

Draft Regulations laid before Parliament under sections 71S(2) and 429(2) and (2A) of, and paragraph 26(2)(a) of Schedule 2 to, the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2023 No. XXX

FINANCIAL SERVICES AND MARKETS

The Public Offers and Admissions to Trading Regulations 2023

Made - - - - *****

Coming into force in accordance with regulation 2

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The Treasury make these regulations in exercise of the powers conferred by sections 21, 22(1) and (5), 71K, 71L, 71M, 71N, 71O, 71P, 71Q, 71R, 138EA(3) and 428(3) of, and paragraph 25 of Schedule 2 to, the Financial Services and Markets Act 2000(a) and section 78(5) of the Financial Services and Markets Act 2023(b).

In the opinion of the Treasury, one of the effects of these regulations is that an activity which is not a regulated activity (within the meaning of the Financial Services and Markets Act 2000) will become a regulated activity.

In accordance with sections 71S(2) and 429(2) and (2A) of, and paragraph 26(2)(a) of Schedule 2 to, the Financial Services and Markets Act 2000(c), a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation and extent

1.—(1) These Regulations may be cited as the Public Offers and Admissions to Trading Regulations 2023.

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

(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(2)] of that Act.

(b) 2023 c. **.

(c) Subsections (2A) and (2B) of section 429 were inserted by section 136 of the Financial Services (Banking Reform) Act 2013 (c. 33). Subsection (2) was amended by section [29(5)] of the Financial Services and Markets Act 2023 and subsection (2B)(aa) and (ab) are inserted by section [8(8)(a)] of that Act. There are other amendments that are not relevant.

Commencement

2.—(1) The following provisions of these Regulations come into force on the day after that on which these Regulations are made (“the initial commencement day”)—

- (a) this Part, and
- (b) Part 2 (designated activities).

(2) The remaining provisions of these Regulations come into force on the initial commencement day for the following purposes only—

- (a) enabling the FCA—
 - (i) to make or approve rules,
 - (ii) to give guidance,
 - (iii) to give directions, or
 - (iv) to issue statements of policy;
- (b) enabling applications for—
 - (i) a Part 4A permission under section 55A of FSMA 2000(a),
 - (ii) a variation of a Part 4A permission under section 55H or 55I of FSMA 2000(b), or
 - (iii) approval under Part 5 of FSMA 2000,
to be made and determined in relation to an activity which by virtue of these Regulations is to become a regulated activity specified by article 25DB of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c);
- (c) enabling the FCA to exercise its powers under Part 4A(d) or 5 of FSMA 2000 in relation to any such activity.

(3) So far as not already in force by virtue of paragraph (1) or (2), these Regulations come into force on the day on which the revocation of the prospectus regulation by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 comes into force (“the main commencement day”).

Interpretation

3. In these Regulations—

“FSMA 2000” means the Financial Services and Markets Act 2000(e);

“advertisement” means a communication which—

- (a) relates to—
 - (i) a specific offer of relevant securities to the public, or
 - (ii) an admission, or proposed admission, of transferable securities to trading on a regulated market or primary MTF,
- (b) aims specifically to promote the potential subscription for, or acquisition of, relevant securities, and

(c) is not a prospectus or an MTF admission prospectus;

and “advertise” has a corresponding meaning;

“equity securities”, except in paragraph 10 of Schedule 1, means—

- (a) transferable securities that are shares in companies,

(a) Section 55A was inserted by section 11 of the Financial Services Act 2012 (c. 21) and amended by S.I. 2018/135 and S.I. 2018/1149.

(b) Sections 55H and 55I were inserted by section 11 of the Financial Services Act 2012 (c. 21). There are amendments which are not relevant.

(c) S.I. 2001/544. Article 25DB is inserted by regulation 46 of these Regulations.

(d) Part 4A was inserted by section 11(2) of the Financial Services Act 2012.

(e) 2000 c. 8.

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

“initial commencement day” has the meaning given in regulation 2(1);

“issuer”, in relation to—

- (a) an offer of relevant securities to the public, or
- (b) 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;

“main commencement day” has the meaning given in regulation 2(3);

“market operator”, in relation to a regulated market, has the same meaning as in Part 6 of FSMA 2000 (see section 103(1) of that Act)(a);

“MTF admission prospectus” has the meaning given in regulation 21(3);

“non-equity securities” means relevant 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 8;

“prospectus” has the meaning given in regulation 21(1);

“the prospectus regulation” means Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC(b);

“regulated market”, except in regulation 7(5)(a), has the same meaning as in Part 18 of FSMA 2000 (see section 313(1) of that Act)(c);

“regulated market admission rules” has the meaning given in regulation 14(2);

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

“supplementary prospectus” has the meaning given in regulation 21(4);

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

“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(d) in any part of the United Kingdom.

“Transferable securities”

4. 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;

(a) There are amendments of section 103(1) but none is relevant.

(b) EUR 2017/1129; amended by S.I. 2019/1234 and S.I. 2021/1376.

(c) The definition of “regulated market” was inserted by S.I. 2007/126 and substituted by S.I. 2019/662.

(d) 1971 c. 80.

- (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”

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

- (a) transferable securities, other than excluded securities, and
- (b) investments that—
 - (i) are of a kind specified for the purposes of section 22 of FSMA 2000 (regulated activities) as a result of article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(a) (instruments creating or acknowledging indebtedness), but
 - (ii) are not transferable securities or excluded securities.

(2) In this regulation “excluded securities” has the meaning given in regulation 6.

Meaning of “excluded securities” in regulation 5

6.—(1) In regulation 5 “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.

(a) S.I. 2001/544. Article 77 was amended by S.I. 2010/86 and revoked in part by S.I. 2011/133.

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

“Offer of relevant securities to the public”

7.—(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) 2011. c. 25.

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

(c) 1985 c. 68.

(d) 1985 c. 69.

(e) S.I. 1992/1725 (N.I. 15).

(f) 2014 c. 14.

(g) 1969 c. 24 (N.I.). Section 1 was substituted, and the short title of the Act amended, by s. 8 of the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16).

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

“Primary MTF”

8.—(1) In these Regulations “primary MTF” means a multilateral trading facility which meets the conditions in paragraph (2).

(2) The conditions are—

- (a) that the operator of the multilateral trading facility maintains rules which relate to each of the following—
 - (i) the eligibility of issuers,
 - (ii) the conditions for admission to trading, including information to be published, and
 - (iii) requirements to be complied with in order to maintain the admission to trading, and
- (b) that the issuers of transferable securities that are to be admitted to trading on the multilateral trading facility are required to comply with those rules.

(3) In this regulation “multilateral trading facility” has the same meaning as in Part 18 of FSMA 2000 (see section 313(1) of that Act)^(d).

PART 2

Designated activities

Designated activities: public offers of relevant securities

9. The following activities are specified under section 71K of FSMA 2000^(e) as designated activities for the purposes of that 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

10. The following activities are specified under section 71K of FSMA 2000 as designated activities for the purposes of that 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 the admission, or proposed admission, of transferable securities to trading on a regulated market;
- (d) admitting transferable securities to trading on a regulated market.

