

Financial Services (Investment and Fiduciary Services)

**1989-47**

**FINANCIAL SERVICES (INVESTMENT EXCHANGE) (RULES  
AND NOTIFICATION) REGULATIONS 2007**

**Subsidiary  
2007/010**

Subsidiary Legislation made under ss. 29A, 31 and 53.

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**(LN. 2007/010)**

*Commencement*      **18.1.2007**

Amending enactments	Relevant current provisions	Commencement date
None		

**EU Legislation/International Agreements involved:**

Directive 79/279/EEC

Directive 2001/34/EC

**ARRANGEMENT OF REGULATIONS.**

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*In exercise of the powers conferred on him by sections 29A, 31 and 53 of the Financial Services Act 1989 and all other enabling powers, the Minister has made the following Regulations—*

**Title.**

1. These Regulations may be cited as the Financial Services (Investment Exchange) (Rules and Notification) Regulations 2007.

**Interpretation.**

2. In these Regulations “exchange company ” means a person which is, or has made an application to be, licensed under the Act to carry on the controlled activity of establishing and conducting the business of a stock exchange.

*Conditions for operation of the market*

**Resources and facilities.**

3.(1) The exchange company must have the financial, human and technical resources sufficient for the proper performance of its functions.

(2) The rules and practices of the exchange company must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors.

(3) Without prejudice to the generality of subregulation (2),—

- (a) where appropriate the exchange company must require issuers of securities listed for trading on the exchange to comply with such obligations as will, so far as possible, afford to persons dealing in the securities proper information for determining their current value;
- (b) the exchange company must either itself provide satisfactory procedures (including default procedures) for the settlement of transactions on the stock exchange or ensure that such provision is made by means of services provided under clearance systems approved by it; and
- (c) the exchange company must either itself have or secure the provision on its behalf of satisfactory arrangements for recording the transactions effected on the exchange.

**Compliance arrangements.**

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4.(1) The exchange company must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules.

(2) Without prejudice to the responsibility of the exchange company under subregulation (1), the arrangements it makes for monitoring may make provision for that function to be performed on behalf of the exchange by any other person who is able and willing to perform it.

**Complaints.**

5. The exchange company must have effective arrangements for the consideration and investigation of complaints in respect of business transacted by means of its facilities.

**Maintenance of standards and co-operation with Authority and the Government.**

6. The exchange company must—

- (a) promote and maintain high standards of integrity and fair dealing in the carrying on of investment business; and
- (b) when requested by the Authority or the Minister, co-operate, by the sharing of information and otherwise, with the Authority or the Minister in the carrying out of its responsibilities.

*Access to the market***Gibraltar and European bodies entitled to admission to membership.**

7.(1) The rules of the exchange company must be such that any of the following bodies—

- (a) an authorised Gibraltar investment firm,
- (b) a Gibraltar licensed institution or Gibraltar subsidiary institution,
- (c) an authorised European investment firm, or
- (d) a European institution,

may become a Member of, or have access to, the stock exchange and may participate in the clearing and settlement system provided for members of the stock exchange.

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(2) Nothing in the rules of the exchange company shall exclude a firm or institution from compliance with all the requirements which are applicable to other members or, as the case may be, to other persons who have access to the stock exchange.

(3) Expressions used in subregulation (1) have the same meaning as in the Financial Services Act 1998.

**Conditions for admission of securities to the market.**

8.(1) The rules of the exchange company shall secure that the conditions specified in Sections I and III of Council Directive 79/279/EEC apply to the admission to listing for trading on the stock exchange of securities other than—

- (a) units issued by collective investment undertakings, except the closed end type; and
- (b) securities issued by a member State or its regional or local authorities.

(2) Article 2 of Council Directive 79/279/EEC applies for the construction of subregulation (1)(a).

(3) On the coming into force of the legislation to transpose into the law of Gibraltar Directive 2001/34/EC of the European Parliament and Council of 28 May on the admission of securities to official stock exchange listing, Article 111.2 of that Directive (construction of references to repealed directive) shall apply for the purposes of subregulations (1) and (2).

*Notification*

**General notification rule.**

9.(1) The exchange company shall notify the Authority in writing of the occurrence of any event or circumstance specified in the Schedule .

