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The United Kingdom Financial Services Act, 1986: A New Regulatory Framework

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The United Kingdom Financial Services Act, 1986: A New Regulatory Framework†

The Financial Services Act, 1986[1] (the Act), which is intended to promote standards of integrity and competence in the U.K. financial services industry, to modify and extend existing investor protection laws, and to secure reciprocity with other countries in respect of financial services, received the Royal Assent on November 7, 1986. Its provisions will come into force in stages during the course of 1986 and 1987.[2]

The background to this "most comprehensive overhaul of investor protection legislation for 40 years"[3] is complex. First, a number of City of London scandals prompted H.M. Government to appoint a leading academic lawyer, Professor Gower, to review the existing law and make proposals for reform.[4] Second, was the process of "convergence." Until recently most U.K. financial businesses were small in scale and in capital backing, and were limited in scope to a particular sphere of financial activity. Reflecting the functional separation, different legislation applied

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1. The Financial Services Act 1986, ch. 60. The Department of Trade and Industry (DTI) has published AN INTRODUCTION TO THE FINANCIAL SERVICES ACT (1986).

2. Provisions relating to insider dealing, listed securities, disclosure of information to regulatory bodies, the application by the Securities and Investment Board to become the designated agency, insurance companies, and friendly societies have already come into force, and provisions relating to the compulsory acquisition of shares following a takeover offer will come into force on April 30, 1987.

3. DTI, FINANCIAL SERVICES BILL—A LAYMAN'S GUIDE 1 (1986).

4. REVIEW OF INVESTOR PROTECTION, CMND. NO. 9125 (Jan. 1984).

to businesses providing different types of financial services,[5] although the general law on theft, fraud, and insolvency was applicable to all.[6] The barriers between discrete businesses came under increasing pressure during the early 1980s, however. Responsible for this process of "convergence" was a combination of increased competition from substantially capitalized U.S. and Japanese firms, introduction of new markets and services in the U.K., and extraordinary advances in technology. Finally, the London Stock Exchange relaxed its rules on membership, fixed commissions, and separation of the functions of stock jobbers and stockbrokers, in part in response to the challenge presented by the formation of the International Securities Regulatory Organization (ISRO) and an action against the anticompetitive aspects of its rule book brought by the Office of Fair Trading. To begin with, the rules were amended to permit corporate membership with limited liability, and to permit corporate members to be wholly owned by nonmembers;[7] finally, on October 27, 1986, the day termed "Big Bang" by the financial market, fixed commissions were abolished and dual capacity dealing was introduced, jobbers and brokers being replaced by market makers.

To regulate this new marketplace the Government has introduced a new system of "self regulation within a statutory framework."[8] The apparently modest initial proposals of the Government have, however, produced a large, unwieldy, and technical piece of legislation, the subject of over one thousand parliamentary amendments and many late night debates. The Act has emerged 211 sections long and so complex that members of Parliament protested that no one, not even the Government members responsible for the Bill, understood its provisions and their implications.[9] It is therefore with the warning that where applicability of the Act to a specific situation is in issue, there is no substitute for detailed consideration of the Act and the rules made under it, that the author offers the following "bird's-eye-view" of the main provisions concerning regulation of the financial services industry in the U.K.[10]

5. Examples include the Insurance Companies Act 1982, ch. 50; the Policyholders Protection Act 1975, ch. 75; the Insurance Brokers (Registration) Act 1977, ch. 46; the Banking Act 1979, ch. 37; the Building Societies Act 1962, 10 & 11 Eliz. 2, ch. 37; the Prevention of Fraud (Investments) Act 1958, 6 & 7 Eliz. 2, ch. 45.

6. *E.g.*, the Theft Act 1968, ch. 60; the Insolvency Act 1985, ch. 65.