(a) 1986 c. 45.

(b) S.I. 1989/2405 (N.I. 19).

(c) 2006 c. 46. Part 26A was inserted by paragraph 1 of Schedule 9 to the Corporate Insolvency and Governance Act 2020 (c. 12).

(d) The definition of “multilateral trading facility” was inserted by S.I. 2007/126 and substituted by S.I. 2019/662.

(e) Section 71K is inserted by section [8(2)] of the Financial Services and Markets Act 2023 (c. **).

Designated activities: admissions to trading on primary MTF

11. The following activities are specified under section 71K of FSMA 2000 as designated activities for the purposes of that 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) 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

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

- (a) the offer is of a kind specified in Part 1 of Schedule 1, or
- (b) the offer is of a kind that consists entirely of a combination of 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

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

- (a) the offer—
 - (i) is of any of the kinds specified in paragraphs 1 to 11 and 13 of Schedule 1, and
 - (ii) is not also of the kind specified in paragraph 12 of that Schedule, and
- (b) the total consideration for the relevant securities being offered in the United Kingdom can amount, in value, to at least £1,000,000, or an equivalent amount (see paragraph (4)).

(2) In the event that material information is disclosed by, or on behalf of, 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—
 - (i) the offer is of the kind specified in paragraph 6 of Schedule 1, and
 - (ii) designated activity rules, or rules made by the operator of a primary MTF, require the publication of a prospectus, MTF admission prospectus or other document,
be included in the prospectus, MTF admission prospectus or other document or in a supplement to the prospectus, MTF admission prospectus or other document;
- (b) in any other case, be disclosed to all other investors to whom the offer is addressed.

(3) In determining whether an offer (“offer A”) falls within paragraph (1)(b), offer A is to be taken together with any other offer of relevant securities issued or to be issued by the same offeror which was open at any time within the period of 12 months ending with the day on which offer A is first made.

(4) Paragraph 18 of Schedule 1 (meaning of an “equivalent amount”) applies for the purposes of paragraph (1)(b) as it applies for the purposes of Part 1 of that Schedule.

FCA rules relating to admissions to trading on regulated market

- 14.**—(1) The FCA may make designated activity rules relating to—
- (a) the carrying on of any of the activities specified in regulation 9—
 - (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 10.
- (2) Designated activity rules made by virtue of this regulation are referred to in these Regulations as “regulated market admission rules”.

FCA rules relating to admissions to trading on primary MTF

- 15.**—(1) The FCA may make designated activity rules relating to—
- (a) the carrying on of any of the activities specified in regulation 9—
 - (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 11.
- (2) Designated activity rules made by virtue of this regulation may make provision—
- (a) requiring the operator of a primary MTF that does not meet the qualified investor condition in regulation 16 to include in its rules provision requiring the issuer of transferable securities, a person making an offer of transferable securities to the public, or a person requesting the admission of transferable securities to trading —
 - (i) in such cases as may be specified in the designated activity rules, to publish a document described as an MTF admission prospectus, as a condition of the admission of the transferable securities to trading on a primary MTF, and
 - (ii) in such cases as may be so specified, to publish a supplementary prospectus;
 - (b) relating to the communication of an advertisement relating to the admission, or proposed admission, of transferable securities to trading on a primary MTF.
- (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 22 (responsibility for prospectus or MTF admission prospectus),
 - (b) regulation 32 (withdrawal rights), and
 - (c) paragraph 9 of Schedule 2 (protected forward-looking statements).
- (4) Designated activity rules made by virtue of this regulation may not require an MTF admission prospectus, or a supplementary prospectus relating to an MTF admission prospectus, to be reviewed or approved by the FCA.

Qualified investor condition in regulation 15(2)(a)

- 16.**—(1) For the purposes of regulation 15(2)(a), “the qualified investor condition” is that the rules of the primary MTF provide that—
- (a) only qualified investors are permitted to trade on the primary MTF, and

- (b) no qualified investor is permitted to trade on the primary MTF when acting (directly or through one or more intermediaries) on behalf of persons who are not themselves qualified investors.

(2) Where—

- (a) a person who is not a qualified investor (“the client”) 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 trading on a primary MTF on the client’s behalf without reference to the client,

trading on the primary MTF by or on behalf of the qualified investor is not to be treated for the purposes of paragraph (1) as done on behalf of the client.

(3) In this regulation “qualified investor” means—

- (a) a person described in paragraph 3 of Schedule 1 to the markets in financial instruments regulation^(a), other than a person who has agreed in writing with a relevant firm 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 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—
 - (i) is an eligible counterparty for the purposes of Section 6 of Chapter 3 of the Conduct of Business sourcebook, and
 - (ii) has not agreed in writing with a relevant firm 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) a 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 of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, 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 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

(4) In paragraph (3)—

- (a) “relevant firm”, in relation to a person, means an investment firm or qualifying credit institution which (in either case)—
 - (i) is the operator of a primary MTF, or
 - (ii) is to trade on a primary MTF on the person’s behalf;
- (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 FSMA 2000, as it has effect from time to time.

^(a) Schedule 1 was inserted by S.I. 2018/1403.

FCA rules relating to public offers unconnected with admissions to trading

17. The FCA may also make designated activity rules relating to the carrying on of any of the activities specified in regulation 9 in cases where the offer of relevant securities to the public does not fall within regulation 14(1)(a) or 15(1)(a).

Further provision about regulated market admission rules

- 18.—(1) Regulated market 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 in 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 relating to the offer;
 - (e) requiring that before a prospectus or supplementary 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 be included in a database made available to the public by the FCA;
 - (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) Regulated market admission rules may also make provision as to—
- (a) the form and content of a prospectus, including any constituent part of, summary of, or supplement to, a prospectus;
 - (b) the procedure for the review by the FCA of a prospectus, supplementary 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 supplementary prospectus or may determine that a constituent part of a prospectus cannot form part of a valid prospectus;
 - (e) how and when a prospectus or supplementary prospectus must be published;
 - (f) the conditions that must be met for a prospectus, a constituent part of a prospectus, or a supplementary prospectus to become valid in a case where the rules do not require it to be approved by the FCA;
 - (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 or supplementary prospectus are to be made;
- (l) the ways in which a prospectus or supplementary prospectus may be made available to the public;
- (m) the disclosure, publication or other communication of other information relating to—
 - (i) transferable securities already admitted to trading on a regulated market, or
 - (ii) the admission of transferable securities to trading on a regulated market;
- (n) the suspension of trading in transferable securities where continued trading would be detrimental to the interests of investors.

(3) Regulated market 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 14(1).

(5) No obligation under regulated market 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 other liabilities under—

- (a) Part 1 of the Banking Act 2009 (special resolution regime)(a), 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

19. 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 FSMA 2000 in relation to the making of—

- (a) regulated market admission rules, and
- (b) rules made by virtue of regulation 15.

Waiver or modification of rules

20. 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.

