

2009 No. 1828

STAMP DUTY

STAMP DUTY RESERVE TAX

The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 9) 2009

<i>Made</i> - - - -	<i>8th July 2009</i>
<i>Laid before the House of Commons</i>	<i>9th July 2009</i>
<i>Coming into force</i> - -	<i>30th July 2009</i>

The Treasury make the following Regulations in exercise of the powers conferred on them by sections 116 and 117 of the Finance Act 1991(a).

Citation and commencement

1.—(1) These Regulations may be cited as the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 9) 2009 and shall come into force on 30th July 2009.

(2) These Regulations shall have effect—

- (a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 30th July 2009;
- (b) for the purposes of the charge to stamp duty reserve tax—
 - (i) in the case of agreements to transfer traded securities which are not conditional, in relation to agreements made on or after 30th July 2009;
 - (ii) in the case of agreements to transfer traded securities which are conditional, in relation to agreements where the condition is satisfied on or after that date.

Interpretation

2.—(1) In these Regulations—

“clearing participant” means (a) a member of LIFFE who as such is permitted by the Rules of LIFFE to clear transactions made on the Exchange of traded securities or (b) LCH.Clearnet Limited, when required by the applicable Rules of LIFFE to clear transactions made on the Exchange;

“the Exchange” means the London International Financial Futures and Options Exchange (“LIFFE”) which is operated by LIFFE A&M;

(a) 1991 c. 31. Section 116(4) was amended by paragraph 5 of Schedule 20 to the Financial Services and Markets Act 2000 (c. 8) and by paragraph 7 of Schedule 21 to the Finance Act 2007 (c. 11).

“LCH.Clearnet Limited” is a company which is a recognised clearing house under the Financial Services and Markets Act 2000(a);

“LIFFE A&M” means LIFFE Administration and Management, an unlimited company having a share capital, which is a recognised investment exchange authorised to provide clearing services under the Financial Services and Markets Act 2000;

“nominee” means a person whose business is or includes holding traded securities as a nominee for LCH.Clearnet Limited or LIFFE A&M, in each case acting in its capacity as a person providing clearing services in connection with a transaction made on the Exchange, or as a nominee for a clearing participant, or as a nominee for a non-clearing firm (as the case may be);

“non-clearing firm” means a member of LIFFE other than a clearing participant;

“option” means an option to buy or sell traded securities where such option is listed by and made on or under the Rules of LIFFE.

“traded securities” means options, stocks, shares or loan capital, or interests in stocks, shares or loan capital, issued or raised by a body corporate but does not include stocks and shares issued by a body corporate not incorporated in the United Kingdom unless—

- (a) the stocks and shares are registered in a register kept in the United Kingdom by or on behalf of the body corporate; or
- (b) in the case of shares, they are paired, within the meaning of section 99(6A) of the Finance Act 1986(b), with shares issued by a body corporate incorporated in the United Kingdom;

Prescription of recognised investment exchanges and recognised clearing houses

3. For the purpose of sections 116 and 117 of the Finance Act 1991—

- (a) LIFFE A&M is prescribed as a recognised investment exchange; and
- (b) LCH.Clearnet Limited is prescribed as a recognised clearing house.

Prescribed circumstances for the purposes of sections 116 and 117

4.—(1) In the circumstances prescribed in this regulation, the charge to stamp duty and the charge to stamp duty reserve tax shall be treated as not arising.

(2) The circumstances prescribed are where, in connection with a transaction made on the Exchange conditions A and B are met.

(3) Condition A is that traded securities of a particular kind are issued or transferred, or agreed to be issued or transferred, from—

- (a) a clearing participant or a nominee of a clearing participant to another clearing participant or nominee,
- (b) a non-clearing firm or a nominee of a non-clearing firm to a clearing participant or a nominee of a clearing participant,
- (c) a clearing participant or a nominee of a clearing participant to LIFFE A&M, or to LCH.Clearnet Limited, or to a nominee of either LIFFE A&M or LCH.Clearnet Limited,
- (d) a person other than a clearing participant to LIFFE A&M, or to LCH.Clearnet Limited, or to a nominee of either LIFFE A&M or LCH.Clearnet Limited, as a result of a failure by a clearing participant to fulfil his obligations in respect of the transaction concerned to transfer traded securities to LIFFE A&M, or to LCH.Clearnet Limited, or to a nominee of either LIFFE A&M or LCH.Clearnet Limited, or
- (e) LIFFE A&M, or LCH.Clearnet Limited, or a nominee of either LIFFE A&M or LCH.Clearnet Limited to a clearing participant or a nominee of a clearing participant.

