

2001 No. 2509

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Consultation with Competent Authorities)
Regulations 2001**

Made - - - - - 12th July 2001

Laid before Parliament 13th July 2001

Coming into force in accordance with regulation 1

The Treasury, in exercise of the powers conferred on them by sections 183(2), 188(2), 417(1)(a) and 428(3) of the Financial Services and Markets Act 2000(b), hereby make the following Regulations:

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001 and come into force on the day on which section 19 of the Act comes into force.

2. In these Regulations—

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

“EEA credit institution” means an EEA firm falling within paragraph 5(b) of Schedule 3 to the Act(c);

“EEA investment firm” means an EEA firm falling within paragraph 5(a) of Schedule 3 to the Act;

“investment firm”, except in the term “EEA investment firm”, has the meaning given by article 4(5) of the Regulated Activities Order;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(d);

“UK authorised person” has the meaning given by section 178(4) of the Act.

3. Where paragraph (1) or (2) of regulation 5 applies, the requirement specified by regulation 6 is prescribed for the purposes of section 183(2) of the Act (and so must be complied with by the Authority before determining whether to approve of the change of control or to give a warning notice under section 183(3) or 185(3) of the Act).

4. Where—

(a) paragraph (1) or (2) of regulation 5 applies; and

(b) the Authority proposes to give a notice of objection under 187(1) of the Act;

the requirement specified by regulation 6 is prescribed for the purposes of section 188(2) of the Act (and so must be complied with by the Authority before it gives a warning notice under section 188(1) of the Act).

(a) See the definition of “prescribed”.

(b) 2000 c. 8.

(c) Amended by S.I. 2000/2952.

(d) S.I. 2001/544.

- 5.—(1) This paragraph applies where—
- (a) a person (“the acquirer”) proposes to acquire or has acquired control, an additional kind of control or an increase in a relevant kind of control over a UK authorised person in circumstances falling within section 178(1) or (2) of the Act;
 - (b) that UK authorised person is an investment firm;
 - (c) the acquirer is either—
 - (i) an EEA investment firm; or
 - (ii) the parent undertaking of an EEA investment firm; and
 - (d) as a result of the acquisition or proposed acquisition, the acquirer is or would become a parent undertaking of the UK authorised person.
- (2) This paragraph applies where—
- (a) a person (“the acquirer”) proposes to acquire or has acquired control, an additional kind of control or an increase in a relevant kind of control over a UK authorised person in circumstances falling within section 178(1) or (2) of the Act;
 - (b) that UK authorised person has permission to accept deposits (within the meaning of the Regulated Activities Order);
 - (c) the acquirer is either—
 - (i) an EEA credit institution; or
 - (ii) the parent undertaking of an EEA credit institution; and
 - (d) as a result of the acquisition or proposed acquisition, the acquirer is or would become a parent undertaking of the UK authorised person.
6. The requirement specified by this regulation is that the Authority must consult the home state regulator of each EEA investment firm that is mentioned in regulation 5(1)(c)(i) or (ii) or each EEA credit institution that is mentioned in regulation 5(2)(c)(i) or (ii), as the case may be.

12th July 2001

Nick Ainger
John Heppell

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the requirements as to consultation with other EEA competent authorities, which the Financial Services Authority (“the Authority”) must comply with when it performs its functions under Part XII (control over authorised persons) of the Financial Services and Markets Act 2000 (c. 8.) (“the Act”). The consultation requirements apply where the Authority receives a notice of control under section 178 of the Act from an EEA firm that is an investment firm or credit institution (or from a parent undertaking of such a firm or institution) and that notice relates to a change of control in a UK authorised person who is either an investment firm or who has permission to accept deposits and which indicates that the acquirer is or proposes to become a parent undertaking of that authorised person. Where the consultation requirements apply, the Authority must consult the home state regulator of each EEA firm before approving the change of control or serving a warning notice under section 183 or section 185 of the Act. Where a notice of control has not been given in respect of such a change of control, and the Authority proposes to give notice of objection under section 187(1) of the Act on the basis that it is not satisfied that the approval requirements set out in section 186 of the Act have been met, the Authority must consult the home state regulator of each EEA firm.

These Regulations implement in part Council Directive 93/22/EEC on investment services in the securities field (OJ L141, 11.6.93, p. 27) and European Parliament and Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions (OJ L126, 26.5.2000, p. 1).

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