7. These changes came into effect on March 1, 1986.

8. FINANCIAL SERVICES IN THE UNITED KINGDOM: A NEW FRAMEWORK FOR INVESTOR PROTECTION, CMND. No. 9432, ch. 5, at 13 (Jan. 1985).

9. 479 PARL. DEB. H.L. (5th ser.) 87 (1986) (Baroness Seears).

10. Reforms relating to listing of securities, offers of unlisted securities, takeovers, insider dealing, and reciprocity are beyond the scope of this article.

I. Authorization

The central feature of the new framework is the requirement of "authorization." The Act provides that:[11] "No person shall carry on, or purport to carry on, investment business in the United Kingdom unless he is an authorised person . . . or an exempted person." To achieve "self regulation within a statutory framework" the Act confers extensive powers on the Secretary of State for Trade and Industry (the Secretary of State), including the power to grant authorization. These powers, other than those that may affect the U.K.'s international obligations, are to be delegated to The Securities and Investment Board (the SIB),[12] a private limited company, the board of which is to be appointed by the Secretary of State and the Governor of the Bank of England. The SIB's running costs are to be met by fees levied on the financial services industry, and the SIB is not to be regarded as acting on behalf of H.M. Government.[13] A delegation order is to be made when the Secretary of State is satisfied that the SIB's rules and regulations afford adequate protection to investors, the Director-General of Fair Trading has reported on whether they have an unnecessarily anticompetitive effect, and the order has been approved by Parliament.[14] At the time of writing, a delegation order is expected to become effective in April 1987.

The day-to-day functions of granting authorization and monitoring the conduct of authorized persons will be carried out by self-regulatory organizations (SROs) approved by the SIB.[15] The SROs expected to be approved are:

The Securities Association[16] (TSA)	For firms dealing and broking in domestic and international securities, options, and financial futures.
The Association of Futures Brokers and Dealers (AFBD)	For firms dealing and broking in futures and options.

11. Act § 3.
12. *See id.* pt. I, ch. XII.
13. *Id.* sched. 9, para. 1.
14. *Id.* §§ 114, 122.
15. In theory a direct application for authorization could be made to the SIB pursuant to section 25, but the SIB intends to discourage such applications. The governing body of a profession whose members carry on investment business in the course of practicing that profession may apply to become a "recognized professional body" that can grant authorization to such members. *Id.* § 15.
16. The Securities Association was formed as a result of the merger between The Stock Exchange and the International Securities Regulatory Organization that was approved by the members of those institutions in November 1986.

The Financial Intermediaries, Managers and Brokers Regulatory Association (FIMBRA)	For firms dealing and broking in securities and collective investments; life assurance and unit trust intermediaries; investment managers and advisers.
The Investment Management Regulatory Organization (IMRO)	For investment managers and advisers, including managers and trustees of collective investment schemes and in-house pension fund managers.
The Life Assurance and Unit Trust Regulatory Organization (LAUTRO)	For life companies and unit trust managers and trustees for the management and selling of insurance-linked investments and mutual funds.

To obtain approval an SRO must satisfy certain criteria. Its governing body must include persons independent of the membership to protect the interests of the public, and its rules must afford to investors protection at least equivalent to that afforded by the SIB's rules.[17] A person whose business extends beyond the scope of activities regulated by an SRO may have to become a member of more than one SRO. The SRO that regulates the main business will be regarded as the "lead regulator," but problems of overlapping regulation have yet to be resolved.

A person authorized to carry on investment business in other member states of the European Economic Community who does not maintain a permanent place of business in the United Kingdom is an authorized person without the need to apply for authorization.[18] The same holds for the operator or trustee of a collective investment scheme constituted in another member state.[19] Other persons "automatically authorized" are friendly societies registered under the provisions of the Friendly Societies Act 1974,[20] and insurance companies authorized under the Insurance Companies Act 1982.[21]

17. Act sched. 2.
18. *Id.* § 31.
19. *Id.* § 24.
20. Friendly Societies Act 1974, ch. 46; *see* Act § 23.
21. Insurance Companies Act 1982, ch. 50; *see* Act § 22.

