
DRAFT STATUTORY INSTRUMENTS

2023 No.

FINANCIAL SERVICES AND MARKETS

Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023

Made - - - - - ***
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PART 1 — Amendments of Financial Services and Markets Act 2000

PART 2 — Amendments of secondary legislation

The Treasury make these regulations in exercise of the powers conferred by sections 71K, 71L, 71M, 71N, 71O, 71P, 71Q, 71R, 138EA(3) and 428(3) of the Financial Services and Markets Act 2000(a).

In accordance with sections 71S(2) and 429(2), (2A) and (2B)(aa) and (ab) of that Act(b), a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023.

(2) These Regulations come into force on [.....]

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In these Regulations—

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

“admission rules” has the meaning given in regulation 13(2);

“advertisement” means a communication which—

(a) relates to a specific offer of relevant securities to the public or to an admission, or proposed admission, of transferable securities to trading on a regulated market or primary MTF, and

(b) aims specifically to promote the potential subscription for, or acquisition of, transferable securities,

and “advertise” has a corresponding meaning;

“company” includes—

(a) any body corporate (wherever incorporated), and

(b) [any unincorporated body constituted under the law of a country or territory outside the United Kingdom,]

but does not include an open-ended investment company;

“equity securities”, except in paragraph 9 of Schedule 1, means—

(a) transferable securities that are shares in companies,

(b) other transferable securities that are equivalent to shares in companies, and

(c) transferable securities that—

(i) give the right to acquire securities within paragraph (a) or (b) if converted or if the rights conferred by them are exercised, and

(a) 2000 c. 8. Sections 71K to 71S are inserted by section [8(2)] of the Financial Services and Markets Act 2023 (c. **). Section 138EA is inserted by section [29] of that Act.

(b) Subsections (2A) and (2B) were inserted by section 136 of the Financial Services (Banking Reform) Act 2013 (c. 33). Subsection (2) is amended by section [29(5)] of the Financial Services and Markets Act 2003 and subsection (2B)(aa) is inserted by section [8(8)(a)] of that Act. There are other amendments that are not relevant.

(ii) are issued by the issuer of the underlying shares or by an entity belonging to the group of that issuer;

“issuer”, in relation to an offer of relevant securities to the public or the admission, or proposed admission, of transferable securities to trading on a regulated market or primary MTF, means the person who is issuing, proposes to issue or has issued the securities in question;

“market operator”, in relation to a regulated market, has the same meaning as in Part 6 of the Act (see section 103(1));

“non-equity securities” means transferable securities that are not equity securities;

“offeror”, in relation to an offer of relevant securities to the public, means the person making the offer;

“primary MTF” has the meaning given in regulation 7;

“prospectus” has the meaning given in regulation 19(1);

“regulated market”, except in regulation 6(5)(a), has the same meaning as in Part 18 of the Act (see section 313(1));

“relevant securities” has the meaning given in regulation 4;

“supplementary prospectus” has the meaning given in regulation 19(2);

“transferable securities” has the meaning given in regulation 3;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(a) in any part of the United Kingdom.

“Transferable securities”

3. In these Regulations, “transferable securities” means those classes of securities which are negotiable on the capital market (with the exception of instruments of payment), such as—

- (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
- (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
- (c) any other securities giving the right to acquire or sell any such securities or giving rise to a cash settlement determined by reference to such securities, currencies, interest rates or yields, commodities or other indices or measures.

“Relevant securities”

4.—(1) [In these Regulations “relevant securities” means—

- (a) transferable securities, other than excluded securities (see regulation 5),
- (b) any of the investments specified in paragraph (2), other than transferable securities, excluded securities or anything excluded by paragraph (3), or
- (c) any of the investments specified in paragraph (4), other than transferable securities, excluded securities or anything excluded by paragraph (5).

(2) The investments referred to in paragraph (1)(b) are—

- (a) any of the following investments that confer a right to receive payment of principal or interest on indebtedness incurred for borrowed money—
 - (i) debentures,
 - (ii) debenture stock.

(a) 1971 c. 80.

- (iii) loan stock,
 - (iv) bonds,
 - (v) certificates of deposit, or
 - (vi) any other instrument creating or acknowledging indebtedness,
- (b) any other investment that consists of a right to receive payment of principal or interest on indebtedness incurred for borrowed money (whether or not there is an instrument creating or acknowledging the indebtedness),
 - (c) contractual or property rights under warrants or other contracts or instruments entitling the holder of the rights to subscribe for anything falling within sub-paragraph (a) or (b),
 - (d) certificates, depositary receipts or other instruments which confer contractual or property rights over anything falling within sub-paragraph (a) or (b),
 - (e) any right to or interest in, or option to acquire or dispose of, anything falling within sub-paragraph (a), (b) or (c), including—
 - (i) a certificate of deposit representing any such right or interest, or
 - (ii) beneficial interests under a trust, or the equivalent under the law of a country or territory outside the United Kingdom.
- (3) There are excluded by this paragraph from paragraph (1)(b)—
- (a) an instrument of payment, any other cheque or other bill of exchange, a banker's draft or a letter of credit (except a bill of exchange accepted by a banker);
 - (b) a banknote;
 - (c) indebtedness under, or a statement showing a balance on, a current, deposit or savings account with a qualifying credit institution;
 - (d) a contract of insurance.
- (4) The investments referred to in paragraph (1)(c) are—
- (a) shares in companies,
 - (b) other investments that are equivalent to shares in companies,
 - (c) interests in limited liability partnerships or equivalent entities,
 - (d) contractual or property rights under warrants or other contracts or instruments entitling the holder of the rights to subscribe for anything falling within sub-paragraph (a), (b), or (c),
 - (e) certificates, depositary receipts or other instruments which confer contractual or property rights over anything falling within sub-paragraph (a), (b) or (c),
 - (f) any right to or interest in, or option to acquire or dispose of, anything falling within sub-paragraph (a), (b) or (c), including—
 - (i) a certificate of deposit representing any such right or interest, or
 - (ii) beneficial interests under a trust, or the equivalent under the law of a country or territory outside the United Kingdom.
- (5) There are excluded by this paragraph from paragraph (1)(c)—
- (a) shares or stock in the share capital of a building society within the meaning of the Building Societies Act 1986(a), other than shares of a class defined as deferred shares for the purposes of section 119 of that Act;
 - (b) shares or stock in the share capital of a credit union within the meaning of the Credit Unions Act 1979(b) or the Credit Unions (Northern Ireland) Order 1985(c), other than any transferable shares.

(a) 1986 c. 53.
 (b) 1979 c. 34.
 (c) S.I. 1985/1205 (N.I. 12).

(6) In this regulation—

“excluded securities” has the meaning given in regulation 5;

“instrument” includes any record whether or not in the form of a document;

“investment” includes any asset, right or interest.]

Meaning of “excluded securities” in regulation 4

5.—(1) In regulation 4 “excluded securities” means—

- (a) [units issued by a collective investment undertaking other than the closed-end type;]
- (b) non-equity securities issued by—
 - (i) the government of any country or territory,
 - (ii) a local or regional authority of any country or territory,
 - (iii) a public international body of which the United Kingdom or any other State is a member, or
 - (iv) the European Central Bank or the central bank of any State;
- (c) shares in the capital of the central bank of any State;
- (d) securities unconditionally and irrevocably guaranteed by the government or a local or regional authority of any country or territory;
- (e) securities issued by a qualifying body;
- (f) non-fungible shares of capital—
 - (i) the main purpose of which is to provide the holder with a right to occupy any immovable property, and
 - (ii) which cannot be sold without that right being given up;
- (g) money market instruments, as defined in Article 2(1)(25A) of the markets in financial instruments regulation, that have a maturity of less than 12 months.