Prospectuses

“Prospectus”, “MTF admission prospectus” and “supplementary prospectus”

21.—(1) In these Regulations “prospectus” (except in the expression “MTF admission prospectus”) means either of the following—

- (a) a document whose publication is required by regulated market admission rules and which is described by those rules as a prospectus;
- (b) a document whose publication is not required by regulated market admission rules but which is described by those rules as a prospectus and whose publication requires—
 - (i) the prior approval of the FCA under regulated market admission rules, or
 - (ii) validation in accordance with regulated market admission rules.

(a) 2009 c. 1.

(2) In these Regulations, except in regulations 30 and 31 and Schedule 2 (which relate to liability for statements in a prospectus), “prospectus” does not include an MTF admission prospectus.

(3) In these Regulations “MTF admission prospectus” means a document whose publication is required by rules made by the operator of a primary MTF (whether or not as a result of regulation 15(2)(a)(i)) and which is described by those rules as an MTF admission prospectus.

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

- (a) a document whose publication is required by regulated market admission rules and which is described by those rules as a supplementary prospectus, or
- (b) a document whose publication is required by rules made by the operator of a primary MTF (whether or not as a result of regulation 15(2)(a)(ii)) and which is described by those rules as a supplementary prospectus.

(5) In these Regulations—

- (a) any reference to a prospectus is to be read, in a case where a supplementary prospectus has been published in relation to it, as a reference to the prospectus together with the supplementary prospectus, and
- (b) any reference to an MTF admission prospectus is to be read, in relation to a case where a supplementary prospectus has been published in relation to it, as a reference to the MTF admission prospectus together with the supplementary prospectus.

Responsibility for prospectus or MTF admission prospectus

22.—(1) Regulated market admission rules may make provision for determining the persons responsible for—

- (a) a prospectus, or
- (b) a supplementary prospectus falling within regulation 21(4)(a).

(2) Rules made by virtue of regulation 15 may make provision for determining the persons responsible for—

- (a) an MTF admission prospectus, or
- (b) a supplementary prospectus falling within regulation 21(4)(b).

General requirements to be met by a prospectus or MTF admission prospectus

23.—(1) A prospectus or MTF admission 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 transferable securities issued by the issuer have already been 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, in relation to debt securities, as 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, the information referred to in paragraph (1) includes the necessary information which is material to an investor for making an informed assessment of the underlying assets, including—

- (a) the creditworthiness of the obligor of the underlying assets, or
- (b) where the underlying assets are shares or securities equivalent to shares, the prospects of the issuer of the underlying assets.

(6) Paragraph (5) does not limit paragraphs (1) and (2).

(7) This regulation does not limit the further information that—

- (a) regulated market admission rules may require to be included in a prospectus, or
- (b) rules made by the operator of a primary MTF may require to be included in an MTF admission prospectus.

(8) In this regulation “debt securities” means bonds or other forms of transferable securitised debts, except—

- (a) transferable securities which are equivalent to shares, and
- (b) transferable securities which, if converted or if the rights conferred by them are exercised, give rise to a right to acquire—
 - (i) shares, or
 - (ii) transferable securities which are equivalent to shares.

Issuers established outside UK: presentation of historical financial information

24.—(1) This regulation applies where regulated market admission rules require a prospectus to include historical financial information for an issuer established in a country outside the United Kingdom.

(2) The historical financial information must be presented in accordance with one of the following accounting standards—

- (a) UK-adopted international accounting standards;
- (b) International Financial Reporting Standards adopted pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards^(a), as it applies in the European Union;
- (c) International Financial Reporting Standards, but only if the notes to the audited financial statements that form part of the historical financial information contain an explicit and unreserved statement that the financial statements comply with International Financial Reporting Standards in accordance with IAS 1 Presentation of Financial Statements;
- (d) Generally Accepted Accounting Principles of Japan;
- (e) Generally Accepted Accounting Principles of the United States of America;
- (f) Generally Accepted Accounting Principles of the People’s Republic of China;
- (g) Generally Accepted Accounting Principles of Canada;
- (h) Generally Accepted Accounting Principles of the Republic of Korea;

(a) OJ no. L243, 11.9.2002, p. 1.

- (i) national accounting standards of a country that are equivalent to UK-adopted international accounting standards in accordance with a determination made by the Treasury in regulations under Commission Regulation (EC) No 1569/2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council^(a).

(3) If the historical financial information is not prepared in accordance with the required standards, the financial statements must be restated in compliance with UK-adopted international accounting standards, but this is subject to paragraph (4).

(4) Regulated market admission rules may, in such cases as may be specified in the rules, exempt an issuer whose historical financial information is not prepared in accordance with the required standards from the duty imposed by paragraph (3).

(5) Where a person is required by regulated market admission rules to disclose information in relation to transferable securities as if the person were the issuer of those securities, paragraph (4) applies in relation to the person as it applies in relation to an issuer of transferable securities.

(6) Where an exemption given under paragraph (4) by regulated market admission rules is relied on, the prospectus must include—

- (a) a statement—
 - (i) that the financial information included in the document has not been prepared in accordance with UK-adopted international accounting standards, and
 - (ii) that, if the historical financial information had been prepared in accordance with UK-adopted international accounting standards, there might have been material differences in the financial information, and
- (b) a narrative description of the differences between UK-adopted international accounting standards and the accounting principles adopted by the issuer in preparing its annual financial statements.

(7) In this regulation “UK-adopted international accounting standards” has the meaning given in section 474(1) of the Companies Act 2006 (minor definitions for Part 15)^(b).

Exemptions from disclosure

25.—(1) The FCA may authorise the omission from a prospectus required by regulated market admission rules 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 23 for the purposes of an MTF admission prospectus.

Consideration of applications

26.—(1) This regulation applies where a person has applied to the FCA under regulated market admission rules for approval of a prospectus.

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

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

(3) In paragraph (2), “specified” means specified in the notice.

(a) EUR 2007/1569. Amended by S.I. 2019/207.

(b) 2006 c. 46. The definition was inserted by S.I. 2019/685, Sch. 1, para. 21(d).

(4) 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.

(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, or
- (b) any document produced to be authenticated,

in such manner as it may reasonably require.

Procedure for decision to refuse an application

27.—(1) In this regulation, “a relevant application” means an application to the FCA under regulated market admission rules for approval of a prospectus or supplementary 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 to include information or to provide information or documents

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

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

(2) In paragraph (1), “specified” means specified in the notice.

Power to refuse to accept applications or to prohibit validation or publication

29.—(1) Where the FCA is satisfied that a person has repeatedly and seriously contravened any provision within paragraph (2) (whether or not each contravention is of the same provision), the FCA may decide that, for a period not exceeding 5 years—

- (a) the FCA will not accept from the person any application under regulated market admission rules for the approval of a prospectus,
- (b) the FCA will not engage in any process initiated by the person for validation of a prospectus under regulated market admission rules, and
- (c) the person is not permitted—
 - (i) to publish a prospectus,

- (ii) to attempt to have a prospectus approved, or
- (iii) to have a prospectus validated.

