

SCHEDULE 1

Equivalence determinations

Prospectus Directive and Transparency Directive

17.—(1) For the purposes of rules made by the Financial Conduct Authority that are “prospectus rules” as defined by section 73A(4) of FSMA (“prospectus rules), to determine that a third country ensures the equivalence of prospectuses drawn up in that country with the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement the Prospectus Directive.

(2) Such equivalence may arise by reason of—

- (a) the third country’s national law, or
- (b) practices and procedures based on international standards set by international organisations including the disclosure standards of IOSCO.

(3) For the purposes of—

- (a) rules made by the FCA that are prospectus rules or “transparency rules” as defined by section 89A(5) of FSMA, and
- (b) [Commission Regulation \(EC\) No 809/2004](#) of 29 April 2004 implementing [Directive 2003/71/EC](#) of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements⁽¹⁾;

to determine that the Generally Accepted Accounting Principles of a third country may be considered equivalent to UK-adopted international accounting standards within the meaning given by section 474(1) of the Companies Act 2006⁽²⁾.

(4) The determination in paragraph (3) may only be made if the financial statements drawn up in accordance with Generally Accepted Accounting Principles of the third country enable investors to make a similar assessment of the assets and liabilities, financial position, profit and losses and prospects of the issuer as financial statements drawn up in accordance with UK-adopted international accounting standards, with the result that investors are likely to make the same decisions about the acquisition, retention or disposal of securities of an issuer.

(5) For the purpose of prospectus rules, to determine that the legal and supervisory framework of a third country ensures that a regulated market authorised in that third country complies with legally binding requirements which are, for the purpose of the application of the exemption under paragraph 5 of rule 1.2.2 of the FCA Prospectus Rules, equivalent to the requirements resulting from:

- (a) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse⁽³⁾,
- (b) the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement Title III of [Directive 2004/39/EC](#)⁽⁴⁾, and
- (c) the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement the Transparency Directive,
and which are subject to effective supervision and enforcement in that third country.

(1) OJ L 149, 30.4.2004, p.3.

(2) [2006 c. 46](#) Section 474 was amended by Regulation 46 of the Adoption and Use of International Accounting Standards (Amendment) (EU Exit) Regulations 2019. [hoped to be laid and made in January]

(3) OJ L 173, 12.6.2014, p. 1–61. [[[MAR Exit SI will be laid but not made.]]]

(4) OJ L 145, 30.4.2004.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 No. 541*

(6) The determination in paragraph (5) may only be made if the legal and supervisory framework of the third country fulfils at least the following conditions —

- (a) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- (b) the markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
- (c) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and
- (d) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.

(7) For the purposes of rules made by the FCA that are “transparency rules” as defined by section 89A(5) of FSMA, to determine that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in the law of the United Kingdom which was relied on by the United Kingdom immediately before exit day to implement [Directive 2004/109/EC](#).