
STATUTORY INSTRUMENTS

1995 No. 1537

The Public Offers of Securities Regulations 1995

PART II

PUBLIC OFFERS OF UNLISTED SECURITIES

Investments to which this Part applies

- 3.—(1) This Part of these Regulations applies to any investment which—
- (a) is not admitted to official listing, nor the subject of an application for listing, in accordance with Part IV of the Act; and
 - (b) falls within paragraph 1, 2, 4 or 5 of Schedule 1 to the Act.
- (2) In the application of those paragraphs for the purposes of these Regulations—
- (a) debentures having a maturity of less than one year from their date of issue shall be deemed to be excluded from paragraph 2;
 - (b) the note to paragraph 1 shall have effect with the omission of the words “, except in relation to any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986,”;
 - (c) paragraphs 4 and 5 shall have effect with the omission of references to investments falling within paragraph 3; and
 - (d) paragraph 4 shall have effect as though after the words “subscribe for” there were inserted “or acquire”.

Registration and publication of prospectus

4.—(1) When securities are offered to the public in the United Kingdom for the first time the offeror shall publish a prospectus by making it available to the public, free of charge, at an address in the United Kingdom, from the time he first offers the securities until the end of the period during which the offer remains open.

(2) The offeror shall, before the time of publication of the prospectus, deliver a copy of it to the registrar of companies for registration.

(3) Paragraph (2) and regulations 5, 6 and 8 to 15 shall not apply to a prospectus submitted for approval in accordance with listing rules made under section 156A of the Act.

Offers of securities

5. A person is to be regarded as offering securities if, as principal
- (a) he makes an offer which, if accepted, would give rise to a contract for the issue or sale of the securities by him or by another person with whom he has made arrangements for the issue or sale of the securities; or
 - (b) he invites a person to make such an offer;

but not otherwise; and, except where the context otherwise requires, in this Part of these Regulations “offer” and “offeror” shall be construed accordingly.

Offers to the public in the United Kingdom

6. A person offers securities to the public in the United Kingdom if, to the extent that the offer is made to persons in the United Kingdom, it is made to the public; and, for this purpose, an offer which is made to any section of the public, whether selected as members or debenture holders of a body corporate, or as clients of the person making the offer, or in any other manner, is to be regarded as made to the public.

Exemptions

7.—(1) For the purposes of these Regulations, an offer of securities shall be deemed not to be an offer to the public in the United Kingdom if, to the extent that the offer is made to persons in the United Kingdom

- (a) the condition specified in any one of the sub-paragraphs of paragraph (2) is satisfied in relation to the offer; or
- (b) paragraph (3) applies in relation to the offer.

(2) The following are the conditions specified in this paragraph

- (a) the securities are offered to persons
 - (i) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or
 - (ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses;or are otherwise offered to persons in the context of their trades, professions or occupations;
- (b) the securities are offered to no more than fifty persons;
- (c) the securities are offered to the members of a club or association (whether or not incorporated) and the members can reasonably be regarded as having a common interest with each other and with the club or association in the affairs of the club or association and in what is to be done with the proceeds of the offer;
- (d) the securities are offered to a restricted circle of persons whom the offeror reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer;
- (e) the securities are offered in connection with a bona fide invitation to enter into an underwriting agreement with respect to them;
- (f) the securities are the securities of a private company and are offered by that company to
 - (i) members or employees of the company;
 - (ii) members of the families of any such members or employees; or
 - (iii) holders of securities issued by the company which fall within paragraph 2 of Schedule 1 to the Act;
- (g) the securities are offered to a government, local authority or public authority, as defined in paragraph 3 of Schedule 1 to the Act;
- (h) the total consideration payable for the securities cannot exceed ecu 40,000 (or an equivalent amount);