(2) For the purposes of paragraph (1)(a)—

- (a) “collective investment undertaking other than the closed-end type” means unit trusts and investment companies with both of the following characteristics—
 - (i) they raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and
 - (ii) their units are, at the holder’s request, repurchased or redeemed, directly or indirectly, out of their assets;
- (b) “units of a collective investment undertaking” means securities issued by a collective investment undertaking as representing the rights of the participants in such an undertaking over its assets.

(3) In paragraph (1)(e), “qualifying body” means—

- (a) a charity as defined by section 1(1) of the Charities Act 2011(a),
- (b) a body entered in the Scottish Charity Register,
- (c) a charity as defined by section 35 of the Charities Act (Northern Ireland) 1964(b),
- (d) a housing association within the meaning of—
 - (i) section 5(1) of the Housing Act 1985(c),
 - (ii) section 1 of the Housing Associations Act 1985(d), or

(a) 2011. c. 25.

(b) 1964 c. 33 (N.I.).

(c) 1985 c. 68.

(d) 1985 c. 69.

- (iii) article 3 of the Housing (Northern Ireland) Order 1992(a), or
- (e) a registered society that is—
 - (i) registered under the Co-operative and Community Benefit Societies Act 2014(b) as a community benefit society,
 - (ii) a pre-commencement society within the meaning of that Act that was registered in accordance with section 2(2)(a)(ii) of that Act,
 - (iii) registered under section 1(1)(b) of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969(c), or
 - (iv) a pre-2016 Act society within the meaning of that Act that was registered in accordance with section 1(2)(b) of that Act.

“Offer of relevant securities to the public”

6.—(1) For the purposes of these Regulations there is an offer of relevant securities to the public if there is a communication to any person which presents sufficient information on—

- (a) the relevant securities to be offered, and
- (b) the terms on which they are to be offered,

to enable an investor to decide to buy or subscribe for the relevant securities in question.

(2) For the purposes of these Regulations, to the extent that an offer of relevant securities is made to a person in the United Kingdom it is an offer of relevant securities to the public in the United Kingdom.

(3) The communication may be made—

- (a) in any form;
- (b) by any means.

(4) Paragraph (1) includes the placing of relevant securities through a financial intermediary.

(5) Paragraph (1) does not include a communication in connection with trading on—

- (a) a regulated market, as defined in Article 2(1)(13) of the markets in financial instruments regulation, or
- (b) a multilateral trading facility, as defined in Article 2(1)(14) of the markets in financial instruments regulation.

(6) Paragraph (1) does not include a communication about relevant securities allotted under or as a result of—

- (a) a voluntary arrangement under Part 1 of the Insolvency Act 1986(d) or Part 2 of the Insolvency (Northern Ireland) Order 1989(e), or
- (b) a compromise or arrangement under Part 26 or 26A of the Companies Act 2006(f).

“Primary MTF”

7.—(1) In these Regulations “primary MTF” means a multilateral trading facility which meets the following conditions.

(2) Condition A is that newly issued transferable securities are admitted to trading on the multilateral trading facility.

(a) S.I. 1992/1725 (N.I. 15).
 (b) 2014 c. 14.
 (c) 1969 c. 24 (N.I.).
 (d) 1986 c. 45.
 (e) S.I. 1989/2405 (N.I. 19).
 (f) 2006 c. 46.

(3) Condition B is that the issuers of transferable securities that are to be admitted to trading on the multilateral trading facility are required to comply with rules made by the operator of the multilateral trading facility which relate to [each of the following—

- (a) the eligibility of issuers,
- (b) the conditions for admission to trading, including information to be published, and
- (c) requirements to be complied with in order to maintain the admission to trading.]

(4) In this regulation “multilateral trading facility” has the same meaning as in Part 18 of the Act (see section 313(1)).

PART 2

Designated activities

Designated activities: public offers of relevant securities

8. The following activities are specified under section 71K of the Act as designated activities for the purposes of the Act—

- (a) offering relevant securities to the public in the United Kingdom;
- (b) communicating an advertisement relating to an offer of relevant securities to the public in the United Kingdom;
- (c) disclosing, otherwise than in an advertisement, information relating to such an offer.

Designated activities: admissions to trading on regulated market

9. The following activities are specified under section 71K of the Act as designated activities for the purposes of the Act—

- (a) requesting or obtaining the admission of transferable securities to trading on a regulated market;
- (b) communicating an advertisement relating to the admission, or proposed admission, of transferable securities to trading on a regulated market;
- (c) disclosing, otherwise than in an advertisement, information relating to such an admission to trading or proposed admission to trading;
- (d) admitting transferable securities to trading on a regulated market.

Designated activities: admissions to trading on primary MTF

10. The following activities are specified under section 71K of the Act as designated activities for the purposes of the Act—

- (a) requesting or obtaining the admission of transferable securities to trading on a primary MTF;
- (b) communicating an advertisement relating to the admission, or proposed admission, of transferable securities to trading on a primary MTF;
- (c) disclosing, otherwise than in an advertisement, information relating to such an admission to trading or proposed admission to trading;
- (d) admitting transferable securities to trading on a primary MTF.

PART 3

Regulation of public offers and admissions to trading

Prohibition of public offers of relevant securities

Prohibition of public offers of relevant securities

11.—(1) It is unlawful for relevant securities to be offered to the public in the United Kingdom unless—

- (a) the offer is of any of the kinds specified in Part 1 of Schedule 1, or
- (b) the offer combines two or more of the kinds of offer specified in that Part of that Schedule.

(2) Part 1 of Schedule 1 is to be read with the provisions of Part 2 of that Schedule.

Disclosure of information

12.—(1) Paragraph (2) applies in relation to an offer of relevant securities to the public in the United Kingdom if the offer—

- (a) is of any of the kinds specified in paragraphs 2 to 12 of Schedule 1, but
- (b) is not also of either of the kinds referred to in paragraph 1 and 14 of that Schedule.

(2) In the event that material information is disclosed by an issuer or offeror and addressed to one or more selected investors in oral or written form, that information must—

- (a) in a case where the offer is of the kind specified in paragraph 6 of Schedule 1 and designated activity rules require the publication of a prospectus, be included in the prospectus or in a supplement to the prospectus, and
- (b) in any other case, be disclosed to all other investors to whom the offer is addressed.

Rule-making powers of FCA

FCA rules relating to admissions to trading on regulated market

13.—(1) The FCA may make designated activity rules relating to—

- (a) the carrying on of any of the activities specified in regulation 8—
 - (i) in connection with an admission, or proposed admission, of transferable securities to trading on a regulated market, or
 - (ii) in relation to transferable securities that have already been admitted, or are of a class that has already been admitted, to trading on a regulated market, or
- (b) the carrying on of any of the activities specified in regulation 9.

(2) Designated activity rules made by virtue of this regulation are referred to in these Regulations as “admission rules”.

FCA rules relating to admissions to trading on primary MTF

14.—(1) The FCA may make designated activity rules relating to—

- (a) the carrying on of any of the activities specified in regulation 8—
 - (i) in connection with an admission, or proposed admission, of transferable securities to trading on a primary MTF, or
 - (ii) in relation to transferable securities that have already been admitted, or are of a class that has already been admitted, to trading on a primary MTF, or
- (b) the carrying on of any of the activities specified in regulation 10.

