginal Citations

M4 Paragraph 10A was inserted by [S.I. 2003/1473](#).

6. After paragraph 11 insert—

“Tied agent

11A. “Tied agent” has the meaning given in Article 4.1.25 of the markets in financial instruments directive.”.

7. In paragraph 12, after sub-paragraph (2), insert—

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

“(3) If an EEA firm falling within paragraph 5(a) is seeking to use a tied agent established in the United Kingdom in connection with the exercise of an EEA right deriving from the markets in financial instruments directive, this Part of this Schedule applies as if the firm were seeking to establish a branch in the United Kingdom.

(4) But if—

(a) an EEA firm already qualifies for authorisation by virtue of sub-paragraph (1); and

(b) the EEA right which it is exercising derives from the markets in financial instruments directive,

sub-paragraph (3) does not require the firm to satisfy the establishment conditions in respect of its use of the tied agent in question.”.

8. In paragraph 13—

(a) in sub-paragraph (1)—

(i) at the end of paragraph (b) omit “and”;

(ii) after paragraph (b) insert—

“(ba) in the case of a firm falling within paragraph 5(a), the Authority has given the firm notice for the purposes of this paragraph or two months have elapsed beginning with the date when the home state regulator gave the consent notice; and”;

(iii) in paragraph (c), at the beginning, insert “ in the case of a firm falling within paragraph 5(b), (c), (d) or (f), ”;

(b) in sub-paragraph (2), in paragraph (b), at the beginning insert “ except if the firm falls within paragraph 5(a), ”.

9. In paragraph 14—

(a) in sub-paragraph (1), after paragraph (b), insert—

“(ba) if the firm falls within paragraph 5(b) and is seeking to provide services in exercise of the right under Article 31.5 of the markets in financial instruments directive, the Authority has received notice (“a regulator's notice”) from the firm's home state regulator stating that the firm intends to exercise that right in the United Kingdom;”;

(b) after sub-paragraph (2) insert—

“(2A) Sub-paragraph (2)(b) does not apply in the case of a firm falling within paragraph 5(a).”.

10. In paragraph 19—

(a) in sub-paragraph (3) for “The” substitute “ Subject to sub-paragraph (5B), the ”;

(b) after sub-paragraph (5A) ^{M5} insert—

“(5B) If the firm is a UK investment firm, a notice of intention may not include ancillary services unless such services are to be provided in connection with the carrying on of one or more investment services and activities.

(5C) In sub-paragraph (5B) “ancillary services” has the meaning given in Article 4.1.3 of the markets in financial instruments directive.”;

(c) in sub-paragraph (6) ^{M6} for “the investment services directive or the UCITS directive” substitute “ the UCITS directive or, in the case of a credit institution authorised under the banking consolidation directive, the markets in financial instruments directive ”;

- (d) after sub-paragraph (7A) ^{M7} insert—

“(7B) If the firm is a UK investment firm and the first condition is satisfied, the Authority must give a consent notice to the host state regulator within three months beginning with the date on which it received the firm's notice of intention unless the Authority has reason to doubt the adequacy of the firm's resources or its administrative structure.”.

Marginal Citations

M5 Paragraph 19(5A) was inserted by [S.I. 2003/1473](#).

M6 Paragraph 19(6) was amended by [S.I. 2003/2066](#).

M7 Paragraph 19(7A) was inserted by [S.I. 2003/1473](#).

- 11.** In paragraph 20—

- (a) in sub-paragraph (2) for “The” substitute “ Subject to sub-paragraph (2A), the ”;

- (b) after sub-paragraph (2) insert—

“(2A) If the firm is a UK investment firm, a notice of intention may not include ancillary services unless such services are to be provided in connection with the carrying on of one or more investment services and activities.

(2B) In sub-paragraph (2A) “ancillary services” has the meaning given in Article 4.1.3 of the markets in financial instruments directive.”;

- (c) in sub-paragraph (3) ^{M8} for “investment services directive” substitute “ markets in financial instruments directive ”;

- (d) in sub-paragraph (4B) ^{M9}, after “insurance directives” insert “ or from the markets in financial instruments directive ”;

- (e) after sub-paragraph (4B) insert—

“(4BA) If the firm's EEA right derives from the markets in financial instruments directive, the Authority must comply as soon as reasonably practicable with a request for information under the second sub-paragraph of Article 31.6 of that directive from the host state regulator.”.