- (i) the minimum consideration which may be paid for securities acquired pursuant to the offer is at least ecu 40,000 (or an equivalent amount);
- (j) the securities are denominated in amounts of at least ecu 40,000 (or an equivalent amount);
- (k) the securities are offered in connection with a takeover offer;
- (l) the securities are offered in connection with a merger within the meaning of Council Directive No. [78/855/ECC](#)(1);
- (m) the securities are shares and are offered free of charge to any or all of the holders of shares in the issuer;
- (m) the securities are shares, or investments falling within paragraph 4 or 5 of Schedule 1 to the Act relating to shares, in a body corporate and are offered in exchange for shares in the same body corporate, and the offer cannot result in any increase in the issued share capital of the body corporate;
- (o) the securities are issued by a body corporate and offered—
 - (i) by the issuer;
 - (ii) only to qualifying persons; and
 - (iii) on terms that a contract to acquire any such securities may be entered into only by the qualifying person to whom they were offered or, if the terms of the offer so permit, any qualifying person;
- (p) the securities result from the conversion of convertible securities and listing particulars or a prospectus relating to the convertible securities were or was published in the United Kingdom under or by virtue of Part IV of the Act, Part III of the Companies Act 1985 or these Regulations;
- (q) the securities are issued by—
 - (i) a charity within the meaning of section 96(1) of the Charities Act 1993(2);
 - (ii) a housing association within the meaning of section 5(1) of the Housing Act 1985(3);
 - (iii) an industrial or provident society registered in accordance with section 1(2)(b) of the Industrial and Provident Societies Act 1965(4); or
 - (iv) a non-profit making association or body, recognised by the country or territory in which it is established, with objectives similar to those of a body falling within any of paragraphs (i) to (iii);and the proceeds of the offer will be used for the purposes of the issuer's objectives;
- (r) the securities offered are shares and ownership of the securities entitles the holder—
 - (i) to obtain the benefit of services provided by a building society within the meaning of section 119(1) of the Building Societies Act(5), an industrial or provident society registered in accordance with section 1(2) of the Industrial and Provident Societies Act 1965 or a body of a like nature established in a member State; or
 - (ii) to membership of such a body;
- (s) the securities offered are Euro-securities and are not the subject of advertising likely to come to the attention of persons who are not professionally experienced in matters relating to investment;

(1) OJ No. L295, 20.10.78, p. 36.

(2) 1993 c. 10.

(3) 1985 c. 68.

(4) 1965 c. 12.

(5) 1986 c. 53.

- (t) the securities are of the same class, and were issued at the same time, as securities in respect of which a prospectus has been published under or by virtue of Part IV of the Act, Part III of the Companies Act 1985 or these Regulations;
 - (u) the securities are not transferable.
- (3) This paragraph applies in relation to an offer where the condition specified in one relevant sub-paragraph is satisfied in relation to part, but not the whole, of the offer and, in relation to each other part of the offer, the condition specified in a different relevant sub-paragraph is satisfied.
- (4) For the purposes of paragraph (3), “relevant sub-paragraph” means any of sub-paragraphs (a) to (g), (k) to (n), (p), (q) and (t) of paragraph (2).
- (5) For the purposes of this regulation, “shares”, except in relation to a takeover offer, means investments falling within paragraph 1 of Schedule 1 to the Act
- (6) For the purposes of determining whether the condition specified in sub-paragraph (b) or (h) of paragraph (2) is satisfied in relation to an offer, the offer shall be taken together with any other offer of securities of the same class which was—
- (a) made by the same person;
 - (b) open at any time within the period of 12 months ending with the date on which the offer is first made; and
 - (c) deemed not to be an offer to the public in the United Kingdom by virtue of that condition being satisfied.
- (7) In determining for the purposes of paragraph (2)(d) whether a person is sufficiently knowledgeable to understand the risks involved in accepting an offer of securities, any information supplied by the offeror shall be disregarded, apart from information about—
- (a) the issuer of the securities, or
 - (b) if the securities confer the right to acquire other securities, the issuer of those other securities.
- (8) For the purposes of paragraph (2)(f)—
- (a) the members of a person’s family are the person’s husband or wife, widow or widower and children (including stepchildren) and their descendants, and any trustee (acting in his capacity as such) of a trust the principal beneficiary of which is the person himself or herself, or any of those relatives; and
 - (b) regulation 3(2)(a) shall not apply.
- (9) For the purposes of determining whether the condition mentioned in sub-paragraph (h), (i) or (j) of paragraph (2) is satisfied in relation to an offer, an amount, in relation to an amount denominated in ecu, is an “equivalent amount” if it is an amount of equal value, calculated at the latest practicable date before (but in any event not more than 3 days before) the date on which the offer is first made, denominated wholly or partly in another currency or unit of account.
- (10) For the purposes of paragraph (2)(k), “takeover offer” means—
- (a) an offer which is a takeover offer within the meaning of Part XIII A of the Companies Act 1985 (or would be such an offer in that Part of that Act applied in relation to any body corporate); or
 - (b) an offer made to all the holders of shares, or of shares of a particular class, in a body corporate to acquire a specified proportion of those shares (“holders” and “shares” being construed in accordance with that Part);

but in determining for the purposes of sub-paragraph (b) whether an offer is made to all the holders of shares, or of shares of any class, the offeror, any associate of his (within the meaning of section 430E

of that Act) and any person whose shares the offeror or any such associate has contracted to acquire shall not be regarded as holders of the shares.

(11) For the purposes of paragraph (2)(m), “holders of shares” means the person who, at the close of business on a date specified in the offer and falling within the period of 28 days ending with the date on which the offer is first made, were holders of such shares.