(2) Designated activity rules made by virtue of this regulation may make provision—

- (a) requiring the operator of a primary MTF to include in its rules provision requiring the issuer of transferable securities, in such cases as may be specified in the designated activity rules, to publish a document described as a prospectus, as a condition of the admission of the securities to trading on a primary MTF;
 - (b) relating to the communication of other information in cases where provision made by virtue of sub-paragraph (a) applies;
 - (c) imposing obligations on the operator of the primary MTF in relation to admissions to trading in cases where provision made by virtue of sub-paragraph (a) applies;
 - (d) requiring the issuer of transferable securities, in a case where the publication of a prospectus has been required by virtue of sub-paragraph (a), to publish in such circumstances as may be specified in the designated activity rules a supplementary prospectus in such form and containing such information as the designated activity rules may specify.
- (3) Apart from the provision mentioned in paragraph (2), designated activity rules made by virtue of this regulation may only make the provision mentioned in—
- (a) regulation 20 (responsibility for prospectus),
 - (b) regulation 27 (compensation for statements in prospectus),
 - (c) regulation 29 (withdrawal rights), and
 - (d) paragraph 9 of Schedule 2 (protected forward-looking statements).

FCA rules relating to public offers unconnected with admissions to trading

15. The FCA may also make designated activity rules relating to the carrying on of any of the activities specified in regulation 8 in cases where the offer of relevant securities to the public does not fall within regulation 13(1)(a) or 14(1)(a).

Further provision about admission rules

- 16.—**(1) Admission rules may (among other things) make provision—
- (a) requiring a person proposing to request the admission of transferable securities to trading on a regulated market to notify the FCA before making the request;
 - (b) requiring a person proposing to request the admission of transferable securities to trading on a regulated market to publish a prospectus or other document before making the request;
 - (c) about the publication of a prospectus by a person proposing to request the admission of transferable securities to trading a case where the person is not required to publish a prospectus, and about the approval or other validation of a prospectus in such a case;
 - (d) requiring that, where there is an offer to the public of transferable securities that are of the same class as transferable securities already admitted to trading, the offeror must publish specified information in connection with the offer;
 - (e) requiring that before a prospectus is published—
 - (i) it must be submitted to, and approved by, the FCA, or
 - (ii) specified conditions must be met;
 - (f) requiring specified documents to be filed with the FCA and, if the rules so provide, to form part of a publicly accessible database;
 - (g) that a prospectus may be treated as having constituent parts which may be separately submitted, approved or otherwise validated, published or filed;
 - (h) specifying circumstances in which any requirement falling within sub-paragraph (a), (b), (d), (e), (f) or (g) applies or does not apply.
- (2) Admission rules may also make provision as to—

- (a) the form and content of a prospectus, including any summary of or supplement to a prospectus;
- (b) the procedure for the review by the FCA of a prospectus or other document;
- (c) the circumstances in which the FCA may decide to suspend the review of a prospectus or other document;
- (d) the grounds on which the FCA may refuse to approve a prospectus or may determine that a constituent part of a prospectus cannot form part of a valid prospectus;
- (e) how and when a prospectus must be published;
- (f) the conditions that must be met for a prospectus, or constituent part of a prospectus, that does not require approval by the FCA to become valid;
- (g) the period during which an approved (or otherwise validated) or filed constituent part of a prospectus may form part of a valid prospectus;
- (h) the period of validity of a prospectus;
- (i) the disclosure of the maximum price or of the criteria or conditions according to which the final offer price is to be determined, if that information is not contained in a prospectus;
- (j) the disclosure of the amount of the transferable securities which are to be offered to the public or of the criteria or conditions according to which that amount is to be determined, if that information is not contained in a prospectus;
- (k) the manner in which applications to the FCA for approval of a prospectus are to be made;
- (l) the ways in which a prospectus may be made available to the public;
- (m) the disclosure, publication or other communication of other information;
- (n) the suspension of trading in transferable securities where continued trading would be detrimental to the interests of investors.

(3) Admission rules may require the market operator not to admit transferable securities to trading on a regulated market unless conditions specified in the rules are met.

(4) Paragraphs (1) to (3) do not limit regulation 13(1).

(5) No obligation under admission rules to publish a prospectus is to apply in relation to the admission to trading on a regulated market of transferable securities resulting from the conversion or exchange, directly or indirectly, of other securities, own funds or eligible liabilities by the Bank of England under—

- (a) Part 1 of the Banking Act 2009 (special resolution regime), or
- (b) Schedule [11] to the Financial Services and Markets Act 2023 (central counterparties).

Matters to which FCA must have regard when making certain rules

17. The desirability of facilitating offers of transferable securities in the United Kingdom being made to a wide range of investors is a matter specified for the purposes of section 138EA of the Act in relation to the making of—

- (a) admission rules, and
- (b) rules made by virtue of regulation 14.

Waiver or modification of rules

18. Designated activity rules made by virtue of these regulations may authorise the FCA to dispense with or modify the application of the rules in particular cases and by reference to any circumstances.

“Prospectus” and “supplementary prospectus”

19.—(1) In these Regulations “prospectus” means—

- (a) a document whose publication is required by admission rules and which is described by those rules as a prospectus;
- (b) any document whose publication is not required by admission rules but whose publication requires the prior approval of, [or validation by,] the FCA under admission rules and which is described by those rules as a prospectus,
- (c) a document whose publication is required by rules made by the operator of a primary MTF and which is described by those rules as a prospectus, or
- (d) a supplementary prospectus (see paragraph (2)).

(2) In these Regulations “supplementary prospectus” means—

- (a) a document whose publication is required by admission rules and which is described by those rules as a supplementary prospectus,
- (b) a document whose publication is required by rules made virtue of regulation 14(2)(d), or
- (c) a document whose publication is required by rules made by the operator of a primary MTF and which is described by those rules as a supplementary prospectus.

Responsibility for prospectus

20.—(1) The appropriate rules may make provision for determining the persons responsible for a prospectus.

(2) In paragraph (1) “the appropriate rules” means—

- (a) in relation to a prospectus falling within regulation 19(1)(a) or (b) or a supplementary prospectus falling within regulation 19(2)(a), admission rules;
- (b) in relation to a prospectus falling within regulation 19(1)(c) or a supplementary prospectus falling within regulation 19(2)(b) or (c), rules made by virtue of regulation 14(1).

General requirements to be met by a prospectus

21.—(1) A prospectus must contain the necessary information which is material to an investor for making an informed assessment of—

- (a) the assets and liabilities, profits and losses, financial position and prospects of the issuer and of any guarantor,
- (b) the rights attaching to the transferable securities, and
- (c) the reasons for the issuance and its impact on the issuer.

(2) That information may vary depending on—

- (a) the nature of the issuer,
- (b) the type of transferable securities,
- (c) the circumstances of the issuer, and
- (d) whether the issuer has transferable securities admitted to trading on a regulated market or primary MTF.

(3) The reference in paragraph (1)(a) to the prospects of the issuer and of any guarantor are to be read as including, where appropriate, a reference to the creditworthiness of the issuer and of any guarantor.

(4) Paragraph (5) applies in relation to non-equity securities which—

- (a) represent an interest in assets, including any rights intended to ensure the servicing of those assets or the receipt or the timely receipt by holders of those assets of the amounts payable under those assets,
- (b) are secured by assets and include terms providing for payments calculated by reference to those assets, or
- (c) give rise to payment or delivery obligations linked to assets.

(5) In the case of non-equity securities to which this paragraph applies, a prospectus must also contain the necessary information which is material to an investor for making an informed assessment of the prospects or creditworthiness of the underlying assets and, where appropriate, the prospects or creditworthiness of the obligor of the underlying assets.

(6) This regulation does not limit the further information that admission rules may require to be included in a prospectus.

Exemption from disclosure

22.—(1) The FCA may authorise the omission from a prospectus required by admission rules, or from a constituent part of such a prospectus, of any information whose inclusion would otherwise be required, on the ground that its disclosure would be contrary to the public interest.

(2) The Treasury may issue a certificate to the effect that the disclosure of any information would be contrary to the public interest.

(3) Any information to which such a certificate relates is not to be regarded as necessary information falling within regulation 21 for the purposes of a prospectus required in relation to the admission of transferable securities to trading on a primary MTF.