Marginal Citations

M8 Paragraph 20(3) was amended by [S.I. 2003/2066](#).

M9 Paragraph 20(4B) was inserted by [S.I. 2001/1376](#).

- 12.** After paragraph 20 insert—

“Tied agents

20A.—(1) If a UK investment firm is seeking to use a tied agent established in an EEA State (other than the United Kingdom) in connection with the exercise of an EEA right deriving from the markets in financial instruments directive, this Part of this Schedule applies as if the firm were seeking to establish a branch in that State.

- (2) But if—

- (a) a UK investment firm has already established a branch in an EEA State other than the United Kingdom in accordance with paragraph 19; and

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

(b) the EEA right which it is exercising derives from the markets in financial instruments directive,
paragraph 19 does not apply in respect of its use of the tied agent in question.”.

SCHEDULE 5

Regulation 3(5)

OTHER AMENDMENTS OF THE ACT

1. The Act is further amended as follows.

Amendment of section 39

2. In section 39 (exemption of appointed representatives)—

(a) after subsection (1) insert—

“(1A) But a person is not exempt as a result of subsection (1)—

(a) if his principal is an investment firm or a credit institution, and

(b) so far as the business for which his principal has accepted responsibility is investment services business,

unless he is entered on the applicable register.

(1B) The “applicable register” is—

(a) in the case of a person established in an EEA State (other than the United Kingdom) which permits investment firms authorised by the competent authority of that State to appoint tied agents, the register of tied agents maintained in that State pursuant to Article 23 of the markets in financial instruments directive;

(b) in the case of a person established in an EEA State which does not permit investment firms authorised as mentioned in paragraph (a) to appoint tied agents—

(i) if his principal has his relevant office in the United Kingdom, the record maintained by the Authority by virtue of section 347(1)(ha), and

(ii) if his principal is established in an EEA State (other than the United Kingdom) which permits investment firms authorised by the competent authority of the State to appoint tied agents, the register of tied agents maintained by that State pursuant to Article 23 of the markets in financial instruments directive; and

(c) in any other case, the record maintained by the Authority by virtue of section 347(1)(ha).”;

(b) in subsection (4), after “this Act,” insert “ or with a provision contained in any directly applicable Community regulation made under the markets in financial instruments directive,”;

(c) after subsection (6) insert—

“(7) A person carries on “investment services business” if—

(a) the business includes providing services or carrying on activities of the kind mentioned in Article 4.1.25 of the markets in financial instruments directive, and

(b) as a result of providing such services or carrying on such activities he is a tied agent or would be if he were established in an EEA State.

- (8) In this section—
- “competent authority” has the meaning given in Article 4.1.22 of the markets in financial instruments directive;
- “credit institution” means—
- (a) a credit institution authorised under the banking consolidation directive, or
 - (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its relevant office in an EEA State;
- “relevant office” means—
- (a) in relation to a body corporate, its registered office or, if it has no registered office, its head office, and
 - (b) in relation to a person other than a body corporate, the person's head office.”.

Section 39A

3. After section 39 (exemption of appointed representatives) insert—

“39A Certain tied agents operating outside United Kingdom

- (1) This section applies to an authorised person whose relevant office is in the United Kingdom if—
- (a) he is a party to a contract with a person (other than an authorised person) who is established—
 - (i) in the United Kingdom, or
 - (ii) in an EEA State which does not permit investment firms authorised by the competent authority of the State to appoint tied agents; and
 - (b) the contract is a relevant contract.
- (2) A contract is a “relevant contract” if it satisfies conditions A to C.
- (3) Condition A is that the contract permits or requires the person mentioned in subsection (1)(a) (the “agent”) to carry on investment services business.
- (4) Condition B is that either—
- (a) it is a condition of the contract that such business may only be carried on by the agent in an EEA State other than the United Kingdom; or
 - (b) in a case not falling within paragraph (a), the Authority is satisfied that no such business is, or is likely to be, carried on by the agent in the United Kingdom.
- (5) Condition C is that the business is of a description that, if carried on in the United Kingdom, would be prescribed for the purposes of section 39(1)(a)(i).
- (6) An authorised person to whom this section applies who—
- (a) enters into or continues to perform a relevant contract with an agent which does not comply with the applicable requirements,
 - (b) enters into or continues to perform a relevant contract without accepting or having accepted responsibility in writing for the agent's activities in carrying on investment services business,
 - (c) enters into a relevant contract with an agent who is not entered on the record maintained by the Authority by virtue of section 347(1)(ha), or

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

- (d) continues to perform a relevant contract with an agent when he knows or ought to know that the agent is not entered on that record,

is to be taken for the purposes of this Act to have contravened a requirement imposed on him by or under this Act.