(2) Except where any provision of the Schedule otherwise requires, a notification shall be given as soon as possible after the occurrence of the event or circumstance concerned.

(3) A notification under this regulation shall contain all such information as is necessary to ensure that the Authority is fully aware of the nature of the circumstances giving rise to the requirement to notify and of the details of what has occurred.

(4) The Authority may in its absolute discretion by notice in writing to the exchange company exclude or modify the application of any provision of

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the Schedule if the Authority is satisfied that the exclusion or modification will not be prejudicial to the interests of investors.

**SCHEDULE**

Regulation 9.

**NOTIFICATIONS OF EVENTS AND CIRCUMSTANCES**

**Interpretation of Schedule.**

1. In this Schedule—

“annual accounting reference date”, in relation to an exchange company, means the date notified to the Authority as the date as at which the annual accounts are drawn up;

“category of membership”, in relation to an exchange, means any category into which the members are divided for the purpose of joining the exchange or the conduct of business on the exchange;

“chairman”, in relation to an exchange company, means the person for the time being elected chairman of the company pursuant to its constitution;

“chief executive”, means any person occupying the position of chief executive or managing director (whether solely or jointly) of an exchange company, by whatever name called;

“employee”, in relation to an exchange company, means an individual who is employed in connection with the exchange’s business, whether under a contract of service or for services or otherwise;

“exchange” means the stock exchange established and conducted by an exchange company;

“key individual”, in relation to an exchange company, means a person holding any of the posts set out in paragraph 2(1);

“person responsible for compliance”, in relation to an exchange company, means a person who is responsible for the monitoring and enforcement of compliance with the rules of the exchange; and

“person responsible for finance”, in relation to an exchange company, means a person who is responsible for maintaining the accounts and other financial records of the exchange.

**Changes and events relating to key individuals.**

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2.(1) The exchange company shall notify the Authority of the fact that any person is to become or has ceased to be—

- (a) the chairman of the exchange company;
- (b) the chief executive of the exchange company;
- (c) the person responsible for compliance;
- (d) the person responsible for the exchange company's finance;
- (e) a member of the Board of the exchange company;
- (f) a member of a body to which that Board has delegated rule-making powers;
- (g) a member of a body with responsibility for disciplinary matters within the exchange; and
- (h) a member of a body with responsibility for investigating complaints in respect of business transacted on the exchange.

(2) The prior consent of the Authority shall be obtained for any person to take up any of the posts in subparagraph (1) and, accordingly, a notification that a person is to take up one of those posts must be given at least fourteen days before the appointment is due to take effect.

(3) In the case of a new appointment falling within subparagraph (1)(a), the notice shall include details of the person's qualifications and experience.

(4) In the case of a notification of a change falling within subparagraph (1)(b), a statement of the reason for the change shall be given.

(5) The exchange company shall notify the Authority if it becomes aware of any of the following in relation to a key individual—

- (a) a change of name;
- (b) a conviction of any offence involving fraud or other dishonesty;
- (c) a conviction of any offence under any legislation relating to financial services or banking;
- (d) the initiation of any proceedings in respect of bankruptcy, winding-up, sequestration or similar proceedings;
- (e) the refusal of any application for, or revocation or suspension of, any licence or authorisation under the legislation relating to financial services or banking;



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- (f) the imposition of disciplinary measures or sanctions by a regulatory authority or professional body in relation to the individual's professional or business activities; or
- (g) the making of an order by a court disqualifying that individual from serving as a director of a company or from being concerned with the management of a company.

**Dismissal etc. of key individuals and other employees.**

3. The exchange company shall notify the Authority if, as a result of concerns about the honesty or integrity of the person concerned—

- (a) a key individual or other employee is dismissed for misconduct; or
- (b) a key individual or other employee resigns as a result of, or to avoid, an investigation into his alleged misconduct; or
- (c) any other disciplinary action is taken against a key individual or other employee.

**Changes in constitution of an exchange.**

4.(1) The exchange company shall notify the Authority of any proposed change to its constitution, articles of association, governing statute, charter or by-laws, giving reasons for the proposed change.

(2) A notification under this paragraph shall be made before the proposed change is circulated to the exchange's membership for consideration or approval.