Authorization is required only by those carrying on investment business. The Government was, however, anxious to achieve equivalence of treatment between competing products and services, and the Act contains broad definitions of "investments"[22] and "investment business."[23] The former covers all forms of securities, units in collective investment schemes, CDs, long-term insurance contracts, and most types of options, futures, and contracts for differences; it does not include funds deposited in a bank or other savings account. The definition of futures in schedule 1[24] seeks to differentiate between contracts made for investment purposes, which are caught, and those made for commercial purposes, which are not. The test is complex and unclear at the margin, with a resulting unsatisfactory uncertainty as to the ambit of the Act. A person "carries on investment business" by engaging in any activity that falls within part II of schedule 1 to the Act and is not excluded by parts III or IV of that schedule.[25] The activities falling within part II of the schedule are, in summary:

Dealing: Buying, selling, subscribing for, or underwriting investments, or offering or agreeing to do so.

Arranging Deals: Making or offering or agreeing to make arrangements with a view to another person buying or selling investments.

Managing: Managing, offering, or agreeing to manage another person's assets that include or have included investments or assets that the manager has held out would be invested in investments.

Advising: Giving or offering or agreeing to give advice as to the merits of the purchase or sale of investments or the exercise of rights conferred by investments.

Operating Collective Investment Schemes: Including acting as trustee of an authorized unit trust scheme.

The provisions of part III, which exclude certain activities from the definition of "investment activities," are detailed and complex, and an exhaustive analysis is beyond the scope of this article. The main categories excluded are: buying or selling investments for a person's own account (except when the person's business is dealing in investments); intragroup and joint venture transactions; employee share schemes; activities of trustees; activities of a supplier of goods or services in connection with a related supply; activities related to acquisition or disposal of shares in a private company; activities carried out in accordance with a permission granted by SIB (which will be given only where the applicant's main

22. Act sched. 1, pt. I.
23. *Id.* sched. 1, pt. II.
24. *Id.* sched. 1, pt. I, para. 8.
25. *Id.* § 1(3).

business is not investment business); advice in newspapers, or advice necessarily incident to professional advice.

Overseas persons who do not maintain a permanent place of business in the U.K. may escape the need to be authorized, since investment business is carried on "in the U.K." by an overseas person only if he engages in the U.K. in investment activities *and* his doing so constitutes the carrying on of a business in the U.K. Part IV of schedule I contains certain additional exclusions from the definition of "investment activities" that operate for the benefit of overseas persons. In summary, an overseas person will not need to be authorized if his investment activities in the U.K. are confined to dealings with or through authorized persons or to activities that do not contravene the advertising and cold-calling rules discussed in section VI below.

II. Obtaining Authorization

Certain investment activities that have traditionally been separately regulated in the U.K. are outside the Act's regulatory regime. Thus, certain transactions in the wholesale money market by institutions listed by the Bank of England are exempt,[26] as are, more controversially, persons permitted by the Council of Lloyds to act as underwriting agents at Lloyds.[27]

A person who cannot rely on any of the above exclusions or exemptions should apply to the SRO appropriate to his business for authorization. The rules of the SROs are in the process of being drafted, and it is not known whether drafts published to date[28] will meet with the SIB's approval. The SIB's own rules for persons seeking direct authorization from the SIB are also in draft form,[29] the delegation order not having been made. Set forth below are highlights of the most widely relevant of these rules, since, as indicated above, to obtain the approval of the SIB, an SRO's rules must offer equivalent investor protection.

The SIB will require an applicant for authorization to give full information about:[30] (1) its "business profile"—that is, the type or types of investment business it proposes to carry on; (2) its financial position; (3) the structure of its organization, including ownership, associated com-

26. *Id.* § 43.

27. *Id.* § 42.