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

- (a) any provision of regulated market admission rules;
- (b) any provision of these Regulations;
- (c) any provision contained in or made under Part 6 of FSMA 2000;
- (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 the restrictions in paragraph (1) are to apply in relation to a person, the FCA must give the person a warning notice specifying the length of the proposed period.

(4) If the FCA decides that for a period the restrictions in paragraph (1) are to apply in relation to a person—

- (a) the FCA must give the person a decision notice,
- (b) the period starts with the date of the notice, and
- (c) 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.

(5) If the FCA decides that for a specified period the restrictions in paragraph (1) are to apply in relation to a person, the person may refer the matter to the Tribunal.

Compensation for statements in prospectus etc

30.—(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 23.

(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) 2012 c. 21.

- (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 “prospectus” includes an MTF admission prospectus.
- (8) In this regulation “the appropriate rules” means—
- (a) in the case of a prospectus relating to admission to trading on a regulated market, regulated market admission rules, or
 - (b) in the case of an MTF admission prospectus, rules made by the operator of the primary MTF.
- (9) In Schedule 2—
- (a) Part 1 relates to the interpretation of the Schedule,
 - (b) Part 2 contains exemptions from liability under paragraphs (1) and (5), and
 - (c) Part 3 contains exemptions from liability under those paragraphs and from other liability.
- (10) This regulation is subject to regulation 31.

Provisions supplementary to regulation 30

31.—(1) Regulation 30(1) to (6) and Part 1 of Schedule 2 do not affect any liability which may be incurred apart from regulation 30.

(2) References in regulation 30 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 incur any liability under regulation 30 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 25;
- (b) in a case where P is not responsible for a prospectus, information which P would not be required to disclose in a prospectus 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.

(5) In this regulation “prospectus” includes an MTF admission prospectus.

Further powers of FCA

Withdrawal rights

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

(2) Regulated market admission rules or rules made by virtue of regulation 17 may include provision requiring the offeror, or an intermediary through whom the relevant securities are bought or subscribed for, to take such steps as may be specified in the rules in question to inform any person entitled to withdraw an acceptance of any right conferred by virtue of paragraph (1).

(3) Rules made by virtue of regulation 15 may require the operator of a primary MTF to include in its rules provision requiring the offeror, or an intermediary through whom the relevant securities are bought or subscribed for, to take such steps as may be specified in the rules to inform any person entitled to withdraw an acceptance of any right conferred by virtue of paragraph (1).

(4) The appropriate rules may provide that, in the event of a failure by the offeror or an intermediary to comply with any duty imposed under paragraph (2) or by virtue of paragraph (3), any transaction resulting from the person's acceptance of the offer is to be void or unenforceable.

(5) In paragraphs (1) and (4) "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, 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 15,
- (c) in any other case, rules made by virtue of regulation 17.

(6) This regulation does not limit any rights that a person falling within paragraph (1) may have apart from this regulation.

FCA's power to require information

33.—(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 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) "Officer" means an officer of the FCA and includes a member of the FCA's staff or an agent of the FCA,

(5) 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 or by virtue of these Regulations.

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

(7) The FCA may require—

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

in such manner as it may reasonably require.

(8) "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

34.—(1) The FCA may give directions under section 71O of FSMA 2000 (designated activities: directions)(a) to a person imposing on the person such requirements as the FCA considers appropriate in relation to the carrying on of an activity that is a designated activity by virtue of regulation 9, 10 or 11.

(a) Section 71O is inserted by section [8(2)] of the Financial Services and Markets Act 2023 (c. **).

(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 FSMA 2000 by virtue of paragraph (1) includes (among other things) 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

35.—(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 contravened, 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 contravened, it may require the offeror to withdraw the offer.

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

(5) “An applicable provision” means—

- (a) a provision of Part 6 of FSMA 2000;
- (b) a provision of these Regulations;
- (c) a provision of—
 - (i) regulated market admission rules, or
 - (ii) designated activity rules made by virtue of regulation 15 or 17.

(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 financial promotion 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 or financial promotion 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 or financial promotion 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 or financial promotion rules;
 - (d) upon the FCA giving notice under regulation 38(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 FSMA 2000 (FCA general rules: product intervention)(a).

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

36.—(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 contravened 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 contravened 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 contravened, 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 FSMA 2000;
- (b) a provision of these Regulations;
- (c) a provision of regulated market admission rules.

(6) Paragraphs (7) and (8) apply where—

(a) Section 137D was inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

- (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 (product intervention) 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 financial promotion 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 or financial promotion 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 or financial promotion 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 or financial promotion rules;
 - (d) upon the FCA giving notice under regulation 38(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) 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.
- (11) “Product intervention rules” has the same meaning as in section 137D of FSMA 2000.

Power to suspend or prohibit trading on a trading facility

37.—(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 contravened, 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 contravened, 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 contravened, 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 Part 6 of FSMA 2000,
- (b) a provision of these Regulations, or
- (c) a provision of designated activity rules made by virtue of regulation 15;

“trading facility” means a multilateral trading facility or organised trading facility, each of those expressions having the same meaning as in Part 18 of FSMA 2000 (see section 313(1) of that Act).

Procedure under regulations 34 to 37

38.—(1) A requirement under any of regulations 34 to 37 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 34 to 37 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 the person's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(8) If a notice under this regulation relates to the exercise of the power conferred by regulation 36(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

39.—(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 regulated market admission rules or of designated activity rules made by virtue of regulation 15 or 17.

Penalties for contraventions

40.—(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 person ("P") of an applicable provision, the FCA considers that a person who was at the material time a relevant officer of P 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 regulated market admission rules or of designated activity rules made by virtue of regulation 15 or 17;

"relevant officer" of a person means—

- (a) a director or other similar officer of the person, or
- (b) if the affairs of the person are managed by its members, a member of the person.

Procedure under regulation 39 or 40

41.—(1) If the FCA proposes to take action against a person under regulation 39 or 40, 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 39 or 40, 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 penalty.

(7) If the FCA decides to take action against a person under regulation 39 or 40, the person may refer the matter to the Tribunal.

Statement of policy

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

(a) the imposition of penalties under regulation 40, 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 40 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

43.—(1) Before issuing a statement under regulation 42, 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.

Appointment by FCA of persons to carry out investigations

44.—(1) Paragraph (3) applies if it appears to the FCA that there are circumstances suggesting that—

- (a) there may have been a contravention of an applicable provision, or
- (b) a person who was at the material time a relevant officer of a person to whom an applicable provision has applied has been knowingly concerned in a contravention by that person of an applicable provision.

(2) “Relevant officer” of a person means—

- (a) a director or other similar officer of the person, or
- (b) if the affairs of the person are managed by its members, a member of the person.

(3) The FCA may appoint one or more competent persons to conduct an investigation on its behalf.

(4) Part 11 of FSMA 2000 applies in relation to an investigation under paragraph (3) as if—

- (a) the investigator were appointed under section 167(1) of that Act;
- (b) references to the investigating authority in relation to the investigator were references to the FCA;
- (c) references to the offences mentioned in section 168 of that Act were to the offence under section 85 of that Act;
- (d) references to an authorised person were references to the person under investigation.