Consideration of applications

23.—(1) This regulation applies where a person has applied to the FCA under admission rules for approval of a prospectus or a constituent part of a prospectus.

(2) The FCA may by notice in writing require the applicant to provide—

- (a) specified documents or documents of a specified description, or
- (b) specified information or information of a specified description.

(3) Paragraph (2) applies only to information and documents reasonably required in connection with the exercise by the FCA of its functions relating to the application.

(4) The FCA may require any information provided under this regulation to be provided in such form as it may reasonably require.

(5) The FCA may require—

- (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
- (b) any document produced to be authenticated in such manner,

as it may reasonably require.

Procedure for decision to refuse an application

24.—(1) In this regulation “a relevant application” means an application to the FCA under admission rules for approval of a prospectus,

(2) If the FCA proposes to refuse a relevant application, it must give the applicant written notice.

(3) The notice must state the FCA’s reasons for the proposed refusal.

(4) If the FCA decides to refuse a relevant application, it must give the applicant written notice.

(5) The notice must—

- (a) give the FCA's reasons for refusing the application, and
 - (b) inform the applicant of the right to refer the matter to the Tribunal.
- (6) If the FCA refuses a relevant application, the applicant may refer the matter to the Tribunal.

Requirements as to information to be included in a particular prospectus

25.—(1) Where admission rules require the publication of a prospectus [or other document], the FCA may by notice in writing to the issuer, offeror or person requesting admission to trading on a regulated market—

- (a) require the inclusion in the prospectus [or other document] of such supplementary information necessary for investor protection as the FCA may specify;
 - (b) require a person controlling, or controlled by, the issuer, offeror or person requesting admission to trading to provide specified information or documents;
 - (c) require an auditor or manager of the issuer, offeror or person requesting admission to trading to provide specified information or documents;
 - (d) require a financial intermediary commissioned to assist in requesting the admission to trading on a regulated market of transferable securities to which the prospectus [or other document] relates, to provide specified information or documents.
- (2) “Specified” means specified in the notice.

Power to refuse approval of a prospectus

26.—(1) Where the FCA is satisfied that a person has repeatedly and seriously infringed provision within paragraph (2) (whether or not each infringement is of the same provision), the FCA may decide that, for a period not exceeding 5 years, the FCA will not accept from the person any application under admission rules for the approval of a prospectus.

(2) The provisions referred to in paragraph (1) are—

- (a) any provision of admission rules;
- (b) any provision of these Regulations;
- (c) any provision contained in or made under Part 6 of the Act;
- (d) section 89 of the Financial Services Act 2012^(a) (misleading statements);
- (e) section 90 of that Act (misleading impressions).

(3) If the FCA proposes that for a period it will not accept any application from a person for approval of a prospectus, the FCA must give the person a warning notice specifying the length of the proposed period.

(4) If the FCA decides for a period that it will not accept any application from a person for approval of a prospectus—

- (a) the FCA must give the person a decision notice,
- (b) the period starts with the date of the notice,
- (c) the person may refer that matter to the Tribunal, and
- (d) the notice must—
 - (i) be dated;
 - (ii) specify the length of the period;
 - (iii) state that the period begins with the date of the notice; and
 - (iv) state that the person may refer the matter to the Tribunal.

(a) 2012 c. 21.

(5) If the FCA decides not to accept any application from a person for the approval of a prospectus for a specified period, the person may refer the matter to the Tribunal.

Compensation for statements in prospectus etc

27.—(1) Any person responsible for a prospectus is liable to pay compensation to a person who has—

- (a) acquired transferable securities to which the prospectus applies, and
- (b) suffered loss in respect of them as a result of—
 - (i) any untrue or misleading statement in the prospectus, or
 - (ii) the omission from the prospectus of any matter that is required to be included by regulation 21.

(2) If a prospectus is required to include information about the absence of a particular matter, the omission from the prospectus of that information is to be treated as a statement in the prospectus that there is no such matter.

(3) Where the appropriate rules require a prospectus to include a summary containing key information, a person is not to be subject to liability solely on the basis of the summary unless the summary, when read with the rest of the prospectus—

- (a) is misleading, inaccurate or inconsistent, or
- (b) does not provide the key information that is required by the appropriate rules to be included in the summary.

(4) In paragraph (3), “summary” means anything that is described by the appropriate rules as a summary.

(5) Any person who fails to comply with a requirement of the appropriate rules relating to the publication of a supplementary prospectus is liable to pay compensation to any person who has—

- (a) acquired securities of the kind in question, and
- (b) suffered loss in respect of them as a result of the failure.

(6) In paragraph (5) the reference to a supplementary prospectus includes a reference to—

- (a) any document which the appropriate rules provide is to be treated for the purposes of that paragraph as if it were a supplementary prospectus, and
- (b) where the final terms of an offer are contained in a separate document that is neither a prospectus nor a supplementary prospectus, that separate document.

(7) In this regulation “the appropriate rules” means—

- (a) in the case of a prospectus relating to admission to trading on a regulated market, admission rules, or
- (b) in the case of a prospectus relating to admission to trading on a primary MTF—
 - (i) in paragraphs (3) and (4) rules made by the operator of the primary MTF, and
 - (ii) in paragraph (5) and (6)(a), rules made by the FCA by virtue of regulation 14.

(8) In Schedule 2—

- (a) Part 1 contains exemptions from liability under paragraphs (1) and (5),
- (b) Part 2 contains an exemption from liability under those paragraphs and from other liability.

(9) This regulation is subject to regulation 28.

Provisions supplementary to regulation 27

28.—(1) Regulation 27(1) to (6) and Part 1 of Schedule 2 do not affect any liability which may be incurred apart from regulation 27.

(2) References in regulation 27 to the acquisition by a person of transferable securities include references to the person's contracting to acquire them or any interest in them.

(3) A person (P) does not, by reason of being a promoter of a company or otherwise, incur any liability under regulation 27 for failing to disclose—

- (a) in a case where P is responsible for a prospectus, information which P is entitled to omit by virtue of regulation 22;
- (b) in a case where P is not responsible for a prospectus, information which P would not be required to disclose in a prospectus in respect of a company's securities if P were responsible for the prospectus.

(4) The reference in paragraph (3) to a person incurring liability includes a reference to any other person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.

Further powers of FCA

Withdrawal rights

29.—(1) A person who has agreed to buy or subscribe for relevant securities offered to the public may withdraw that acceptance in such circumstances and in such manner as may be specified in the appropriate rules.

(2) [Provision made in reliance on section 71P(2)(b) of FSMA 2000 about circumstances in which a transaction is void or unenforceable.]

(3) In paragraph (1) “the appropriate rules” means—

- (a) in the case of an offer made in connection with an admission, or proposed admission, to trading on a regulated market, admission rules,
- (b) in the case of an offer made in connection with an admission, or proposed admission, to trading on a primary MTF, rules made by virtue of regulation 14,
- (c) in any other case, rules made by virtue of regulation 15.

FCA's power to require information

30.—(1) The FCA may, by notice in writing given to a person, require the person—

- (a) to provide specified information or information of a specified description, or
- (b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified, and
- (b) at such place as may be specified.

(3) An officer who has written authorisation from the FCA to do so may require a relevant person without delay—

- (a) to provide the officer with specified information or information of a specified description, or
- (b) to produce to the officer specified documents or documents of a specified description.

(4) This regulation applies only to information and documents reasonably required by the FCA in connection with the exercise by the FCA of its functions under these regulations.

(5) The FCA may require any information provided under this regulation to be provided in such form as it may reasonably require.

(6) The FCA may require—

- (a) any information provided, whether in a document or otherwise, to be verified in such manner, or
- (b) any document produced to be authenticated in such manner,

as it may reasonably require.