28. At the time of writing, draft rules have been published by IMRO and LAUTRO. *See supra* text accompanying note 16.

29. *Regulation of Investment Business:* Drafts relating to Rules Regulation, Orders and Directions to be made by the SIB as Designated Agency under the Financial Services BIU. The first drafts were published in May 1986.

30. *Id.* ch. I.

panies, and the business they carry on; (4) its arrangements for ensuring compliance with the SIB rules; and (5) the expertise, experience, and record of the applicant, its controllers, directors, or key staff. The SIB will weigh the information provided to decide whether applicant is "fit and proper" (by which is meant honest, solvent, and competent). An important part of the "fit and proper" test will be the applicant's financial resources in relation to its proposed business.

III. Financial Regulation

The SIB's draft Financial Regulation Rules[31] will impose financial resources, bookkeeping, and reporting requirements on all investment businesses. However, the businesses are subdivided into four categories: trustees of regulated unit trusts; investment advisors who do not handle client funds; investment advisors and unit trust managers who do have access to client funds; and other investment businesses. The minimum level of capital that must be maintained, and the capital that is to be treated as available to meet this level, will vary according to the category into which a business falls and (if relevant) a determination of its risk position. Thus, trustees in the first category are required to maintain a specified monetary amount of capital (£4 million), and their entire gross capital can be taken into account. For the second category the minimum level required, and the capital available to meet this level, is calculated with regard to net current assets as well as gross capital. The minimum financial resources requirement for the third category is more complex. The business must maintain a specified amount of gross capital, a positive amount of adjusted net current assets, and an amount of adjusted capital in proportion to its relevant annual expenditure. For other investment businesses the minimum requirement is to be based on the greatest of a fixed monetary amount, or sums calculated according to levels of expenditure and volume of business. This requirement must be met out of liquid capital (liquid assets less all liabilities exclusive of approved subordinated loans). In addition, any business that maintains inventory or investment positions will be required to add a proportion of the market value of its positions to the minimum capital requirement that would otherwise apply. Precise methods of calculation for this additional requirement are yet to be decided and, at the request of the SIB, ISRO is conducting historic price analyses on a variety of investments to grade them according to degree of volatility.

These rules will affect substantial reform. At present most investment advisors in the U.K. are not subject to capital adequacy requirements,

31. *Id.* ch. II.

while the existing requirements on Stock Exchange members are far less detailed and less onerous. The rules may have a substantial impact on overseas institutions that conduct investment business in the United Kingdom through thinly capitalized subsidiaries. When a number of companies within a group are authorized persons, each will need to meet the particular financial resources requirements applicable to it. The SIB, however, by permitting the use of intragroup subordinated loans (subject to conditions), anticipates that firms will be able to maintain a degree of flexibility of financial resources and allocate and move capital at short notice as the opportunities and needs arise. The recording and reporting requirements proposed are also more onerous than those existing at present. All firms, even unincorporated ones, will have to submit to their SRO annual accounts audited in accordance with the standards laid down in the Companies Act 1985.[32] In addition, all firms, except trustees of unit trusts, will have to prepare financial statements (that need not be audited) every three months.

IV. Conduct of Business

The SIB's draft rules also impose "conduct of business" requirements on authorized persons, to ensure that they observe high standards of integrity and fair dealing, act with due skill, care, and diligence, and comply with best market practice.[33] Rules that apply to all persons authorized by the SIB include:

(1) *Ban on "Benefits in Kind."*[34] This rule prohibits attempts to obtain the introduction of business by offering any benefits other than payment of commission, normal and reasonable business entertainment, and gifts not exceeding twenty-five in any twelve months.

(2) *"Churning."*[35] "A firm shall not recommend transactions to a customer or effect them for him with unnecessary frequency or recommend or effect transactions of excessive size."

Even the SIB recognizes the difficulty of policing this rule. It has said: "The rule is difficult to specify but perpetrators usually know when they are doing it."