(a) 2000 c. 8

(b) 1986 c. 41. Subsections (3) to (6A) were amended by section 113(2) of the Finance Act 1990 (c.29). The whole of Part 4 of the 1986 Act is to be repealed from a date to be appointed (see sections 110 and 111(1) of the 1990 Act).

(4) Condition B is that the person to whom those securities are agreed to be issued or transferred under any of the agreements specified in paragraph (3) (“the relevant agreement”) is required on receipt of those securities to transfer traded securities under a matching agreement to another person or, in the case of an agreement falling within paragraph (3)(d), would have been so required if the failure referred to in that paragraph had not occurred.

(5) In paragraph (4)—

- (a) a “matching agreement” means an agreement under which—
 - (i) the traded securities agreed to be transferred are of the same kind as the traded securities agreed to be transferred under the relevant agreement, and
 - (ii) the number and transfer price of the traded securities agreed to be transferred are identical to the number and transfer price of the traded securities agreed to be transferred under the relevant agreement;
- (b) references to LCH.Clearnet Limited are references to that clearing house in its capacity as a person providing clearing services in connection with a transaction made on the Exchange;
- (c) references to LIFFE A&M are references to LIFFE A&M acting in its capacity as a self-clearing recognised investment exchange providing clearing services in connection with a transaction made on the Exchange;
- (d) references to a clearing participant are references to a clearing participant in its capacity as such.

Consequential provision

5.—(1) Traded securities which are the subject of an agreement specified in regulation 4(3) shall be dealt with by a clearing participant who is party to the agreement in a separate designated account, and not otherwise.

(2) In paragraph (1) “designated account” means an account designated by LIFFE A&M, acting in its capacity as a self-clearing recognised investment exchange in connection with the traded securities concerned.

Revocation of the Stamp and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulation 1997/2429

6. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1997/2429 are hereby revoked as respects instruments and agreements referred to in regulation 1(2).

8th July 2009

Dave Watts
Frank Roy
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 1997/2429. The 1997 Regulations prescribed LIFFE A&M as a recognised investment exchange for the purposes of section 116 and 117 of the Finance Act 1991 and exempted from stamp duty and stamp duty reserve tax (“SDRT”) certain transfers and agreements to transfer traded securities made in the course of trading in those securities on LIFFE (“the Exchange”) where the transfers were cleared by The London Clearing House Limited.

LIFFE A&M is authorised by the FSA to act as a recognised investment exchange capable of providing clearing services. LIFFE A&M will now use this authorisation to act as a “self-clearing” recognised investment exchange. These Regulations exempt from stamp duty and stamp duty reserve tax (“SDRT”) both LIFFE A&M and LCH.Clearnet Limited for certain issues and transfers of, or agreements to issue or transfer traded securities made in the course of trading in those securities on the market operated by LIFFE A&M. The transfers and agreements exempted are those involving LIFFE A&M or LCH.Clearnet Limited (or nominees of LIFFE A&M or LCH.Clearnet Limited), through whom transactions on the Exchange are cleared, or clearing participants in LIFFE A&M or LCH.Clearnet Limited (or their nominees).

Regulation 1 provides for citation, commencement and effect and regulation 2 contains definitions.

Regulation 3 prescribes LIFFE A&M as a recognised investment exchange and LCH.Clearnet Limited as a recognised clearing house for the purpose of the exemption. Regulation 4 prescribes the circumstances in which stamp duty and SDRT will not be charged.

Regulation 5 makes consequential provisions requiring traded securities which are agreed to be transferred in the prescribed circumstances to be dealt with in a separate designated account.

Regulation 6 revokes the 1997/2429 Regulation as respects instruments or agreements in relation to which the present Regulations have effect.

A full and final Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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