(5) In this regulation “an applicable provision” means—

- (a) a provision of these Regulations, or
- (b) a provision of regulated market admission rules or of designated activity rules made by virtue of regulation 15 or 17.

Reporting of infringements

45.—(1) This regulation applies to an employer who—

- (a) provides regulated financial services,
- (b) carries on regulated activities in reliance on the exemption in section 327 of FSMA 2000 (exemption from the general prohibition), or
- (c) is a recognised investment exchange, a recognised clearing house, a recognised CSD or a third country central counterparty.

(2) The employer must have in place appropriate internal procedures for their employees to report, through an independent channel, contraventions or potential contraventions of an applicable provision.

(3) In this regulation—

“applicable provision” has the same meaning as in regulation 44;

“employer” and “employee” each has the meaning given in section 230 of the Employment Rights Act 1996(a);

“regulated financial services” has the meaning given in section 1H(2) of FSMA 2000(b).

(a) 1996 c. 18. There are amendments that are not relevant to these definitions.

(b) Section 1H was inserted by section 6(1) of the Financial Services Act 2012. Subsection (2) was repealed in part by S.I. 2013/1881 and amended by section 27 of the Financial Guidance and Claims Act 2018 and by S.I. 2019/632.

PART 4

Amendments to Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

Operating an electronic system for public offers of relevant securities

46.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a) is amended as follows.

(2) In article 25 (arranging deals in investments)(b), in paragraph (3), for “or 25DA” substitute “, 25DA or 25DB,”.

(3) In article 25D (operating a multilateral trading facility)(c), after paragraph (1) insert—

“(1A) Paragraph (1) does not apply to a kind of activity to which article 25DB applies.”.

(4) In article 25DA (operating an organised trading facility)(d), after paragraph (1) insert—

“(1A) Paragraph (1) does not apply to a kind of activity to which article 25DB applies.”.

(5) After article 25DA insert—

“Operating an electronic system for public offers of relevant securities

25DB.—(1) Operating an electronic system by means of which a qualifying public offer is made is a specified kind of activity.

(2) “Qualifying public offer” means an offer of relevant securities to the public in the United Kingdom that meets the following conditions.

(3) Condition A is that, if paragraph 13 of Schedule 1 to the Public Offers and Admissions to Trading Regulations 2023 (which exempts offers made by means of a regulated platform) were disregarded, the offer would be prohibited by regulation 12(1) of those Regulations.

(4) Condition B is that the relevant securities—

(a) fall within paragraph (1)(a) of regulation 5 of the Public Offers and Admissions to Trading Regulations 2023 (which defines “relevant securities” for the purposes of those Regulations) and are investments of a kind specified by Part 3 of this Order, or

(b) fall within paragraph (1)(b) of that regulation as a result of being investments of the kind specified by article 77.

(5) Condition C is that the relevant securities are not issued or to be issued by the person operating the electronic system.

(6) In paragraph (2), the reference to an offer of relevant securities to the public in the United Kingdom is to be read in accordance with regulation 7 of the Public Offers and Admissions to Trading Regulations 2023.

(7) In this article “relevant securities” has the same meaning as in the Public Offers and Admissions to Trading Regulations 2023 (see regulation 5 of those Regulations).”.

(6) In article 27 (enabling parties to communicate)(e)—

(a) the existing text becomes paragraph (1), and

(b) after that paragraph insert—

(a) S.I. 2001/544.

(b) Article 25 was amended by S.I. 2003/1476, S.I. 2006/3384 and S.I. 2017/488.

(c) Article 25D was inserted by S.I. 2006/3384 and amended by S.I. 2010/86 and S.I. 2017/488.

(d) Article 25DA was inserted by S.I. 2017/488.

(e) Article 27 was amended by S.I. 2006/2383 and S.I. 2009/1342.

“(2) A person does not carry on an activity of the kind specified by article 25DB merely by providing a means of communication, where the person is not holding out the means of communication as being provided for the making of qualifying public offers within the meaning of that article.”.

PART 5

Amendments to other legislation

Amendments to other legislation

47. In Schedule 3—

- (a) Part 1 contains amendments to primary legislation;
- (b) Part 2 contains amendments to secondary legislation;
- (c) Part 3 contains amendments to assimilated direct legislation.

PART 6

Transitional and saving provisions

Interpretation of Part

48.—(1) In this Part “FSMA 2023” means the Financial Services and Markets Act 2023.

(2) In this Part “the EU-derived prospectus legislation” means—

- (a) the following assimilated direct legislation—
 - (i) the prospectus regulation,
 - (ii) Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301(a);
 - (iii) Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004(b);
- (b) the following subordinate legislation—
 - (i) the Financial Services and Markets Act 2000 (Prospectus) Regulations 2019(c);
 - (ii) the Prospectus (Amendment etc.) (EU Exit) Regulations 2019(d).

Saving provisions

49.—(1) These Regulations, and the revocation by section 1(1) of, and Schedule 1 to, FSMA 2023 of the EU-derived prospectus legislation, do not apply in relation to—

-
- (a) EUR 2019/979.
 - (b) EUR 2019/980; amended by S.I. 2019/1234.
 - (c) S.I. 2019/1043.
 - (d) S.I. 2019/1234.

- (a) an offer of relevant securities to the public that is first made before the main commencement day,
- (b) a request for the admission of transferable securities to trading on a regulated market or primary MTF that is made before the main commencement day

(2) Where a prospectus has been approved by the FCA in accordance with Part 6 of FSMA 2000 and the prospectus regulation before the main commencement day, these Regulations and the revocation by section 1(1) of, and Schedule 1 to, FSMA 2023 of the EU-derived prospectus legislation do not affect the law applicable in relation to any offer of transferable securities to the public or request for the admission of transferable securities to trading on a regulated market which (in either case) is made in reliance on that prospectus, with any supplementary prospectus, during the period for which it is valid under article 12 of the prospectus regulation.

(3) These Regulations, and the revocation by section 1(1) of, and Schedule 1 to, FSMA 2023 of the EU-derived prospectus legislation, do not affect the exercise by the FCA of its powers under Part 6 of FSMA 2000, in cases falling within paragraph (1) or (2).

References to Tribunal

50.—(1) This regulation applies where immediately before the main commencement day—

- (a) a person has a right to make a reference to the Tribunal in respect of any decision of the FCA to refuse the approval of a prospectus, or
- (b) such a reference has been made but the reference or any related appeal has not been determined.

(2) These Regulations, and the revocation by section 1(1) of, and Schedule 1 to, FSMA 2023 of the EU-derived prospectus legislation, do not affect the reference to the Tribunal or any related appeal.

(3) If the Tribunal remit the matter to the FCA for decision, regulation 49(2) applies in relation to a prospectus approved by the FCA in accordance with a direction of the Tribunal as it applies in relation to a prospectus approved before the main commencement day.

Decisions to refuse to accept applications etc

51.—(1) A decision made under section 87JB of FSMA 2000 (power to refuse applications for a period) before the main commencement day which relates to a period that ends on or after that day is to have effect for the remainder of that period as if made under regulation 29.