(7) “Specified” means—

- (a) in paragraphs (1) and (2), specified in the notice, and
- (b) in paragraph (3), specified in the authorisation.

Powers exercisable to protect investors or advance FCA’s operational objectives

31.—(1) The FCA may give directions under section 71O of the Act to a person imposing on the person such requirements as the FCA considers appropriate in relation to the carrying on of any activity that is a designated activity by virtue of regulation 8, 9 or 10.

(2) The FCA may exercise the power conferred by virtue of paragraph (1) only if the FCA considers it desirable to do so for either or both of the following purposes—

- (a) protecting the interests of investors;
- (b) advancing any of its operational objectives.

(3) The power to impose requirements under section 71O of the Act by virtue of paragraph (1) include, in particular, power—

- (a) to require a person to suspend an offer of relevant securities to the public for a period specified in the direction;
- (b) to prohibit the offering of relevant securities to the public in circumstances specified in the direction;
- (c) to require a person not to advertise the offer, or to take such steps as the FCA may specify in the direction to suspend any existing advertisement for a period specified in the direction;
- (d) to require a person to withdraw an offer or an advertisement.

Power to suspend, restrict or prohibit offer to the public

32.—(1) This regulation applies where a person has made an offer of relevant securities to the public (“the offer”).

(2) If the FCA has reasonable grounds for suspecting that an applicable provision has been infringed, it may—

- (a) require the offeror to suspend the offer for a period not exceeding 10 working days;
- (b) require a person not to advertise the offer, or to take such steps as the FCA may specify to suspend any existing advertisement of the offer, for a period not exceeding 10 working days.

(3) If the FCA has reasonable grounds for suspecting that it is likely that an applicable provision will be infringed, it may require the offeror to withdraw the offer.

(4) If the FCA finds that an applicable provision has been infringed, it may require the offeror to withdraw the offer.

(5) “An applicable provision” means—

- (a) a provision of Part 6 of the Act;
- (b) a provision of these Regulations;
- (c) a provision of—
 - (i) admission rules, or
 - (ii) designated activity rules made by virtue of regulation 14 or 15.

(6) The FCA may require the offeror to suspend or restrict the offer on the ground that—

- (a) before the offer was made, the FCA had imposed a prohibition or restriction under Article 42 of the markets in financial instruments regulation in relation to any financial activity or practice of the offeror,

- (b) the FCA has decided to impose a prohibition or restriction under that Article in relation to the relevant securities to which the offer relates or any financial activity or practice of the offeror,
 - (c) before the offer was made, the FCA had found that a financial activity or practice of the offeror had contravened product intervention rules, or
 - (d) the FCA has decided that the offer, if not suspended or restricted, would be likely to result in a contravention of product intervention rules.
- (7) A requirement imposed under paragraph (6) ceases to have effect—
- (a) where it was imposed on the ground specified in paragraph (6)(a) or (b)—
 - (i) upon revocation of the prohibition or restriction under Article 42(6) of the markets in financial instruments regulation; or
 - (ii) when the FCA notifies the offeror that it is satisfied that the prohibition or restriction does not have, or no longer has, any bearing on the relevant securities to which the offer relates;
 - (b) where it was imposed on the ground specified in paragraph (6)(c), when the FCA notifies the offeror that it is satisfied that the contravention of product intervention rules does not have, or no longer has, any bearing on the relevant securities to which the offer relates;
 - (c) where it was imposed on the ground specified in subsection (6)(d), when the FCA notifies the offeror that it is satisfied that the offer, if no longer suspended or restricted, would not result in a contravention of product intervention rules;
 - (d) upon the FCA giving notice under regulation 35(5) revoking its decision to impose the requirement;
 - (e) where the FCA’s decision to impose the requirement is quashed on a reference to the Tribunal or in other legal proceedings, on the date of the judgment of the Tribunal or of the court concerned.
- (8) “Product intervention rules” has the same meaning as in section 137D of the Act.

Power to suspend, restrict or prohibit admission to trading on regulated market

33.—(1) This regulation applies where a person has requested the admission of transferable securities to trading on a regulated market.

(2) If the FCA has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have not yet been admitted to trading on the regulated market in question, it may—

- (a) require the person requesting admission to suspend the request for a period not exceeding 10 working days;
- (b) require a person not to advertise the securities to which it relates, or to take such steps as the FCA may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.

(3) If the FCA has reasonable grounds for suspecting that an applicable provision has been infringed and the securities have been admitted to trading on the regulated market in question, it may—

- (a) require the market operator to suspend trading in the securities for a period not exceeding 10 working days;
- (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.

(4) If the FCA finds that an applicable provision has been infringed, it may require the market operator to prohibit trading in the securities on the regulated market in question.

(5) “An applicable provision” means—

- (a) a provision of Part 6 of the Act;

- (b) a provision of these Regulations;
 - (c) a provision of admission rules.
- (6) Paragraphs (7) and (8) apply where—
- (a) before the request was made for the admission of the securities to trading on the regulated market in question (“the request”), the FCA had imposed a prohibition or restriction under Article 42 of the markets in financial instruments regulation in relation to any financial activity or practice of the person who made the request;
 - (b) the FCA has decided to impose a prohibition or restriction under that Article in relation to the securities or any financial activity or practice of the person who made the request;
 - (c) before the request was made, the FCA had found that a financial activity or practice of the person who made the request had contravened product intervention rules; or
 - (d) the FCA has decided that the admission of the securities to trading on the regulated market in question, if not suspended or restricted, would be likely to result in a contravention of product intervention rules.
- (7) Where the securities have not yet been admitted to trading on the regulated market in question, the FCA may—
- (a) require the person who made the request to suspend or restrict the request;
 - (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertising in connection with the securities.
- (8) Where the securities have been admitted to trading on the regulated market in question, the FCA may—
- (a) require the market operator to suspend or restrict trading in the securities;
 - (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertising in connection with the securities.
- (9) A requirement imposed under paragraph (7) or (8) ceases to have effect—
- (a) where it was imposed on the ground mentioned in paragraph (6)(a) or (b)—
 - (i) upon revocation of the prohibition or restriction under Article 42(6) of the markets in financial instruments regulation; or
 - (ii) when the FCA notifies the person who made the request that it is satisfied that the prohibition or restriction does not have, or no longer has, any bearing on the securities;
 - (b) where it was imposed on the ground mentioned in paragraph (6)(c), when the FCA notifies the person who made the request that it is satisfied that the contravention of product intervention rules does not have, or no longer has, any bearing on the securities;
 - (c) where it was imposed on the ground mentioned in paragraph (6)(d), when the FCA notifies the person who made the request that it is satisfied that the admission of the securities to trading on the regulated market in question, if no longer suspended or restricted, would not result in a contravention of product intervention rules;
 - (d) upon the FCA giving notice under regulation 35(5) revoking its decision to impose the requirement;
 - (e) where the FCA’s decision to impose the requirement is quashed on a reference to the Tribunal or in other legal proceedings, on the date of the judgment of the Tribunal or of the court concerned.
- (10) “Product intervention rules” has the same meaning as in section 137D of the Act.
- (11) Where the FCA considers that the financial or other situation of a person at whose request transferable securities have been admitted to trading on a regulated market is such that trading would be detrimental to the interests of investors, it may require the market operator to suspend trading in the securities.

Power to suspend or prohibit trading on primary MTF

34.—(1) This regulation applies in relation to the trading of transferable securities on a trading facility.

(2) If—

- (a) the FCA has reasonable grounds for suspecting that an applicable provision has been infringed, and
- (b) the securities have not yet been traded on the trading facility in question,

the FCA may require the person who proposes to trade the securities to suspend taking any action to implement the proposal for a period not exceeding 10 working days.

(3) If—

- (a) the FCA has reasonable grounds for suspecting that an applicable provision has been infringed, and
- (b) the securities have been traded on the trading facility in question,

the FCA may require the operator of the facility to suspend trading in the securities for a period not exceeding 10 working days.