(3) *Complaints.*[36] Firms must keep for at least six years copies of all written complaints and a record of their response. They are obliged to ensure that each complaint is investigated and reported on by a person of appropriate experience, competence, and seniority.

32. Companies Act 1985, ch. 6.
33. *See supra* note 29, ch. III.
34. *Id.* rule 2.05(2).
35. *Id.* rule 2.08(2).
36. *Id.* rule 2.10.

(4) *Compliance.*[37] Each firm must establish compliance procedures and prepare a compliance manual.

(5) *Client Money Regulations.*[38] The SIB draft regulations will apply to all authorized persons except those subject to existing statutory rules requiring segregation of client moneys, and registered friendly societies. They impose an obligation to hold on trust in a client bank account all moneys received by a firm in the course of carrying on investment business in the U.K. with or on behalf of clients. The obligation does not, however, extend to moneys received from authorized persons acting on their own account. Moreover, professional, business, or experienced investors[39] may waive the protection afforded by the regulations. Part 3 of the regulations deals with the operation of the bank account and accounting obligations. Where an SRO's rules contain provisions in this regard, then those rules will apply to persons who are authorized by membership of that SRO. Persons who are members of more than one SRO will have to comply with part 3 in addition to parts 1 and 2 of the SIB regulations, unless the relevant SROs have agreed that the rules of one of them should apply.

Other SIB conduct of business rules deal specifically with investment broking, dealing, and portfolio management for customers. The rules distinguish between professional investors, business investors, experienced investors, execution-only customers and occasional customers,[40] and ordinary investors. The level of protection of the customer and the degree of responsibility owed by the investment firm vary according to the category into which the customer falls. The major obligations imposed on the investment firm are as follows:

(1) *"Know Your Customer."*[41] A firm must take reasonable steps to ascertain from its customer such facts about his personal and financial situation as may be expected to be relevant to the proper performance of services for him.

(2) *"Best Execution."*[42] In effecting transactions for, or giving advice to, the customer the firm must ensure that it is dealing on the best available terms, or giving the best advice in all the circumstances, as the case may

37. *Id.* rule 15.

38. *Id.* ch. VI. Since publishing its first draft of this Chapter in September 1986, the SIB has agreed to relax the strict requirement of separation of client moneys by securities firms during the process of settlement, so long as transactions are cleared through an Exchange or a clearing house approved by the SIB for this purpose. See the revised draft of November 1986.

39. *See infra* note 40.

40. For the definition, see *supra* note 29, ch. III, rule 1.05.

41. *Id.* ch. III, pt. 3.

42. *Id.* ch. III, rules 5.01, 5.04.

be. However, these requirements may be substantially reduced when the firm is dealing with someone other than an ordinary investor. When it deals as principal with a professional, business, or experienced investor, the firm may exclude the duty of best execution.[43] Nor is the duty of best advice owed to an execution-only customer.[44]

(3) *No Conflicts of Duty or Interest.*[45] After "Big Bang" a company or group of companies may carry on a range of different financial or investment functions. This flexibility gives rise to the possibility of conflicts of interest, and to the possibility of the company or other members of the group having a material interest in a transaction effected for a customer. For instance, a broker-dealer acquiring securities on behalf of a client, or an investment manager making an acquisition for a portfolio, may purchase those securities from a market maker that is a company in the same group, or may buy or sell securities from or to its customer, not as agent but as principal dealing on its own account. The same group may have a corporate finance department advising in respect to a takeover that will affect the price of the securities being sold to or purchased from the client.

Transactions that involve a conflict of interest are permitted if the firm has in force arrangements ("Chinese Walls") to ensure that information known to persons employed in one part of the business is not known to persons employed in another part of the business and so that the person who acts for the customer cannot know of the conflict or material interest.