(7) The “applicable requirements” are the requirements prescribed for the purposes of subsection (1)(a)(ii) of section 39 which have effect in the case of a person to whom subsection (1A) of that section applies.

(8) A person carries on “investment services business” if—

- (a) his business includes providing services or carrying on activities of the kind mentioned in Article 4.1.25 of the markets in financial instruments directive, and
- (b) as a result of providing such services or carrying on such activities he is a tied agent.

(9) In this section—

“competent authority” has the meaning given in Article 4.1.22 of the markets in financial instruments directive;

“relevant office” means—

- (a) in relation to a body corporate, its registered office or, if it has no registered office, its head office, and
- (b) in relation to a person other than a body corporate, the person's head office.”.

Amendment of section 45

4. In section 45 (variation etc. on the Authority's own initiative), after subsection (2) insert—

“(2A) Without prejudice to the generality of subsections (1) and (2), the Authority may, in relation to an authorised person who is an investment firm, exercise its power under this section to cancel the Part IV permission of the firm if it appears to it that—

- (a) the firm has failed, during a period of at least six months, to carry on a regulated activity which is an investment service or activity for which it has a Part IV permission;
- (b) the firm obtained the Part IV permission by making a false statement or by other irregular means;
- (c) the firm no longer satisfies the requirements for authorisation pursuant to Chapter I of Title II of the markets in financial instruments directive, or pursuant to or contained in any Community legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part IV permission; or
- (d) the firm has seriously and systematically infringed the operating conditions pursuant to Chapter II of Title II of the markets in financial instruments directive, or pursuant to or contained in any Community legislation made under that Chapter, in relation to a regulated activity which is an investment service or activity for which it has a Part IV permission.

(2B) For the purposes of subsection (2A) a regulated activity is an investment service or activity if it falls within the definition of “investment services and activities” in section 417(1).”.

Amendment of section 66(2)

5. In section 66 (disciplinary powers), in subsection (2)(b), after “this Act” insert “ or by any directly applicable Community regulation made under the markets in financial instruments directive ”.

Amendment of section 102B

6. In section 102B ^{M10} (meaning of “offer of transferable securities to the public” etc.), in subsection (6), omit“(within the meaning of Article 1.2 of the investment services directive)”.

Marginal Citations

M10 Section 102B was inserted by [S.I. 2005/1433](#).

Amendment of section 167

7. In section 167 (appointment of persons to carry out general investigations)—
- (a) in subsection (1)—
 - (i) in paragraph (a) after “business of” insert “ a recognised investment exchange or ”;
 - (ii) in paragraph (c) after “control of” insert “ a recognised investment exchange or ”;
 - (b) after subsection (5) insert—

“(6) References in subsection (1) to a recognised investment exchange do not include references to an overseas investment exchange (as defined by section 313(1)).”.

Amendment of section 168

8. In section 168 (appointment of persons to carry out investigations in particular cases), in subsection (4)—
- (a) after paragraph (h) omit “or”;
 - (b) after paragraph (i) insert—

“; or

 - (j) a person may have contravened any provision made by or under this Act for the purpose of implementing the markets in financial instruments directive or by any directly applicable Community regulation made under that directive.”.

Amendment of section 171

9. In section 171 (powers of persons appointed under section 167)—
- (a) after subsection (3) insert—

“(3A) Where the investigation relates to a recognised investment exchange, an investigator has the additional powers conferred by sections 172 and 173 (and for this purpose references in those sections to an investigator are to be read accordingly).”;
 - (b) after subsection (6) insert—

“(7) The reference in subsection (3A) to a recognised investment exchange does not include a reference to an overseas investment exchange (as defined by section 313(1)).”.

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

Amendment of section 205

10. In section 205 (public censure), in subsection (1), after “this Act,” insert “ or by any directly applicable Community regulation made under the markets in financial instruments directive, ”.