(3) The exchange company shall notify the Authority of any change made as a result of the proposals referred to in subparagraph (1) together with the date from which those changes became or are to become effective.

**Auditors.**

5.(1) The exchange company shall notify the Authority of the proposal to appoint an auditor, giving his name and details of his professional qualifications.

(2) The consent of the Authority shall be obtained prior to any person taking up the post of auditor.

(3) If a person ceases to be the auditor of the exchange company, the company shall notify the Authority of that fact and of the circumstances in which he ceased to be the auditor.

**Audit committee reports.**

6.(1) If it has an audit committee, the exchange company shall notify the Authority of the making of any report by the audit committee.

(2) A notification under this paragraph shall be accompanied by a copy of the report in question.

**Trading hours.**

7.(1) Immediately after the grant of its licence or as soon thereafter as the trading hours are first determined, the exchange company shall notify the Authority of its trading hours.

(2) Thereafter, the exchange company shall, as soon as practicable, notify the Authority of—

- (a) any change, whether temporary or permanent, in the hours during which business may be conducted by means of the facilities of the exchange;
- (b) any trading halt; and
- (c) any suspension in trading of any investment.

(3) For the purposes of this paragraph, a trading halt means not only a halt in the trading of investments on the exchange as a whole but also a halt in relation to a sector of trading; but does not include a halt in the trading of individual investments.

**Investments listed or dealt on the exchange.**

8.(1) Immediately after the grant of its licence or as soon thereafter as an investment is first to be admitted to trading, the exchange company shall notify the Authority, giving details of the investment.

(2) The exchange company shall notify the Authority of any proposed change in the type of investments admitted to trading.

(3) The exchange company shall notify the Authority where, otherwise than because a particular trading limit has been reached, the exchange company discontinues or suspends trading in any type of investments.

(4) References in this paragraph to a type of investment do not include references to the securities of a particular company unless those securities of themselves constitute a new type of investment.

**Market information.**

9. The exchange company shall give details to the Authority of its system for displaying market information and of any material change in that system.

**Membership.**

10.(1) The exchange company shall notify the Authority of the introduction or abolition of a category of membership.

(2) The exchange company shall notify the Authority of the fact that a person has become or ceased to be a member of the exchange and, in the case of the former, the notice shall include the member's name, address and category of membership.

(3) Any change in the information previously notified under subparagraph (2) shall also be notified to the Authority.

**Suspension, expulsion and resignation from membership.**

11.(1) The exchange company shall notify the Authority if it suspends or expels a member.

(2) A notification under this paragraph shall state—

- (a) the reasons for the suspension or expulsion;
- (b) the date on which it took effect;
- (c) in the case of a suspension, its duration; and
- (d) any other action taken by the exchange company in relation to the member concerned.

(3) Where a person who has been expelled or suspended appeals against the expulsion or suspension or against any of the matters referred to in subparagraph (2), the exchange company shall notify the Authority of that fact and, subsequently, of the findings of the appeal or, as the case may be, of the withdrawal of the appeal.

(4) The exchange company shall notify the Authority if a person resigns from membership, specifying—

- (a) the name and address of the former member;
- (b) his category of membership; and
- (c) the date on which the resignation took effect.

**Liquidation of, or instruction to close out, positions.**

12.(1) The exchange company shall notify the Authority if it liquidates or restricts the open positions on all or any of the investments of a member, or issues instructions to a member to close out his positions on all or any investments.

(2) A notification under this paragraph shall give the following information—

- (a) the name of the member;
- (b) the nature and size of the positions which are liquidated, restricted or instructed to be closed out; and
- (c) the reasons for the exchange's action.

**Default of exchange member.**

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13.(1) The exchange company shall notify the Authority if it takes any action by reason of the default of a member.

(2) A notification under this paragraph shall give the following information—

- (a) the name of the member;
- (b) the reasons for the action;
- (c) the name of the clearance system on which the member clears business; and
- (d) where appropriate, a summary of the member's open positions, collateral liability and cash and collateral balances in respect of the member's client account and other accounts.

**Delegation of monitoring.**

14.(1) Where the exchange company proposes to delegate the monitoring of compliance with any of its rules to any other body or person, it shall notify the Authority, specifying the monitoring function which it proposes to delegate.