(2) In regulation 29, the reference to contravention of a provision within regulation 29(2) includes a reference to a contravention of a provision within section 87JB(2), at a time or in circumstances where such a provision was applicable, except where a decision under section 87JB was made before the main commencement day by reference to that contravention.

PART 7

Review

Review

52.—(1) The Treasury must from time to time—

- (a) carry out a review of the regulatory provision contained in regulations 3 to 46 (including Schedules 1 and 2), and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of 5 years beginning with the initial commencement day.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Each report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015(a) (see section 32 of that Act).

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of His Majesty’s Treasury

SCHEDULES

SCHEDULE 1

Regulation 12

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 £5 million, or an equivalent amount (see paragraph 18).

2. An offer of relevant securities made solely to qualified investors (see paragraph 15).

3. An offer of relevant securities made 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 made to persons 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 being offered are at the time of the offer admitted to trading on a regulated market or primary MTF.

(a) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12) and by paragraph 36 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16).

Offers to existing holders of shares

7. An offer of shares 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.

8. Dividends that are paid out to persons who hold shares—

- (a) in the form of shares of the same class as the shares in respect of which the dividends are paid, or
- (b) in the form of cash under an arrangement under which the persons to whom the dividend is payable may elect for the cash to be applied to the acquisition of further shares of the same class as the shares in respect of which the dividends are paid,

where (in either case) a written statement is made available on the number and nature of the shares and the reasons for and details of the offer.

Offer to persons already connected with offeror company

9.—(1) An offer that is made by or on behalf of a company (“the offeror company”) and as respects which the following conditions are met.

(2) Condition A is that the offer is of equity securities of the offeror company.

(3) Condition B is that—

- (a) the offer is made only to persons already connected with the offeror company, and
- (b) where the offer is made on terms enabling a person to whom the offer is made to renounce the person’s entitlement to the equity securities in question, those terms enable the entitlement to be renounced only in favour of—
 - (i) another person already connected with the offeror company, or
 - (ii) a person in relation to whom an offer by the offeror company of the equity securities in question would fall within paragraph 2, 5 or 11.

(4) Condition C is that—

- (a) the equity securities offered are not admitted to trading on a regulated market or primary MTF, and
- (b) the offer is not conditional on their admission to trading on a regulated market or primary MTF.

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

- (a) the equity 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.

(6) For the purposes of sub-paragraph (3), “person already connected with the offeror company” means—

- (a) a person who holds equity securities of the offeror company, whether or not of the same class as those being offered,
- (b) a member of the family of such a person,
- (c) a trustee (acting in the trustee’s capacity as such) of a trust of which the principal beneficiary is a person within paragraph (a) or (b).

(7) For the purposes of sub-paragraph (6)(b) the members of a person’s family are—

- (a) the person’s spouse or civil partner, and
- (b) the person’s children (including step-children) and their descendants.

(8) In this paragraph “company” has the meaning given in section 1(1) of the Companies Act 2006.

Offer in connection with takeovers etc

10.—(1) An offer of relevant securities of the offeror or a member of the offeror’s group, where the following conditions are met in relation to the offer.

(2) Condition A is that—

- (a) the relevant securities are offered to some or all persons holding equity securities of a particular class of a company (“the offeree company”), in exchange for equity securities of the offeree company, or
- (b) the relevant securities—
 - (i) are offered in connection with an offer falling within paragraph (a), and
 - (ii) are offered to some or all persons holding relevant securities of the offeree company other than those to which the offer falling within paragraph (a) relates, in exchange for those other relevant securities of the offeree company.

(3) Condition B is that—

- (a) the relevant securities offered are not admitted to trading on a regulated market or primary MTF, and
- (b) the offer is not conditional on their admission to trading on a regulated market or primary MTF.

(4) Condition C is that the offer includes or is accompanied by a written statement—

- (a) containing a description of the offeror and of any group of which the offeror is a member,
- (b) containing details of—
 - (i) the terms of the offer, including the relevant securities offered, and
 - (ii) any fees or expenses payable by the offeror in connection with the offer,
- (c) describing the impact of the offer on the offeree company and on the group of the offeror, and
- (d) stating the offeror’s intentions in relation to—
 - (i) the business of the offeree company, and
 - (ii) any defined benefit pension scheme of the offeree company.

(5) In this paragraph—

“company” means—

- (a) a company as defined in section 1(1) of the Companies Act 2006, or
- (b) an overseas company as defined in section 1044 of that Act;

“defined benefit pension scheme” means a pension scheme as defined in section 1(5) of the Pension Schemes Act 1993^(a) which is not a money purchase scheme as defined in section 181 of that Act;

“equity securities” means—

- (a) shares, or
- (b) rights to subscribe for, or to convert securities into, shares.

Offer of securities to directors or employees

11.—(1) An offer of relevant securities that—

- (a) is made to existing or former directors or employees—
 - (i) by their employer,

(a) 1993 c. 48. Section 1(5) was inserted by section 239 of the Pensions Act 2004 (c. 35).

- (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 article 60(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(a).

Securities offered under banking or central counterparty special resolution regime

12. An offer of relevant securities resulting from the conversion or exchange, directly or indirectly, of other securities, own funds or other liabilities 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).

Offer made by means of a regulated platform

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

(2) An offer of relevant securities is made “by means of a regulated platform” if it is made in the course of the carrying on, by a person who has a Part 4A permission for the regulated activity specified in article 25DB of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b) (operating an electronic system for public offers of relevant investments), of that regulated activity.

PART 2

Supplementary provisions relating to Part 1

14. 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 issued or to be issued by the same offeror which was open at any time within the period of 12 months ending with the day on which offer A is first made, if or to the extent that the earlier offer was exempt from the prohibition in regulation 12(1) by reason only of paragraph 1.

15.—(1) In paragraphs 2 and 3, “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(c), 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—
 - (i) is an eligible counterparty for the purposes of Section 6 of Chapter 3 of the Conduct of Business sourcebook, and

(a) S.I. 2005/1529. Article 60(2) was amended by S.I. 2005/3392.
 (b) S.I. 2001/544; article 25DB is inserted by regulation 46 of these Regulations.
 (c) Schedule 1 was inserted by S.I. 2018/1403.

- (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 of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, 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 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.
- (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 FSMA 2000, as it has effect from time to time.

16. 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 to 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.

17. 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.

18.—(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.

SCHEDULE 2

Regulation 30(9)

Compensation: exemptions

PART 1

Interpretation

1. In this Schedule, “prospectus” includes an MTF admission prospectus.

PART 2

General exemptions

Statements believed to be true

- 2.—(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 23.

(2) A person (D) does not incur any liability under regulation 30(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 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.

Statements by experts

- 3.—(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 30(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

- 4.**—(1) In this paragraph “statement” has the same meaning as in paragraph 2.
- (2) A person (D) does not incur liability under regulation 30(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 2.