Amendment of section 206

11. In section 206 (financial penalties), in subsection (1), after “this Act,” insert “ or by any directly applicable Community regulation made under the markets in financial instruments directive, ”.

Amendment of section 347

12. In section 347 (record of authorised persons etc.)—

(a) after paragraph (h) of subsection (1), omit “and”;

(b) after that paragraph insert—

“(ha) person to whom subsection (2A) applies; and”;

(c) after subsection (2) insert—

“(2A) This subsection applies to—

(a) an appointed representative to whom subsection (1A) of section 39 applies for whom the applicable register (as defined by subsection (1B) of that section) is the record maintained by virtue of subsection (1)(ha) above;

(b) a person mentioned in subsection (1)(a) of section 39A if—

(i) the contract with an authorised person to which he is party complies with the applicable requirements (as defined by subsection (7) of that section), and

(ii) the authorised person has accepted responsibility in writing for the person's activities in carrying on investment services business (as defined by subsection (8) of that section); and

(c) any person not falling within paragraph (a) or (b) in respect of whom the Authority considers that a record must be maintained for the purpose of securing compliance with Article 23.3 of the markets in financial instruments directive (registration of tied agents).”.

Amendment of section 380

13. In section 380 (injunctions), in subsection (6)(a)(i), after “this Act” insert “ or by any directly applicable Community regulation made under the markets in financial instruments directive ”.

Amendment of section 382

14. In section 382 (restitution orders), in subsection (9)(a)(i), after “this Act” insert “ or by any directly applicable Community regulation made under the markets in financial instruments directive ”.

Amendment of section 384

15. In section 384 (power of the Authority to require restitution), in subsection (7)(a), after “this Act” insert “ or by any directly applicable Community regulation made under the markets in financial instruments directive ”.

Amendment of section 392

16. In section 392 (application of sections 393 and 394)—
- (a) in paragraph (a) for “or 385(1)” substitute “, 385(1) or 412B(4) or (8)”;
 - (b) in paragraph (b) for “or 386(1)” substitute “, 386(1) or 412B(5) or (9)”.

Amendment of section 405

17. In section 405 (directions), in subsection (5), for paragraph (a) substitute—
- “(a) Article 15(3) of the markets in financial instruments directive;”.

Sections 412A and 412B

18. After section 412 (gaming contracts), insert—

“Trade-matching and reporting systems

412A Approval and monitoring of trade-matching and reporting systems

(1) A relevant system is an approved relevant system if it is approved by the Authority under subsection (2) for the purposes of Article 25.5 of the markets in financial instruments directive; and references in this section and section 412B to an “approved relevant system” are to be read accordingly.

(2) The Authority must approve a relevant system if, on an application by the operator of the system, it is satisfied that the arrangements established by the system for reporting transactions comply with Article 12(1) of Commission Regulation 1287/2006 of 10 August 2006^{M11} (“the Regulation”).

(3) Section 51(3) and (4) applies to an application under this section as it applies to an application under Part 4.

(4) If, at any time after approving a relevant system under subsection (2), the Authority is not satisfied as mentioned in that subsection, it may suspend or withdraw the approval.

(5) The Authority must keep under review the arrangements established by an approved relevant system for reporting transactions for the purpose of ensuring that the arrangements comply with Article 12(1) of the Regulation; and for the purposes of this subsection the Authority must have regard to information provided to it under subsections (6) and (7).

(6) The operator of an approved relevant system must make reports to the Authority at specified intervals containing specified information relating to—

- (a) the system,
- (b) the reports made by the system in accordance with Article 25 of the markets in financial instruments directive and the Regulation, and
- (c) the transactions to which those reports relate.

“Specified” means specified by the Authority.

(7) The Authority may by written notice require the operator of an approved relevant system to provide such additional information as may be specified in the notice, by such reasonable time as may be so specified, about any of the matters mentioned in subsection (6).

(8) The recipient of a notice under subsection (7) must provide the information by the time specified in the notice.

(9) In this section and section 412B, “relevant system” means a trade-matching or reporting system of a kind described in Article 12 of the Regulation.

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

412B Procedure for approval and suspension or withdrawal of approval

(1) If the Authority approves a relevant system, it must give the operator of the system written notice specifying the date from which the approval has effect.