Otherwise, the transaction is prohibited unless the firm is either authorized by the terms of its agreement with the customer to effect such transactions or it discloses to the customer prior to the transaction the nature of its conflict or interest. A firm can deal as principal with an ordinary investor only if the customer has, with full knowledge of the circumstances, expressly agreed to the firm's effecting the particular transaction in that way, or if the firm is acting as discretionary portfolio manager and the customer agreement authorizes it to act as principal.[46]

(4) *Customer Agreements.*[47] Firms will be able to provide services for customers, other than execution-only customers, only pursuant to a written customer agreement. Before a firm provides any services for an ordinary investor, it must provide the customer with a very detailed "full customer agreement." The Agreement must specify the services to be

43. *Id.* rule 5.04(3).

44. For the definition of "execution only customer," see *id.* rule 1.05.

45. *Id.* rules 5.07, 5.08.

46. The Act does not abrogate the common law and equitable principles relating to fiduciaries, which impose duties that could be infringed by acting as agent when a material interest or conflict of duties arises.

47. *Supra* note 29, ch. III, pt. 4.

provided, the customer's investment objectives, the basis on which fees are to be calculated, and other information, and the customer must sign a copy of it. In the case of a professional, business, or experienced investor a less detailed document, "a terms of business letter," is to be provided to the customer. It must state that the firm is treating him as a professional, business, or experienced investor, as the case may be, and it need not be signed by the customer. As outlined above, when the firm acts as principal the letter may exclude the "best execution" duties that would otherwise apply. An occasional customer is also entitled only to a short form agreement; the firm can start to provide services once the customer confirms receipt of the agreement and the instructions to the firm as summarized in it.

V. Indemnity and Compensation

The SIB will be empowered by the Act to make rules to indemnify investors against losses incurred in dealing with authorized persons.[48] It may take out insurance or require any person to whom the rules apply to take out insurance. The rules will not apply to a member of a recognized SRO unless the SRO has requested that they should apply.

The SIB is also authorized by the Act to establish a compensation fund for investors[49] and to levy contributions from SROs and directly authorized persons. The SIB's centralized scheme will provide a direct means of compensating investors up to a maximum figure, probably £48,000, when persons who are, or have been, authorized persons are insolvent and unable to satisfy claims made in respect of any description of civil liability they incur in connection with their investment businesses. Individual SROs will have the option of providing additional coverage to supplement that offered under the SIB scheme. The scheme is to be administered by a company whose directors will include representatives of the participating SROs.

VI. Advertising and Cold Calling

In addition to the requirement of authorization for those carrying on investment business, the Act contains ancillary provisions. These provisions prohibit the issue of investment advertisements unless approved by authorized persons.[50] They also prohibit "cold calling,"[51] whether or

48. Act § 53. At the time of writing no draft provisions had been published.

49. *Id.* § 54; SIB Rules, *supra* note 29, ch. VIII. Under an agreement with SIB, LAUTRO will not participate in the scheme.

50. Act § 57. Section 58 contains certain limited exceptions to this prohibition.

51. *Id.* § 56.

not by authorized persons, unless the practice falls within the ambit of enabling regulations published by the SIB.[52] These enabling regulations permit an investment agreement following an unsolicited call when: (1) The call was made by a customer or potential customer to the person carrying on investment business, or by the business to an existing customer; (2) the investment agreement relates to life assurance or unit trusts; (3) the call was made on a business or professional investor.

VII. Enforcement and Penalties

The consequences for a person who carries on investment business without obtaining authorization, or who otherwise infringes applicable provisions of the Act or relevant rules, may be extremely serious. Even when a person succeeds in establishing a defense or persuades the court to exercise its discretion favorably, this will only be as the result of criminal or civil proceedings, which may prove to be protracted and expensive.