Corrections of statements by experts

- 5.**—(1) In this paragraph “statement” has the same meaning as in paragraph 3.
- (2) A person (D) does not incur liability under regulation 30(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 3.

Official statements

- 6.**—(1) A person (D) does not incur any liability under regulation 30(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

- 7.** A person (D) does not incur any liability under regulation 30(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 circumstances giving rise to the obligation to publish a supplementary prospectus, as the case may be.

Belief that supplementary prospectus not called for

8.—(1) A person (D) does not incur any liability under regulation 30(5) if D satisfies the court that D reasonably believed that the circumstances were not such as to give rise under the appropriate rules (as defined by regulation 30(8)) to the obligation to publish a supplementary prospectus

(2) In this paragraph “supplementary prospectus” includes a document falling within regulation 30(6)(a) or (b).

Meaning of “expert”

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

PART 3

Further exemption relating to forward-looking statement

“Protected forward-looking statement”

10.—(1) For the purposes of this Part of this Schedule, a forward-looking statement in a prospectus is “a protected forward-looking statement” 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.

(2) In paragraph (1)—

“the appropriate rules” means—

- (i) in relation to a regulated market, regulated market admission rules, and
- (ii) in relation to a primary MTF, rules made by virtue of regulation 15;

“forward-looking statement” includes—

- (i) a statement containing a projection, estimate, forecast or target,
- (ii) a statement giving guidance,
- (iii) a statement of opinion as to future events or circumstances, or
- (iv) a statement of intention.

Exemption from liability

11.—(1) Unless the condition in sub-paragraph (2) is met, a person responsible for a prospectus (R)—

- (a) does not incur any liability under regulation 30(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) A person (P) who is not among those responsible for a prospectus but would apart from this sub-paragraph have any liability to a person other than the issuer in respect of loss caused by a protected forward-looking statement in the prospectus has no such liability unless at any time in the relevant period, P—

- (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.
- (4) “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.
- (5) For the purposes of sub-paragraph (2)(b) and (3)(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.
- (6) In sub-paragraphs (1) and (3) 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.
- (7) This paragraph does not affect—
- (a) civil liability under rules made under section 954 of the Companies Act 2006 (compensation);
 - (b) liability to a civil penalty;
 - (c) criminal liability;
 - (d) the powers conferred by section 382 and 384 of FSMA 2000 (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 32.
- (8) This paragraph does not limit the application of Part 1 of this Schedule in relation to loss caused by a protected forward-looking statement.

SCHEDULE 3

Regulation 47

Amendments to legislation

PART 1

Amendments to primary legislation

Financial Services and Markets Act 2000

1. FSMA 2000 is amended as follows.
- 2.—(1) Section 73A (Part 6 rules)(a) is amended as follows.
 - (2) Omit subsections (4) and (5).
 - (3) In subsection (6), omit “or prospectus rules.”

(a) Section 73A was inserted by S.I. 2005/381. Subsections (4) and (5) were added by S.I. 205/1433. Subsection (6) was added by Schedule 15 to the Companies Act 2006.

3. In section 79 (listing particulars and other documents)(a), in subsection (3A), for “an approved prospectus is required as a result of section 85” substitute “a prospectus is required as a result of rules made by virtue of the 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 12 of the 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 12 of the Public Offers and Admissions to Trading Regulations 2023”.

(6) Omit subsections (5) to (7).

7. Omit sections 86 to 87O (which relate to public offers, admissions to trading and prospectuses)(b).

8.—(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)(c) and (12).

9.—(1) Section 91 (penalties for breach of Part 6 rules) is amended as follows.

(2) Omit subsection (1A)(d).

(3) In subsection (2), omit “(1A)”.

10.—(1) Section 97 (appointment by FCA of persons to carry out investigations) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a)—

(i) at the end of sub-paragraph (i), insert “or”;

(ii) omit the “or” at the end of sub-paragraph (ii);

(iii) omit sub-paragraph (iii);

(b) in paragraph (b)—

(i) omit “or (1A),”;

(ii) at the end of sub-paragraph (i), insert “or”;

(iii) omit the “or” at the end of sub-paragraph (ii);

(iv) omit sub-paragraph (iii).

(3) In subsection (3), omit paragraph (c).

11. Omit section 97A (reporting of infringements)(e).

(a) Subsection (3A) was inserted by S.I. 2005/1433.

(b) Sections 84 to 87 and 87A to 87R were substituted by S.I. 2005/1433. Sections 87E, 87F, 87H and 87I were repealed, and sections 87JA, 87JB and 87LA were inserted, by S.I. 2019/1043.

(c) Subsection (11A) was inserted by S.I. 2019/1043.

(d) Subsection (1A) was inserted by S.I. 2005/1433.

(e) Section 97A was inserted by S.I. 2019/1043.

- 12.** In section 102A (meaning of “securities” etc.)(a), omit subsection (6)(a).
- 13.** Omit section 102B (meaning of “offer of transferable securities to the public”)(b).
- 14.** 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”.
- 15.** In section 138E (limits on effect of contravening rules)(c), in subsection (3)—
(a) at the end of paragraph (c), omit “or”;
(b) at the end of paragraph (d) insert “; or”;
(c) after paragraph (d) insert—
“(e) designated activity rules imposing under paragraph (2) of regulation 32 of the Public Offers and Admissions to Trading Regulations 2023 (withdrawal rights in connection with public offers of securities) a duty in relation to which provision made under paragraph (4) of that regulation applies.”.
- 16.** In section 176 (entry of premises under warrant), in subsection (11)—
(a) in paragraph (a), omit “87C, 87J,”;
(b) at the end of that paragraph, omit “or”;
(c) after that paragraph insert—
“(aa) by the FCA under regulation 26, 28 or 33 of the Public Offers and Admissions to Trading Regulations 2023; or”.
- 17.** In section 391 (publication)—
(a) in subsection (1ZB)(d)—
(i) omit paragraph (c);
(ii) after paragraph (m) insert—
“(n) regulation 41(1) of the Public Offers and Admissions to Trading Regulations 2023.”;
(b) omit subsection (8G).
- 18.** Omit section 391F (publication: special provisions relating to prospectus regulation).
- 19.** In section 392 (application of sections 393 and 394)—
(a) after paragraph (a) insert—
“(aa) a warning notice given in accordance with regulation 41(1) of the Public Offers and Admissions to Trading Regulations 2023;”;
(b) after paragraph (b) insert—
“(c) a decision notice given in accordance with regulation 41(4) of the Public Offers and Admissions to Trading Regulations 2023.”.
- 20.** In section 395 (FCA’s and PRA’s procedures)(e), in subsection (13)—

(a) Section 102A was substituted by S.I. 2005/1433.
(b) Section 102B was substituted by S.I. 2005/1433.
(c) Section 138E was substituted by section 24(1) of the Financial Services Act 2012.
(d) Subsection (1ZB) was inserted by Schedule 9 to the Financial Services Act 2012.
(e) In subsection (13), paragraphs (bb), (h) and (i) are inserted by the Financial Services and Markets Act 2021 Sch. 8 para. 12. There are other amendments of the subsection but none is relevant.