(4) If the FCA finds that an applicable provision has been infringed, it may require the operator of the trading facility in question to prohibit trading in the securities on that trading facility.

(5) In this regulation—

“an applicable provision” means—

- (a) a provision of these Regulations, or
- (b) a provision of designated activity rules made by virtue of regulation 14;

“trading facility” means—

- (a) a UK multilateral trading facility as defined in Article 2(1)(14A) of the markets in financial instruments regulation, or
- (b) a UK organised trading facility as defined in Article 2(1)(15A) of the markets in financial instruments regulation.

Procedure under regulations 31 to 34

35.—(1) A requirement under any of regulations 31 to 34 takes effect—

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

(2) If the FCA—

- (a) proposes to exercise the powers in any of regulations 31 to 34 in relation to a person, or
- (b) exercises any of those powers in relation to a person with immediate effect,

it must give that person written notice.

(3) The notice must—

- (a) give details of the FCA’s action or proposed action;
- (b) state the FCA’s reasons for taking the action in question and choosing the date on which it took effect or takes effect;
- (c) inform the recipient that the recipient may make representations to the FCA within such period as may be specified by the notice (whether or not the recipient has referred the matter to the Tribunal);
- (d) inform the recipient of the date on which the action takes effect or took effect, and
- (e) inform the recipient of the recipient’s right to refer the matter to the Tribunal.

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

(5) If, having considered any representations made to it, the FCA decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in paragraph (2).

(6) A notice given under paragraph (5) must inform that person, where relevant, of the person's right to refer the matter to the Tribunal.

(7) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of procedure on such a reference.

(8) If a notice under this regulation relates to the exercise of the power conferred by regulation 33(3), the notice must also be given to the person at whose request the transferable securities were admitted to trading on the regulated market.

Public censure

36.—(1) If the FCA finds that—

- (a) an issuer of relevant securities,
- (b) a person offering relevant securities to the public, or
- (c) a person requesting the admission of transferable securities to trading on a regulated market,

is failing or has failed to comply with the person's obligations under an applicable provision, it may publish a statement to that effect.

(2) In this regulation "an applicable provision" means—

- (a) a provision of these Regulations, or
- (b) a provision of admission rules or of designated activity rules made by virtue of regulation 14 or 15.

Penalties for breach of rules

37.—(1) If the FCA finds that a person is failing or has failed to comply with the person's obligations under an applicable provision, it may impose on that person a penalty of such amount as it considers appropriate.

(2) If, in the case of a contravention by a company of an applicable provision, the FCA considers that a person who was at the material time a director of the company was knowingly concerned in the contravention, it may impose on that person a penalty of such amount as it considers appropriate.

(3) In this regulation "an applicable provision" means—

- (a) a provision of these Regulations, or
- (b) a provision of admission rules or of designated activity rules made by virtue of regulation 14 or 15.

Procedure under regulation 36 or 37

38.—(1) If the FCA proposes to take action against a person under regulation 36 or 37, it must give the person a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(3) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(4) If the FCA decides to take action against a person under regulation 36 or 37, it must give the person a decision notice.

(5) A decision notice about the publication of a statement must set out the terms of the statement.

(6) A decision notice about the imposition of a penalty must state the amount of the proposed penalty.

(7) If the FCA decides to take action against a person under regulation 36 or 37, the person may refer the matter to the Tribunal.

Statement of policy

39.—(1) The FCA must prepare and issue a statement of its policy with respect to—

- (a) the imposition of penalties under regulation 37, and
- (b) the amount of penalties under that regulation.

(2) The FCA's policy in determining what the amount of a penalty should be must include having regard to—

- (a) the seriousness of the contravention in question in relation to the nature of the requirement contravened,
- (b) the extent to which that contravention was deliberate or reckless, and
- (c) whether the person on whom the penalty is to be imposed is an individual.

(3) The FCA may at any time alter or replace its policy statement.

(4) If its policy statement is altered or replaced, the FCA must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under regulation 37 in the case of any particular contravention, the FCA must have regard to any policy statement published under this regulation and in force at the time when the contravention in question occurred.

(6) The FCA must publish a statement issued under this regulation in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) The FCA must, without delay, give the Treasury a copy of any policy statement which it publishes under this regulation.

Statements of policy: procedure

40.—(1) Before issuing a statement under regulation 39, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with paragraph (2).

(4) If the FCA issues the proposed statement, it must publish an account, in general terms, of—

- (a) the representations made to it in accordance with paragraph (2), and
- (b) its response to them.

(5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with paragraph (4)) publish details of the difference.

(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under paragraph (1).

(7) This regulation also applies to a proposal to alter or replace a statement.

PART 4

Amendments of primary and secondary legislation

Amendments of primary and secondary legislation

41. In Schedule 3—

- (a) Part 1 contains amendments of the Act;
- (b) Part 2 contains amendments of secondary legislation.

PART 5

Transitional provisions

Transitional provisions

42. [to be added].

Signatory text

Date

Two of the Lords Commissioners of His Majesty's Treasury

Name
Name

SCHEDULE 1

Regulation 11

Exceptions from prohibition on offers to the public

PART 1

Offers not contravening prohibition

General exceptions

1. An offer of relevant securities to the public where the total consideration for the relevant securities being offered in the United Kingdom cannot exceed [£.....] (or an equivalent amount).
2. An offer of relevant securities addressed solely to qualified investors.
3. An offer of relevant securities addressed to fewer than 150 persons in the United Kingdom, other than qualified investors.
4. An offer of relevant securities whose denomination per unit amounts to at least £50,000 (or an equivalent amount).
5. An offer of relevant securities addressed to investors who acquire securities for a total consideration of at least £100,000 (or an equivalent amount) per investor, for each separate offer.

Offer of transferable securities admitted or to be admitted to trading

6. An offer of transferable securities where—
 - (a) the offer is conditional on the admission of the transferable securities to trading on a regulated market or primary MTF, or
 - (b) the transferable securities are at the time of the offer admitted to trading on a regulated market or primary MTF.

Offer by means of regulated platform

7.—(1) An offer of relevant securities that is made by means of a regulated platform.

(2) “Regulated platform” means an electronic offer platform falling within Article [...] of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(a) operated by a person who has a Part 4A permission for the regulated activity specified in that article.

Offers to existing holders of equity securities

8. An offer of shares issued by a company in substitution for shares of the same class already issued, if the issuing of the new shares does not involve any increase in the issued share capital of the company.

9.—(1) [An offer of equity securities of a company incorporated in the United Kingdom that is made in accordance with sections 561 and 562 of the Companies Act 2006 to each person who holds ordinary shares in the company, and as respects which the following conditions are met.

(2) Condition A is that the equity securities offered are not, and are not proposed to be, admitted to trading on a regulated market or primary MTF.

(3) Condition B is that the offer is made in writing and includes or is accompanied by a written statement as to—

- (a) the securities being offered,
- (b) the terms of the offer,
- (c) the estimated gross proceeds of the offer,
- (d) the costs of making the offer, and
- (e) the proposed use of the net proceeds.

(4) In this paragraph “equity securities” and “ordinary shares” each has the same meaning as in Chapter 3 of Part 17A of the Companies Act 2006 (see section 560(1) of that Act).]

10. Dividends that are paid out to persons who hold shares in a company in the form of shares of the same class as the shares in respect of which the dividends are paid, where a written statement is made available on the number and nature of the shares and the reasons for and details of the offer.

Offers by other company in connection with takeovers etc

11.—(1) An offer by a company to all persons holding equity securities of another company (“the offeree company”) of equity securities of the offeror in exchange for equity securities of the offeree company, where the following conditions are met in relation to the offer.