(2) If the Authority proposes to refuse to approve a relevant system, it must give the operator of the system a warning notice.

(3) If the Authority decides to refuse to approve a relevant system, it must give the operator of the system a decision notice.

(4) If the Authority proposes to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a warning notice.

(5) If the Authority decides to suspend or withdraw its approval in relation to an approved relevant system, it must give the operator of the system a decision notice specifying the date from which the suspension or withdrawal is to take effect.

(6) Subsections (7) to (9) apply if—

(a) the Authority has suspended its approval in relation to an approved relevant system, and

(b) the operator of the system has applied for the suspension to be cancelled.

(7) The Authority must grant the application if it is satisfied as mentioned in section 412A(2); and in such a case the Authority must give written notice to the operator that the suspension is to be cancelled from the date specified in the notice.

(8) If the Authority proposes to refuse the application, it must give the operator a warning notice.

(9) If the Authority decides to refuse the application, it must give the operator a decision notice.

(10) A person who receives a decision notice under subsection (3), (5) or (9) may refer the matter to the Tribunal.”

Marginal Citations

M11 OJ No L 241, 2.9.2006, p. 1.

Amendment of section 417

19. In section 417 (definitions), in subsection (1)—

(a) at the appropriate place insert—

““investment services and activities” has the meaning given in Article 4.1.2 of the markets in financial instruments directive, read with—

(a) Chapter VI of Commission Regulation 1287/2006 of 10 August 2006, and

(b) Article 52 of Commission Directive [2006/73/EC](#) of 10 August 2006 ^{M12},”

(b) in the definition of “notice of control”, after “ “notice of control”” insert “ (except in Chapter 1A of Part 18) ”.

Marginal Citations

M12 OJ No L 241, 2.9.2006, p. 26.

Amendment of section 422

20. In section 422 (controller), in subsection (1), after “Act” insert “, except in Chapter 1A of Part 18,”.

Amendment of section 424A

21. In section 424A^{M13} (investment firm), for subsection (3) substitute—

“(3) References in this Act to an “investment firm” include references to a person who would be an investment firm (within the meaning of Article 4.1.1 of the markets in financial instruments directive) if—

(a) in the case of a body corporate, his registered office or, if he has no registered office, his head office, and

(b) in the case of a person other than a body corporate, his head office, were in an EEA State.”.

Marginal Citations

M13 Section 424A was inserted by [S.I. 2006/2975](#).

Amendment of section 425

22. In section 425^{M14} (expressions relating to authorisation elsewhere in the single market), in subsection (1)(a)—

(a) omit “ “investment services directive”, ”; and

(b) after “ “single market directives” “ insert “ “, tied agent” ”.

Marginal Citations

M14 Section 425(1)(a) was substituted by [S.I. 2003/2066](#) and amended by [S.I. 2004/3379](#).

Amendment of Schedule 1

23. In paragraph 6 of Schedule 1 (the Financial Services Authority)—

(a) in sub-paragraph (1) after “Act” insert “, or by any directly applicable Community regulation made under the markets in financial instruments directive,”;

(b) in sub-paragraph (3) after “Act” insert “ or of any directly applicable Community regulation made under the markets in financial instruments directive ”.

Amendment of Schedule 6

24. In paragraph 2 of Schedule 6^{M15} (threshold conditions)—

(a) in sub-paragraph (1) for “sub-paragraph (3)” substitute “ sub-paragraphs (2A) and (3) ”;

(b) after sub-paragraph (2) insert—

“(2A) If—

(a) the regulated activity concerned is any of the investment services and activities, and

(b) the person concerned is a body corporate with no registered office,

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

sub-paragraph (2B) applies in place of sub-paragraph (1).

(2B) If the person concerned has its head office in the United Kingdom, it must carry on business in the United Kingdom.”.

Marginal Citations

M15 Paragraph 2 of Schedule 6 was amended by [S.I. 2003/1476](#).

SCHEDULE 6

Regulation 3(6)

CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

PART 1

AMENDMENTS OF PRIMARY LEGISLATION

Amendment of the Judicial Pensions Act (Northern Ireland) 1951

1. In section 11A of the Judicial Pensions Act (Northern Ireland) 1951 ^{M16} (voluntary contributions), in subsection (7B)(a), for “C of the Annex to the Investment Services Directive” substitute “ B of Annex I to the Markets in Financial Instruments Directive ”.