(2) A notice under subparagraph (1) shall include the name of that other body or person together with evidence of his ability and willingness to perform the relevant monitoring function.

(3) Where any other body or person proposes to delegate the monitoring of compliance with its rules to an exchange company, the exchange company shall notify the Authority, specifying the monitoring function which it is proposed should be delegated to the company.

(4) Any agreement for delegating monitoring subsequently concluded by an exchange company and any alteration of that agreement shall also be notified to the Authority.

**Complaints.**

15.(1) Not later than the end of January in each year the exchange company shall notify the Authority of the following—

- (a) the total number of complaints received during the preceding calendar year distinguishing between complaints relating to—
  - (i) the business transacted on the exchange and the exchange's performance of its functions generally;

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- (ii) any clearing arrangements made by the exchange company;
- (iii) the conduct of a member of the exchange in relation to its dealings on the exchange;
- (b) the total number of such complaints settled during that calendar year, distinguishing between complaints on the same basis as in clause (a); and
- (c) the total number of such complaints which had been pending for more than three months at the end of that calendar year distinguishing between complaints on the same basis.

(2) For the purposes of subparagraph (1), a “complaint” is a complaint made in writing to the exchange company and any other complaint to which the exchange company has replied in writing (being in each case complaints relating to one or more of the matters specified in subparagraph (1)(a)).

(3) For the purposes of this paragraph, where the exchange company has given a substantive response in relation to a complaint, then, unless and until the exchange company has received an indication from the complainant that the response is unsatisfactory, the exchange company shall be entitled to treat the complaint as settled and resolved after the expiry of four weeks from the date of its response.

(4) Where an investigator is appointed to look into any complaint, the exchange company shall send to the Authority a copy of any report prepared by the investigator.

**Reports of transactions.**

16. As soon as practicable after the close of business on each business day, the exchange company shall notify the Authority of the transactions carried out on the exchange during that day and of any cancellation or modification of a transaction carried out on an earlier day.

**Fees and Charges.**

17. At the time the following fees or charges are first fixed or subsequently varied, the exchange company shall notify the Authority of—

- (a) the fees or charges levied by in respect of membership of the exchange; and
- (b) the transaction charges imposed.

**Annual accounting reference date.**

18. The exchange company shall notify the Authority of any change in its annual accounting reference date.

**Insolvency and legal proceedings.**

19.(1) The exchange company shall notify the Authority forthwith of the occurrence of any of the following—

- (a) the presentation of a petition for the winding up of the exchange company;
- (b) the appointment of a receiver, administrator, liquidator or trustee of assets of the exchange company; and
- (c) the making of a composition or arrangement with creditors of the exchange company.

(2) The exchange company shall notify the Authority of any proceedings instituted against it—

- (a) arising out of the contravention or alleged contravention of any provision of the legislation relating to financial services or banking; or
- (b) which might be expected to have a significant impact on the financial stability of the exchange.

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(3) The exchange company shall notify the Authority of any legal proceedings instituted by the company.

**Disciplinary action.**

20.(1) The exchange company shall notify the Authority where it has taken any disciplinary action against a member or an employee of any member, stating the name of the person concerned, details of the action taken and the reasons for the disciplinary action.

(2) Notification need not be made to the Authority under this paragraph unless the disciplinary action is relevant and material to the carrying on of any controlled activity or investment business.

(3) Where an appeal is lodged against the action referred to in subparagraph (1), the exchange company shall notify the Authority of that fact and, subsequently, of the findings of the appeal or, as the case may be, of the withdrawal of the appeal.

**Offences.**

21. The exchange company shall notify the Authority if it becomes aware that any person who is or was formerly a member or employee of the exchange—

- (a) has been carrying on any controlled activity or investment business without the necessary licence or authorisation; or
- (b) has been convicted of an offence relating to, or arising out of, the carrying on of any controlled activity or investment business.

**Investor protection.**

22.(1) If any event happens or circumstances arise which make it impossible or impracticable (for however short a period of time) for the exchange company to continue to satisfy the requirements of any of these Regulations, the company shall notify the Authority forthwith.

(2) The notice required under this paragraph shall specify the action which is being or has been taken by the exchange to deal with the situation.