(2) Condition A is that the equity securities offered are not, and are not proposed to be, admitted to trading on a regulated market or primary MTF.

(3) Condition B is that the offer includes or is accompanied by a written statement—

- (a) containing a description of the offeror and details of—
 - (i) the terms of the offer, including the securities offered, and
 - (ii) any fees or expenses payable by the offeror in connection with the offer,
- (b) describing the impact of the offer on the offeree company and on the group of the offeror,
- (c) stating the offeror’s intentions in relation to the business of the offeree company and any pension scheme of the offeree company, and
- (d) stating whether and in what manner the emoluments of the directors of the offeror would be affected by the acquisition of the offeree company or any other transaction associated with the offer.

(a) S.I. 2001/544.

Offer of securities to directors or employees

- 12.**—(1) An offer of relevant securities that—
- (a) is made to existing or former directors or employees—
 - (i) by their employer,
 - (ii) by an undertaking that is part of the same group as their employer, or
 - (iii) by a person who, in pursuance of an employee share scheme or a proposed employee share scheme, holds or will hold the securities as trustee, and
 - (b) includes or is accompanied by a statement containing information on—
 - (i) the number and nature of the securities, and
 - (ii) the reason for, and details of, the offer or allotment.

(2) In this paragraph “employee share scheme” has the meaning given in regulation 60(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005^(a).

Offer of loan notes in connection with a takeover

13.—(1) [An offer by a company to all persons holding equity securities of another company (“the offeree company”) of relevant securities consisting of loan notes issued by the offeror in exchange for equity securities of the offeree company, where the following conditions are met in relation to the offer.

- (2) Condition A is that the loan notes are offered as an alternative consideration to cash.
- (3) Condition B is that the loan notes are not, are and not proposed to be, admitted to trading on a regulated market or primary MTF.
- (4) Condition C is that the offer includes or is accompanied by a written statement containing details of the loan notes offered.]

Securities offered under banking or central counterparty special resolution regime

14. An offer of relevant securities resulting from the conversion or exchange, directly or indirectly, of other securities, own funds or eligible liabilities by the Bank of England under—

- (a) Part 1 of the Banking Act 2009 (special resolution regime), or
- (b) Schedule [11] to the Financial Services and Markets Act 2023 (central counterparties).

PART 2

Supplementary provisions relating to Part 1

15.—(1) In this Schedule “qualified investor”, in relation to an offer of relevant securities, means—

- (a) a person described in paragraph 3 of Schedule 1 to the markets in financial instruments regulation, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of that Schedule;
- (b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with paragraphs 5 and 6 of that Schedule and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of that Schedule;
- (c) a person who—

(a) S.I. 2005/1529.

- (i) is an eligible counterparty for the purposes of Section 6 of Chapter 3 of the Conduct of Business sourcebook, and
 - (ii) has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of Schedule 1 to the markets in financial instruments regulation; or
- (d) [a person whom—
- (i) any relevant firm was authorised to continue to treat as a professional client immediately before 3 January 2018 by virtue of Article 71.6 (transitional provisions) of Directive 2004/39/EC on markets in financial instruments, and
 - (ii) the firm was entitled immediately before IP completion day to continue to treat as a professional client by virtue of Section II.2 of Annex II to the markets in financial instruments directive.]

(2) In sub-paragraph (1)—

- (a) “relevant firm” means an investment firm or qualifying credit institution acting in connection with the offer;
- (b) the reference to the Conduct of Business sourcebook is a reference to that sourcebook in the Handbook of Rules and Guidance published by the FCA under the Act, as it has effect from time to time.

16. In determining whether paragraph 1 is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of relevant securities of the same class made by the same person which—

- (a) was open at any time within the period of 12 months ending with the date on which offer A is first made, and
- (b) had previously satisfied paragraph 1.

17. Where—

- (a) a person (“the client”) who is not a qualified investor has engaged a qualified investor falling within paragraph 3(a) of Schedule 1 to the markets in financial instruments regulation to act as the client’s agent, and
- (b) the terms on which the qualified investor is engaged enable the qualified investor to make decisions concerning the acceptance of offers of relevant securities on the client’s behalf without reference to the client,

an offer made or directed at the qualified investor is not to be regarded for the purposes of paragraph 2 or 3 as also having been made to or directed at the client.

18. For the purposes of paragraph 3, the making of an offer of relevant securities to—

- (a) trustees of a trust,
- (b) members of a partnership in their capacity as such, or
- (c) two or more persons jointly,

is to be treated as the making of an offer to a single person.

19.—(1) For the purposes of Part 1 of this Schedule, an amount is an “equivalent amount”, in relation to an amount denominated in sterling, if it is an amount of equal value denominated wholly or partly in another currency or unit of account.

(2) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.

Compensation: exemptions

PART 1

General exemptions

Statements believed to be true

- 1.—(1) In this paragraph “statement” means—
- (a) any untrue or misleading statement in a prospectus, or
 - (b) the omission from a prospectus of any matter required to be included by regulation 21.
- (2) A person (D) does not incur any liability under regulation 27(1) for loss caused by a statement if D satisfies the court—
- (a) that, at the time when the prospectus was published, D reasonably believed (having made such enquiries, if any, as were reasonable) that—
 - (i) the statement was true and not misleading, or
 - (ii) the matter whose omission caused the loss was properly omitted, and
 - (b) that one or more of the conditions set out in sub-paragraph (3) are satisfied.
- (3) The conditions are—
- (a) that D continued in D’s belief until the time when the transferable securities in question were acquired;
 - (b) that they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire them;
 - (c) that, before the transferable securities were acquired, D had taken all such steps as it was reasonable for D to have taken to secure that a correction was brought to the attention of those persons;
 - (d) that D continued in that belief until after the commencement of dealings in the transferable securities following their admission to trading and they were acquired after such a lapse of time that D ought in the circumstances to be reasonably excused.

Statements by experts

- 2.—(1) In this paragraph “statement” means a statement included in a prospectus which—
- (a) purports to be made by, or on the authority of, another person as an expert, and
 - (b) is stated to be included in the prospectus with that person’s consent.
- (2) A person (“D”) does not incur any liability under regulation 27(1) for loss in respect of any securities caused by a statement if D satisfies the court that, at the time when the prospectus was published, D reasonably believed—
- (a) that the other person—
 - (i) was competent to make or authorise the statement, and
 - (ii) had consented to its inclusion in the form and context in which it was included, and
 - (b) that one or more of the conditions set out in sub-paragraph (3) are satisfied.
- (3) The conditions are—
- (a) that D continued in D’s belief until the time when the transferable securities were acquired;
 - (b) that they were acquired before it was reasonably practicable to bring the fact that the expert was not competent, or had not consented, to the attention of persons likely to acquire the transferable securities in question;

- (c) that, before the transferable securities were acquired, D had taken all such steps as it was reasonable for D to have taken to secure that that fact was brought to the attention of those persons;
- (d) that D continued in D's belief until after the commencement of dealings in the transferable securities following their admission to trading and they were acquired after such a lapse of time that D ought in the circumstances to be reasonably excused.

Correction of statements

3.—(1) In this paragraph “statement” has the same meaning as in paragraph 1.

(2) A person (“D”) does not incur liability under regulation 27(1) for loss caused by a statement if D satisfies the court—

- (a) that before the transferable securities in question were acquired, a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the securities, or
- (b) that D took all such steps as it was reasonable for D to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(3) Nothing in this paragraph is to be taken as affecting paragraph 1.

Corrections of statements by experts

4.—(1) In this paragraph “statement” has the same meaning as in paragraph 2.

(2) A person (“D”) does not incur liability under regulation 27(1) for loss caused by a statement if D satisfies the court—

- (a) that before the transferable securities in question were acquired, the fact that the expert was not competent or had not consented had been published in a manner calculated to bring it to the attention of persons likely to acquire the transferable securities, or
- (b) that D took all such steps as it was reasonable for D to take to secure such publication and reasonably believed that it had taken place before the transferable securities were acquired.