Marginal Citations

M16 [1951 c.20 \(N.I.\)](#); section 11A was inserted by [SI 1991/2631 \(N.I.24\)](#) and subsection (7B) was inserted by [S.I. 2001/3649](#).

Amendment of the County Courts Act (Northern Ireland) 1959

2. In section 127A of the County Courts Act (Northern Ireland) 1959 ^{M17} (voluntary contributions), in subsection (7B)(a), for “C of the Annex to the Investment Services Directive” substitute “ B of Annex I to the Markets in Financial Instruments Directive ”.

Marginal Citations

M17 [1959 c.25 \(N.I.\)](#); section 127A was inserted by [S.I. 1991/2631 \(N.I.24\)](#) and subsection (7B) was inserted by [S.I. 2001/3649](#).

Amendment of the Resident Magistrates' Pensions Act (Northern Ireland) 1960

3. In section 9A of the Resident Magistrates' Pensions Act (Northern Ireland) 1960 ^{M18} (voluntary contributions), in subsection (7B)(a), for “C of the Annex to the Investment Services Directive” substitute “ B of Annex I to the Markets in Financial Instruments Directive ”.

Marginal Citations

M18 1960 c. 2 (N.I.); section 9A was inserted by S.I. 1991/2631 (N.I.24) and subsection (7B) was inserted by S.I. 2001/3649.

Amendment of the Superannuation Act 1972

4. In section 1 of the Superannuation Act 1972 ^{M19} (superannuation schemes as respects civil servants, etc.), in subsection (9B)(a), for “C of the Annex to the Investment Services Directive” substitute “ B of Annex I to the markets in financial instruments directive ”.

Marginal Citations

M19 1972 c.11; section 1(9B) was inserted by S.I. 2001/3649.

Amendment of the Consumer Credit Act 1974

5. In section 25 of the Consumer Credit Act 1974 ^{M20} (licensee to be a fit person), in subsection (1C), for “the Annex to the investment services directive (93/22/EEC)” substitute “ Annex I to the markets in financial instruments directive (2004/39/EC) ”.

Marginal Citations

M20 1974 c.39; section 25(1C) was inserted by S.I. 2001/3649 and amended by S.I. 2006/3221.

Amendment of the Judicial Pensions Act 1981

6. In section 33A of the Judicial Pensions Act 1981 ^{M21}(voluntary contributions), in subsection (9B)(a), for “C of the Annex to the Investment Services Directive” substitute “ B of Annex I to the markets in financial instruments directive ”.

Marginal Citations

M21 1981 c.20; section 33A was inserted by section 82 of the Courts and Legal Services Act 1990 (c.41), and subsection (9B) was inserted by S.I. 2001/3649.

Amendment of the Companies Act 1985

7.—(1) The Companies Act 1985 ^{M22} is amended as follows.

(2) In section 23 ^{M23}(membership of holding company), in subsection (3B)(c), for “Article 16 of Council Directive 93/22/EEC on investment services in the securities field” substitute “ Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

(3) In section 162 ^{M24} (power of company to purchase own shares), in subsection (4)(d), for “for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field” substitute “ which appears on the list drawn up by that State pursuant to Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, ”.

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

(4) In section 162E ^{M25} (Treasury shares: mandatory cancellation), in subsection (3), for “is a regulated market for the purposes of Article 16 of Council Directive 93/22/EEC on investment services in the securities field” substitute “ appears on the list drawn up by an EEA State pursuant to Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

(5) In section 226 ^{M26} (duty to prepare individual accounts), in subsection (5), for “Council Directive 93/22/EEC on investment services in the securities field” substitute “ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

(6) In section 227 ^{M27} (duty to prepare group accounts), in subsection (6), for “Council Directive 93/22/EEC on investment services in the securities field” substitute “ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

(7) In section 228 ^{M28} (exemption for parent companies included in accounts of larger group), in subsection (3), for “Council Directive 93/22/EEC on investment services in the securities field” substitute “ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

(8) In section 228A ^{M29} (exemption for parent companies included in non-EEA group accounts), in subsection (3), for “Council Directive 93/22/EEC on investment services in the securities field” substitute “ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

Marginal Citations

M22 1985 c.6.

