



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART VI

#### OFFICIAL LISTING

*[<sup>F1</sup>Transferable securities: public offers and admission to trading]*

#### Textual Amendments

- F1** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

#### <sup>F2</sup>84 Matters which may be dealt with by prospectus rules

- (1) Prospectus rules may make provision as to—
- (a) the required form and content of a prospectus (including a summary);
  - (b) the cases in which a summary need not be included in a prospectus;
  - (c) the languages which may be used in a prospectus (including a summary);
  - (d) the determination of the persons responsible for a prospectus;
  - (e) the manner in which applications to the [<sup>F3</sup>FCA] for the approval of a prospectus are to be made.
- (2) Prospectus rules may also make provision as to—
- (a) the period of validity of a prospectus;
  - (b) 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;
  - (c) 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;

*Status: Point in time view as at 24/01/2013.*

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- (d) the required form and content of other summary documents (including the languages which may be used in such a document);
- (e) the ways in which a prospectus that has been approved by the [F3FCA] may be made available to the public;
- (f) the disclosure, publication or other communication of such information as the [F3FCA] may reasonably stipulate;
- (g) the principles to be observed in relation to advertisements in connection with an offer of transferable securities to the public or admission of transferable securities to trading on a regulated market and the enforcement of those principles;
- (h) the suspension of trading in transferable securities where continued trading would be detrimental to the interests of investors;
- (i) elections under section 87 or under Article 2.1(m)(iii) of the prospectus directive as applied for the purposes of this Part by section 102C.

<sup>F4</sup>(3) .....

- (4) Prospectus rules may make provision for the purpose of dealing with matters arising out of or related to any provision of the prospectus directive.
- (5) In relation to cases where the home State in relation to an issuer of transferable securities is an EEA State other than the United Kingdom, prospectus rules may make provision for the recognition of elections made in relation to such securities under the law of that State in accordance with Article 1.3 or 2.1(m)(iii) of the prospectus directive.
- (6) In relation to a document relating to transferable securities issued by an issuer incorporated in a non-EEA State and drawn up in accordance with the law of that State, prospectus rules may make provision as to the approval of that document as a prospectus.
- (7) Nothing in this section affects the [F3FCA's] general power to make prospectus rules.]

#### Textual Amendments

- F2** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)
- F3** Word in ss. 73A-84 substituted (24.1.2013 for specified purposes) by [Financial Services Act 2012 \(c. 21\)](#), [ss.16\(2\)\(3\)\(a\)](#), [122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), art. 2(1)(c), [Sch. Pt. 3](#)
- F4** S. 84(3) omitted (1.7.2012) by virtue of [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [3\(1\)](#)

#### <sup>F5</sup>85 **Prohibition of dealing etc. in transferable securities without approved prospectus**

- (1) It is unlawful for transferable securities to which this subsection applies to be offered to the public in the United Kingdom unless an approved prospectus has been made available to the public before the offer is made.
- (2) It is unlawful to request the admission of transferable securities to which this subsection applies to trading on a regulated market situated or operating in the United Kingdom unless an approved prospectus has been made available to the public before the request is made.

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- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (4) A contravention of subsection (1) or (2) is actionable, at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (5) Subsection (1) applies to all transferable securities other than—
  - (a) those listed in Schedule 11A;
  - (b) such other transferable securities as may be specified in prospectus rules.
- (6) Subsection (2) applies to all transferable securities other than—
  - (a) those listed in Part 1 of Schedule 11A;
  - (b) such other transferable securities as may be specified in prospectus rules.
- (7) “Approved prospectus” means, in relation to transferable securities to which this section applies, a prospectus approved by the competent authority of the home State in relation to the issuer of the securities.]

#### Textual Amendments

- F5** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), [Sch. 1 para. 5](#)

#### [<sup>F6</sup>86 Exempt offers to the public

- (1) A person does not contravene section 85(1) if—
  - (a) the offer is made to or directed at qualified investors only;
  - (b) the offer is made to or directed at fewer than [<sup>F7</sup> 150 persons], other than qualified investors, per EEA State;
  - (c) the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least [<sup>F8</sup>100,000 euros] (or an equivalent amount);
  - (d) the transferable securities being offered are denominated in amounts of at least [<sup>F8</sup> 100,000 euros] (or equivalent amounts); <sup>F9</sup> ...
  - (e) the total consideration for the transferable securities being offered [<sup>F10</sup> in the EEA States] cannot exceed 100,000 euros (or an equivalent amount). [<sup>F11</sup>; or]
  - [<sup>F11</sup>(f) the offer falls within subsection (1A).]