An unauthorized person who carries on investment business commits a criminal offense (subject to a limited defense).[53] Any investment agreements into which the unauthorized person has entered may be unenforceable at the option of the other party, who may recover property or money transferred under the agreement and obtain compensation for any loss suffered.[54] The court, however, may enforce the agreement and allow money or property transferred under it to be retained if the unauthorized person had reasonably believed that the agreement did not constitute a contravention of the prohibition on carrying on investment business when unauthorized, and the court finds it just and equitable to hold the agreement valid.[55]

Similarly, the issue of an investment advertisement by an unauthorized person in contravention of section 57 may constitute a criminal offense. The court will render investment agreements pursuant to the advertisement unenforceable unless it is satisfied that the advertisement did not influence the other party to the agreement to any material extent or that the advertisement was not misleading and fairly stated any risks involved.

A breach of the cold-calling prohibition, while not a criminal offense, will have civil consequences paralleling the criminal penalties referred to above, subject to the discretion of the court in two regards. The court may uphold the agreement when the person on whom the call was made

52. *Id.* ch. IV.

53. *Id.* § 4. The defense set out in Section 4(2) is available if the defendant proves that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offense.

54. *Id.* § 5.

55. *Id.* § 5(3).

was not influenced to any material extent by anything said or done in the course of or in consequence of the call. The court may also uphold the agreement if the person was aware of any risks involved in entering into the agreement and entered into the agreement following discussions between the parties of such a nature and over such a period that his entering into the agreement was a consequence of those discussions rather than of the unsolicited call.[56]

Breach of the rules of the SIB or the relevant SRO may result in disciplinary action being taken against an authorized person, with the ultimate sanction of loss of authorization. In addition, breach of the "conduct of business" rules or clients' money regulations will give rise to a cause of action for damages in favor of any person who suffers loss as a result of the contravention.[57]

In addition to this statutory cause of action, the impugned conduct may give rise to actions for damages at common law, in contract, or in tort, although the aggrieved investor cannot receive multiple damages. In the light of the expense and delays involved in litigation, the SIB intends to establish the office of an ombudsman to consider complaints against investment businesses.[58] The scheme will not be available to professional or business investors and the ombudsman will be empowered to consider claims only to the value of £100,000. If the ombudsman's office finds a complaint valid, it may grant an enforceable compensatory award. The ombudsman scheme will also apply to complaints against members of SROs if the SRO in question has elected to make the scheme available as part of its procedures for the investigation of complaints against its members.

Still other sanctions are available to the SIB. In certain circumstances it will be empowered to make a public statement regarding contravention of its rules. Furthermore, it may obtain an injunction to prevent a breach or potential breach of its rules, or to enforce a restitution order.[59]

The Act enables an authorized person to seek relief from the SIB or SRO sanctions by application to a special Financial Services Tribunal[60] comprised of ten panelists, of whom three will be chosen for any particular dispute. The panel will consist of persons with legal qualifications appointed by the Lord Chancellor and persons appointed by the Secretary of State who appear to him to be qualified by experience or otherwise. The chairman of each three-man board will be a lawyer. The Act provides,

56. *Id.* § 57(4).
57. *Id.* § 62.
58. *See* SIB, *Proposed Ombudsman Arrangements* (Dec. 1986).
59. Act §§ 60, 61.
60. *Id.* pt. I, ch. IX.

however, that neither the SIB nor any SRO nor any member, officer, or servant thereof shall be liable in damages for anything done or omitted in good faith in the discharge or purported discharge of their delegated functions.[61]

VIII. Conclusion

The changes surrounding "Big Bang" are intended to consolidate and promote London's position as a major international capital market. Attainment of this objective will depend to a large extent on the effectiveness of the new regulatory framework in maintaining standards and enhancing the reputation of this market. Only time will tell whether the self-regulation approach adopted in the Act will provide a high level of investor protection, both in the international market and in respect of other investment businesses in the U.K., without imposing unnecessarily restrictive controls that unduly impede innovation and competitiveness in the financial services industry in the U.K.

61. *Id.* § 187.