M23 Section 23 was substituted by section 129 of the [Companies Act 1989 \(c.40\)](#), and subsection (3B) was inserted by [S.I. 1997/2306](#). Section 23 is prospectively repealed by the [Companies Act 2006 \(c. 46\)](#).

M24 Subsection (4) of section 162 was inserted by [S.I. 2003/1116](#) and section 162 is prospectively repealed by the Companies Act 2006, Schedule 16.

M25 Section 162E was inserted by [S.I. 2003/1116](#) and is prospectively repealed by the Companies Act 2006, Schedule 16.

M26 Section 226 was inserted by [S.I. 2004/2947](#), and is prospectively repealed by the Companies Act 2006, Schedule 16.

M27 Section 227 was inserted by [S.I. 2004/2947](#), and is prospectively repealed by the Companies Act 2006, Schedule 16.

M28 Section 228 is prospectively repealed by the Companies Act 2006, Schedule 16.

M29 Section 228A was inserted by [S.I. 2004/2947](#), and is prospectively repealed by the Companies Act 2006, Schedule 16.

Amendment of the Finance Act 1986

8.—(1) The Finance Act 1986 ^{M30} is amended as follows.

(2) In section 80B ^{M31} (intermediaries: supplementary), in subsection (2), in the definition of “EEA exchange”, for “Article 16 of European Communities Council Directive No. 93/22/EEC on investment services in the securities field” substitute “ Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

(3) In section 88B ^{M32} (intermediaries: supplementary), in subsection (2), in the definition of “EEA exchange”, for “Article 16 of European Communities Council Directive No. 93/22/EEC on investment services in the securities field” substitute “ Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

Marginal Citations

M30 1986 c.41.

M31 Section 80B was inserted by section 97 of the [Finance Act 1997 \(c.16\)](#), and is prospectively repealed by section 113 of, and Part VII of Schedule 18 to, that Act.

M32 Section 88B was inserted by section 102 of the Finance Act 1997, and is prospectively repealed by section 132 of, and Part VII of Schedule 19 to, the [Finance Act 1990 \(c. 29\)](#).

Amendment of the Building Societies Act 1986

9. In section 81B of the Building Societies Act 1986 ^{M33} (interpretation of Part 8), in subsection (1), for the definition of “regulated market” substitute—

““regulated market” has the meaning given in Article 4.1.14 of Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.”.

Marginal Citations

M33 1986 c.53; section 81B was inserted by [S.I. 2004/3380](#).

Amendment of the Friendly Societies Act 1992

10.—(1) The Friendly Societies Act 1992 ^{M34} is amended as follows.

(2) In section 69A ^{M35} (duty to prepare individual accounts), in subsection (4), for “Council Directive [93/22/EEC](#) on investment services in the securities field” substitute “ Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

(3) In section 69E ^{M36} (duty to prepare group accounts), in subsection (5), for “Council Directive [93/22/EEC](#) on investment services in the securities field” substitute “ Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

Marginal Citations

M34 1992 c.40.

M35 Section 69A was inserted by [S.I. 2005/2211](#).

M36 Section 69E was inserted by [S.I. 2005/2211](#).

Amendment of the Judicial Pensions and Retirement Act 1993

11. In section 10 of the Judicial Pensions and Retirement Act 1993 ^{M37} (additional benefits from voluntary contributions), in subsection (8B), for “C of the Annex to the Investment Services Directive” substitute “ B of Annex I to the markets in financial instruments directive ”.

Marginal Citations

M37 1993 c.8; section 10(8B) was inserted by [S.I. 2001/3649](#).

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

Amendment of the Data Protection Act 1998

12. In Schedule 7 to the Data Protection Act 1998 ^{M38} (miscellaneous exemptions), in paragraph 6(3), in the definition of “instrument”, for “section B of the Annex to the Council Directive on investment services in the securities field (93/22/EEC)” substitute “ section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

Marginal Citations

M38 1998 c. 29; the definition of “instrument” in paragraph 6(3) of Schedule 7 was amended by [S.I. 2002/1555](#).

Amendment of the Competition Act 1998

13. In Schedule 3 to the Competition Act 1998 ^{M39} (general exclusions), in paragraph 3(5), in paragraph (a) of the definition of “EEA regulated market”, for “article 16 of Council Directive 93/22/EEC of 10th May 1993 on investment services in the securities field” substitute “ Article 47 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

Marginal Citations

M39 1998 c.41.