(a) omit paragraph (bb);

(b) at the end insert—

“(j) regulation 38 of the Public Offers and Admissions to Trading Regulations 2023.”.

21. In section 398 (misleading FCA or PRA: residual cases)(a), in subsection (1A), omit—

(a) the “or” at the end of paragraph (i), and

(b) paragraph (j).

22. In Schedule 10A (liability of issuers in connection with published information)(b), in paragraph 7(3)(a)—

(a) in sub-paragraph (i), omit “or prospectus”;

(b) after that sub-paragraph insert—

“(ia) under regulation 30 of the Public Offers and Admissions to Trading Regulations 2023 (compensation for statements in prospectus etc).”.

23. Omit Schedule 11A (transferable securities)(c), so far as remaining in force.

Companies Act 2006

24. In section 474 of the Companies Act 2006 (minor definitions for Part 15), in subsection (1), in the definition of “regulated activity”(d), in paragraph (h), after “deals in investments” insert “, article 25DB (operating an electronic system in relation to public offers of relevant securities)”.

PART 2

Amendments to secondary legislation

Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

25. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(e) is amended as follows.

26. In article 2 (interpretation: general), in paragraph (1), after the definition of “the Regulated Activities Order” insert—

““regulated market admission rules” means designated activity rules made by virtue of regulation 14 of the Public Offers and Admissions to Trading Regulations 2023;”.

27. In article 68 (promotions in connection with admission to certain UK and EEA markets)(f), in paragraph (1)(c), for “prospectus rules made under Part VI of the Act,” substitute “regulated market admission rules,”.

28.—(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 regulated market 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 regulated market admission rules,

(a) Subsection (1A) was inserted by S.I. 2013/1773 and paragraph (j) was inserted by S.I. 2019/1043.

(b) Schedule 10A was inserted by S.I. 2010/1192.

(c) Schedule 11A was inserted by S.I. 2005/1433 and repealed in part by S.I. 2019/1043.

(d) The definition of “regulated activity” was amended by S.I. 2009/1342.

(e) S.I. 2005/1529.

(f) Article 68 was amended by S.I. 2017/448 and S.I. 2021/1074.

except an advertisement as defined in regulation 3 of the Public Offers and Admissions to Trading Regulations 2023.”.

(3) Omit paragraph (1A)(a).

(4) In paragraph (2) for ““listing rules”, “the prospectus regulation” and “prospectus rules”” substitute “and “listing rules””.

29. In article 71 (material relating to prospectus for public offer of unlisted securities), in paragraph (2)—

(a) in sub-paragraph (a), for “the same meaning as in section 102A(3) of the Act” substitute “the meaning given in regulation 4 of the Public Offers and Admission to Trading Regulations 2023;

(b) in sub-paragraph (b), for “prospectus rules made under Part VI of the Act” substitute “regulated market admission rules”.

Financial Services and Markets Act 2000 (Qualifying Provisions) Order 2013

30. The Financial Services and Markets Act 2000 (Qualifying Provisions) Order 2013(b) is amended as follows.

31. In article 1 (citation, commencement and interpretation), in paragraph (2), omit the definition of “the EU Prospectus Regulation”.

32. In article 2 (qualifying provisions: general), omit paragraph (14).

33. In article 5 (qualifying provisions: injunctions and restitution)(c), omit paragraphs (2)(r) and (5)(q).

34. In article 6 (qualifying provisions: fees), omit paragraph (2)(t)(d).

PART 3

Amendments to assimilated direct legislation

Commission Regulation (EC) No 1569/2007

35.—(1) Commission Regulation (EC) No 1569/2007 of 21 December establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuer of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council(e) is amended as follows.

(2) In Article 1(f), in the second paragraph, in point (b)—

(a) in point (i)—

(i) omit the words from ““prospectus” to “or”;

(ii) for “that Act” substitute “the Financial Services and Markets Act 2000”;

(b) for point (ii) substitute—

“(ii) regulation 24 of the Public Offers and Admissions to Trading Regulations 2023;”.

Regulation (EU) 2017/2402 of the European Parliament and of the Council

36.—(1) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific

(a) Paragraph (1A) was inserted by S.I. 2007/2615.
(b) S.I. 2013/419.
(c) Paragraphs (2)(r) and (5)(q) were inserted by S.I. 2019/1043.
(d) Paragraph (2)(t) was inserted by S.I. 2019/1043.
(e) EUR 2007/1569.
(f) Article 1 was amended by S.I. 2019/707 and S.I. 2019/1234.

framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and Regulations (EC) No 1060/2009 and (EU) No 648/2012(a) is amended as follows.

- (2) In Article 7 (transparency requirements for originators, sponsors and SSPEs)(b)—
- (a) in paragraph 1(c), for the words from the beginning to “listing)” substitute “rules made by virtue of regulation 14 of the Public Offers and Admissions to Trading Regulations 2023”;
 - (b) in paragraph 2, in the third subparagraph, for the words from “section 85” to “Part 6 of the 2000 Act” substitute “rules made by virtue of regulation 14 of the Public Offers and Admissions to Trading Regulations 2023”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about public offers of securities and the admission of transferable securities to trading on a regulated market (as defined in regulation 3) or a primary MTF (as defined in regulation 8). The legislation being replaced includes:

- Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003 (which is to be revoked by section 1 of the Financial Services and Markets Act 2023 (c. **)), and
- certain related provisions of Part 6 of the Financial Services and Markets Act 2000 (c. 8) (“FSMA 2000”).

Regulations 9 to 11 specify certain activities under section 71K of FSMA 2000 as designated activities for the purposes of that Act.

Regulation 12 prohibits the offer to the public in the United Kingdom of “relevant securities” (as defined in regulation 5) unless the offer falls within the exemptions in Schedule 1. As a result of the amendments of section 85 of FSMA 2000 in Schedule 3 to the Regulations, a person who contravenes this prohibition commits an offence. Regulation 13 requires the disclosure of information by the issuer or offeror in certain cases where a public offer is exempt from the prohibition.

Regulations 14 to 20 enable the Financial Conduct Authority to make “designated activity rules” (as defined in section 71L(3) of FSMA 2000) regulating the activities that are specified in regulations 9 to 11.

Regulations 21 to 31 and Schedule 2 contain further provision about prospectuses, including provision about the rights of investors to compensation for loss suffered as a result of statements in prospectuses.

Regulations 32 to 45 contain further provisions about the powers of the Financial Conduct Authority in relation to public offers and admissions to trading and about enforcement.

Regulation 46 amends the Financial Services and Markets Act 2001 (Regulated Activities) Order 2001 (S.I. 2001/544) so as to provide a separate regulated activity of operating an electronic system for making public offers of relevant securities in a case where the public offer is not otherwise exempt from the prohibition in regulation 12.

Regulation 47 and Schedule 3 make amendments of other legislation.

Regulations 48 to 51 contain transitional provisions.

(a) EUR 2017/2042.

(b) Article 7 was amended by S.I. 2019/660.

Regulation 52 makes provision for review.

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