- [<sup>F12</sup>(1A) An offer (“the current offer”) falls within this subsection if the transferable securities are being sold or placed through a financial intermediary where—
- (a) the transferable securities have previously been the subject of one or more offers to the public;
  - (b) in respect of one or more of those previous offers any of paragraphs (a) to (e) of subsection (1) applied;

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- (c) a prospectus is available for the securities which has been approved by the [F13]FCA] no earlier than 12 months before the date the current offer is made; and
  - (d) the issuer or other person who was responsible for drawing up the prospectus has given written consent to the use of the prospectus for the purpose of the current offer.]
- (2) Where—
- (a) a person who is not a qualified investor (“ the client ”) has engaged a qualified investor falling within [F14] point (1) of Section I of Annex II to the markets in financial instruments directive] to act as his agent, and
  - (b) the terms on which the qualified investor is engaged enable him to make decisions concerning the acceptance of offers of transferable 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 subsection (1) as also having been made to or directed at the client.
- (3) For the purposes of subsection (1)(b), the making of an offer of transferable 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.
- (4) In determining whether subsection (1)(e) is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which—
- (a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and
  - (b) had previously satisfied subsection (1)(e).
- (5) For the purposes of this section, an amount (in relation to an amount denominated in euros) is an “equivalent amount” if it is an amount of equal value denominated wholly or partly in another currency or unit of account.
- (6) 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.
- [F15](7) “Qualified investor”, in relation to an offer of transferable securities, means—
- (a) a person described in points (1) to (4) of Section I of Annex II to the markets in financial instruments directive, 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 the final paragraph of Section I of Annex II to that directive;
  - (b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to that directive 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 the final paragraph of Section I of Annex II to that directive;
  - (c) a person who is an eligible counterparty in accordance with Article 24 of that directive and has not, before the making of the offer, agreed in writing with the

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relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive; or

- (d) a person whom any relevant firm is authorised to continue to treat as a professional client in accordance with Article 71(6) of that directive.]

[<sup>F16</sup>(8) In subsection (7) “relevant firm” means an investment firm or credit institution acting in connection with the offer.

- (9) Investment firms and credit institutions which are authorised persons must communicate their classification of their clients as being or not being qualified investors on request to an issuer subject to complying with the Data Protection Act 1998 or any directly applicable EU legislation relating to data protection.

(10) In subsections (8) and (9), “credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive; or  
(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have one, its head office) in an EEA State.]]

#### Textual Amendments

- F6** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), [reg. 2\(1\)](#), [Sch. 1 para. 5](#)
- F7** Words in s. 86(1)(b) substituted (31.7.2011) by [The Prospectus Regulations 2011 \(S.I. 2011/1668\)](#), [reg. 1\(2\)](#)
- F8** Words in s. 86(1)(c)(d) substituted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [2\(1\)\(a\)](#)
- F9** Word in s. 86(1) omitted (1.7.2012) by virtue of [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [2\(1\)\(b\)](#)
- F10** Words in s. 86(1)(e) inserted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [2\(1\)\(c\)](#)
- F11** S. 86(1)(f) and preceding word inserted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [2\(1\)\(d\)](#)
- F12** S. 86(1A) inserted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [2\(2\)](#)
- F13** Words in s. 86 substituted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), [ss.](#), [16\(3\)\(b\)](#), [122\(3\)](#) [16\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/113](#), [art. 2\(1\)\(c\)](#), [Sch. Pt. 3](#); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)
- F14** Words in s. 86(2)(a) substituted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [3\(2\)\(a\)](#)
- F15** S. 86(7) substituted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [3\(2\)\(b\)](#)
- F16** S. 86(8)-(10) inserted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [3\(2\)\(c\)](#)

#### [<sup>F17</sup>87 Election to have prospectus

(1) A person who proposes—

- (a) to issue transferable securities to which this section applies,  
(b) to offer to the public transferable securities to which this section applies, or

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- (c) to request the admission to a regulated market of transferable securities to which this section applies,  
may elect, in accordance with prospectus rules, to have a prospectus in relation to the securities.
- (2) If a person makes such an election, the provisions of this Part and of prospectus rules apply in relation to those transferable securities as if, in relation to an offer of the securities to the public or the admission of the securities to trading on a regulated market, they were transferable securities for which an approved prospectus would be required as a result of section 85.
- (3) Listing rules made under section 79 do not apply to securities which are the subject of an election.
- (4) The transferable securities to which this section applies are those which fall within any of the following paragraphs of Schedule 11A—
- (a) paragraph 2,
  - (b) paragraph 4,
  - (c) paragraph 8, or
  - (d) paragraph 9,
- where the United Kingdom is the home State in relation to the issuer of the securities.]

#### **Textual Amendments**

**F17** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(1), **Sch. 1 para. 5**

#### **Modifications etc. (not altering text)**

**C1** S. 87 extended (1.12.2001) by [S.I. 2001/2957](#), arts. 1, 6(4); [S.I. 2001/3538](#), art. 2(1)

**Status:**

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**Changes to legislation:**

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