(3) Nothing in this paragraph is to be taken as affecting paragraph 2.

Official statements

5.—(1) A person (“D”) does not incur any liability under regulation 27(1) for loss resulting from—

- (a) a statement made by an official person which is included in the prospectus, or
- (b) a statement contained in a public official document which is included in the prospectus,

if D satisfies the court that the statement is accurately and fairly reproduced.

False or misleading information known about

6. A person (“D”) does not incur any liability under regulation 27(1) or (5) if D satisfies the court that the person suffering the loss acquired the transferable securities in question with knowledge—

- (a) that the statement was false or misleading,
- (b) of the omitted matter, or
- (c) of the change or new matter,

as the case may be.

Belief that supplementary prospectus not called for

7.—(1) A person (D) does not incur any liability under regulation 27(5) if D satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for a supplementary prospectus.

(2) In this paragraph “supplementary prospectus” includes a document falling within regulation 27(6)(b).

Meaning of “expert”

8. “Expert” includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by the person.

PART 2

Further exemption relating to forward-looking statement

“Protected forward-looking statement”

9.—(1) In this paragraph “forward-looking statement” means—

- (a) a statement containing a projection or estimate,
- (b) a statement of opinion as to future events or circumstances, or
- (c) a statement of intention.

(2) A forward-looking statement in a prospectus is a “protected forward-looking statement” for the purposes of this Part of this Schedule if it—

- (a) is of a kind specified by the FCA for the purposes of this paragraph in the appropriate rules, and
- (b) is accompanied by a statement, in such form as may be required by the appropriate rules, which identifies the statement as a protected forward-looking statement for the purposes of this Part of this Schedule.

(3) In paragraph (2), “the appropriate rules” means—

- (a) in relation to a regulated market, admission rules, and
- (b) in relation to a primary MTF, rules made by virtue of regulation 14.

Exemption from liability

10.—(1) Unless the condition in paragraph (2) is met, a person responsible for a prospectus (“R”)—

- (a) does not incur any liability under regulation 27(1) or (5) in respect of any loss caused by a protected forward-looking statement, and
- (b) is not subject to any other liability in respect of any loss caused by such a statement.

(2) The condition is that, at any time in the relevant period, R—

- (a) knew the protected forward-looking statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
- (b) knew the omission from the protected forward-looking statement to be a dishonest concealment of a material fact.

(3) “The relevant period” is the period beginning with the time when the prospectus is published and ending with the later of—

- (a) the closure of the offer to which the prospectus relates, and
- (b) the commencement of dealings in the transferable securities following their admission to trading on the regulated market or primary MTF.

(4) For the purposes of sub-paragraph (2)(b), a person’s conduct is regarded as dishonest if (and only if)—

- (a) it is regarded as dishonest by persons who regularly trade on the regulated market or primary MTF in question, and
- (b) the person was aware (or must be taken to have been aware) that it was so regarded.

(5) In sub-paragraph (1) the reference to liability, in relation to a person, includes a reference to another person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.

(6) This paragraph does not affect—

- (a) civil liability under rules made under section 954 of the Companies Act 2006;
- (b) liability to a civil penalty;
- (c) criminal liability;
- (d) the powers conferred by section 382 and 384 of the Act (powers of the court to make a restitution order and of the FCA to require restitution); or
- (e) any rights conferred as a result of rules made by virtue of regulation 29.

SCHEDULE 3

Regulation 41

Amendments of primary and secondary legislation

PART 1

Amendments of Financial Services and Markets Act 2000

1. The Act is amended as follows.
2. In section 73A (Part 6 rules), omit subsections (4) and (5).
3. In section 79 (listing particulars and other documents), in subsection (3A), for the words from “an approved” to the end substitute “a prospectus is required as a result of rules made by virtue of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023”.
4. For the italic heading immediately before section 84 substitute “Contravention of prohibition relating to public offer of securities”.
5. Omit section 84 (matters which may be dealt with by prospectus rules).
- 6.—(1) Section 85 (prohibition of dealing etc in transferable securities without approved prospectus) is amended as follows.
 - (2) For the heading, substitute “Contravention of prohibition relating to public offer of securities”.
 - (3) Omit subsections (1) and (2).
 - (4) In subsection (3), for “subsection (1) or (2)” substitute “regulation 11 of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023 (prohibition on public offers of relevant securities)”.
 - (5) In subsection (4), for “subsection (1) or (2)” substitute “regulation 11 of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023”.
 - (6) Omit subsections (5) to (7).
7. Omit sections 86 to 87LA.
8. [Amendment of section 87M.]
9. Omit section 87O (procedure under sections 87JA, 87K, 87L and 87LA).
- 10.—(1) Section 90 (compensation for statements in listing particulars or prospectus) is amended as follows.
 - (2) In the heading, omit “or prospectus”.

- (3) Omit subsections (11), (11A) and (12).
- 11.**—(1) Section 91 of the Act (penalties for breach of Part 6 rules) is amended as follows.
- (2) Omit subsection (1A).
- (3) In subsection (2), omit “(1A) or”.
- 12.** [Amendment of section 97].
- 13.** [Amendment of section 97A]
- 14.** In section 102A (meaning of “securities” etc.), omit subsection (6)(a).
- 15.** Omit section 102B (meaning of “offer of transferable securities to the public”).
- 16.** In section 103 (interpretation of Part 6), in subsection (1), omit the following definitions—
- “offer of transferable securities to the public”;
 - “the prospectus regulation”;
 - “prospectus rules”;
 - “supplementary prospectus”;
 - “working day”.
- 17.** In section 138E (limits on effect of contravening rules), after subsection (3) insert—
- “(4) Subsection (2) is subject to any provision made by virtue of regulation 29 of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023 (withdrawal rights in connection with public offers of securities).”
- 18.** In section 391 (publication), omit subsection (8G).
- 19.** Omit section 391F (publication: special provisions relating to prospectus regulation).
- 20.** In section 395 (FCA’s and PRA’s procedures), in subsection (13)—
- (a) omit paragraph (bb), and
 - (b) at the end insert—
- “(j) regulation 35 of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023.”
- 21.** In Schedule 10A (liability of issuers in connection with published information), in paragraph 7(3)(a)—
- (a) in paragraph (i), omit “or prospectus”, and
 - (b) after that paragraph insert—
- “(ia) under regulation 27 of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023,”.
- 22.** Omit Schedule 11A (transferable securities).

PART 2

Amendments of secondary legislation

23. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005^(a) is amended as follows.

(a) S.I. 2005/1529.

24.—(1) Article 68 (promotions in connection with admission to certain UK and EEA markets) is amended as follows.

(2) In paragraph (1)(c), for “prospectus rules made under Part VI of the Act” substitute “admission rules”.

(3) After paragraph (2) insert—

“(3) In this article “admission rules” means designated activity rules made by virtue of regulation 13 of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023.”.

25.—(1) Article 70 (promotions included in listing particulars etc.) is amended as follows.

(2) In paragraph (1), for sub-paragraphs (c) and (d) substitute—

“(c) a prospectus or supplementary prospectus published in accordance with admission rules;

(d) any other document required or permitted to be published—

(i) by listing rules under Part 6 of the Act, or

(ii) by admission rules,

except an advertisement as defined in regulation 2 of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023.”.

(3) Omit paragraph (1A).

(4) For paragraph (2) substitute—

“(2) In this article—

(a) “listing particulars” and “listing rules” have the meaning given by Part 6 of the Act;

(b) “admission rules” means designated activity rules made by virtue of regulation 13 of the Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023.”.

26. [Further amendments to be added.]