PART 2

AMENDMENTS OF SECONDARY LEGISLATION

Amendment of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

14. In regulation 2 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 ^{M40} —

- (a) in paragraph (b) of the definition of “institution” for “point 2 of Article 1 of Council Directive 93/22/EEC excluding the bodies set out in the list in Article 2(2)(a) to (k)” substitute “ Article 4.1.1 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, other than a person to whom Article 2 applies ”;
- (b) in the definition of “securities” for “B of the Annex to Council Directive 93/22/EEC” substitute “ C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

Marginal Citations

M40 [S.I. 1999/2979](#).

Amendment of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001

15. In article 3 of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 ^{M41}, in the definition of “regulated market”, for “Article 1(13) of the investment services directive” substitute “ Article 4.1.14 of the markets in financial instruments directive ”.

Marginal Citations

M41 [S.I. 2001/996](#); the definition of “regulated market” was inserted by [S.I. 2005/381](#).

Amendment of the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001

^{F1}16.

Textual Amendments

F1 [Sch. 6 para. 16](#) revoked (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), [Sch. 3](#)

Amendment of the Insurers (Reorganisation and Winding Up) Regulations 2004

17. In regulation 44 of the Insurers (Reorganisation and Winding Up) Regulations 2004 ^{M42}, in paragraph (3), for “Council Directive ([93/22/EEC](#)) of 10th May 1993 in investment services in the securities field” substitute “ Article 4.1.14 of Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

Marginal Citations

M42 [S.I. 2004/353](#).

Amendment of the Credit Institutions (Reorganisation and Winding up) Regulations 2004

18.—(1) The Credit Institutions (Reorganisation and Winding up) Regulations 2004 ^{M43} are amended as follows.

(2) In regulation 29(2) for “Council Directive of 10th May 1993 on investment services in the securities field (No [93/22/EEC](#))” substitute “ Article 4.1.14 of Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

(3) In regulation 31(3) for “Section B of the Annex to the Council Directive of 10th May 1993 on investment services in the securities field (No [93/22/EEC](#))” substitute “ Section C of Annex I to Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

Marginal Citations

M43 [S.I. 2004/1045](#).

Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

Amendment of the Financial Conglomerates and Other Financial Groups Regulations 2004

19.—(1) The Financial Conglomerates and Other Financial Groups Regulations 2004 ^{M44} are amended as follows.

(2) In regulation 1(2), in paragraph (d) of the definition of “regulated entity”, for “Article 1(2) of the investment services directive” substitute “ Article 4.1.1 of the markets in financial instruments directive ”.

(3) In regulation 7(1), in paragraph (b) of the definition of “investment firm”, for “investment services directive” substitute “ markets in financial instruments directive ”.

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Marginal Citations

M44 [S.I. 2004/1862](#); the definition of “regulated entity” in regulation 1(2) was amended by [S.I. 2006/3221](#).

Amendment of the Investment Recommendation (Media) Regulations 2005

20. In regulation 2 of the Investment Recommendation (Media) Regulations 2005 ^{M45}, in the definition of “financial instrument”, for “1(13) of Council Directive [93/22/EEC](#) on investment services in the securities field” substitute “ 4.1.14 of Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ”.

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Marginal Citations

M45 [S.I. 2005/382](#).

F²SCHEDULE 7

Regulations 6A and 7

EXERCISE OF PASSPORT RIGHTS UNDER THE INVESTMENT SERVICES DIRECTIVE

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Textual Amendments

F2 Schs. 7-9 revoked (3.1.2018) by [The Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017 \(S.I. 2017/701\)](#), reg. 1(6), **Sch. 5 para. 8** (with reg. 7) (as amended by [S.I. 2017/1255](#), regs. 2(a), 38)

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F²SCHEDULE 8

Regulations 9C and 9D

TRANSITIONAL PROVISION FOR PART IV PERMISSIONS
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Status: Point in time view as at 03/01/2018.

Changes to legislation: There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. (See end of Document for details)

F²SCHEDULE 9

Regulation 9E

TRANSITIONAL PROVISION IN RELATION TO CLIENT CLASSIFICATION

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Status:

Point in time view as at 03/01/2018.

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007.