(12) For the purposes of paragraph (2)(o), a person is a “qualifying person”, in relation to an issuer, if he is a bona fide employee or former employee of the issuer or of another body corporate in the same group or the wife, husband, widow, widower or child or stepchild under the age of eighteen of such an employee or former employee.

Form and content of prospectus

8.—(1) Subject to regulation 11 and to paragraphs (2), (4), (5) and (6), a prospectus shall contain the information specified in Parts II to X of Schedule 1 to these Regulations (which shall be construed in accordance with Part I of that Schedule).

(2) Where the requirement to include in a prospectus any information (the “required information”) is inappropriate to the issuer’s sphere of activity or to its legal form or to the securities to which the prospectus relates, the requirement—

- (a) shall have effect as a requirement that the prospectus contain information equivalent to the required information; but
- (b) if there is no such equivalent information, shall not apply.

(3) The information in a prospectus shall be presented in as easily analysable and comprehensible a form as possible.

(4) Where, on the occasion of their admission to dealings on an approved exchange, securities falling within paragraph 1 of Schedule 1 to the Act are offered on a pre-emptive basis to some or all of the existing holders of such securities, a body or person dealing designated for the purposes of this paragraph by the Treasury shall have power to authorise the omission from a prospectus subject to this regulation of specified information provided that up-to-date information equivalent to that which would otherwise be required by this regulation is available as a result of the requirements of that approved exchange.

In this paragraph, “specified information” means information specified in paragraph 41 to 47 of Schedule 1 to these Regulations.

(5) Where a class of securities falling within paragraph 1 of Schedule 1 to the Act has been admitted to dealings on an approved exchange, a body or person designated for the purposes of this paragraph by the Treasury shall have power to authorise the making of an offer without a prospectus, provided that—

- (a) the number or estimated market value or the nominal value or, in the absence of a nominal value, the accounting par value of the securities offered amounts to less than ten per cent of the number or the corresponding value of securities of the same class already admitted to dealings; and
- (b) up-to-date information equivalent to that required by this regulation is available as a result of the requirements of that approved exchange.

(6) Where a person—

- (a) makes an offer to the public in the United Kingdom of securities which he proposes to issue; and
- (b) has, within the 12 months preceding the date on which the offer is first made, published a full prospectus relating to a different class of securities which he has issued, or to an earlier issue of the same class of securities,

he may publish, instead of a full prospectus, a prospectus which contains only the differences which have arisen since the publication of the full prospectus mentioned in sub-paragraph (b) and any supplementary prospectus and which are likely to influence the value of the securities, provided that the prospectus is accompanied by that full prospectus and any supplementary prospectus or contains a reference to it or them; and, for this purpose, a full prospectus is one which contains the information specified in Parts II to X of Schedule 1 (other than any information whose omission is authorised by or under paragraph (2) or (4) or regulation 11).

General duty of disclosure in prospectus

9.—(1) In addition to the information required to be included in prospectus by virtue of regulation 8 a prospectus shall (subject to these Regulations) contain all such information as investors would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—

- (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and
- (b) the rights attaching to those securities.

(2) The information to be included by virtue of this regulation shall be such information as is mentioned in paragraph (1) which is within the knowledge of any person responsible for the prospectus or which it would be reasonable for him to obtain by making enquiries.

(3) In determining what information is required to be included in a prospectus by virtue of this regulation regard shall be had to the nature of the securities and of the issuer of the securities.

(4) For the purposes of this regulation “issuer”, in relation to a certificate or other instrument falling within paragraph 5 of Schedule 1 to the Act, means the person who issued or is to issue the securities to which the certificate or instrument relates.

Supplementary prospectus

10.—(1) Where a prospectus has been registered under this Part of these Regulations in respect of an offer of securities and at any time while an agreement in respect of those securities can be entered into in pursuance of that offer—

- (a) there is a significant change affecting any matter contained in the prospectus whose inclusion was required by regulation 8 or 9; or
- (b) a significant new matter arises the inclusion of information in respect of which would have been so required if it has arisen when the prospectus was prepared; or
- (c) there is a significant inaccuracy in the prospectus,

the offeror shall deliver to the registrar of companies for registration, and publish in accordance with paragraph (3), a supplementary prospectus containing particulars of the change or new matter or, in the case of an inaccuracy, correcting it.

(2) In paragraph (1) “significant” means significant for the purpose of making an informed assessment of the matters mentioned in regulation 9(1)(a) and (b).

(3) Regulation 4(1) shall apply to a supplementary prospectus delivered for registration to the registrar of companies in the same way as it applies to a prospectus except that the obligation to publish the supplementary prospectus shall begin with the time it is delivered for registration to the registrar of companies.

(4) Where the offeror is not aware of the change, new matter or inaccuracy in question he shall not be under any duty to comply with paragraphs (1) and (3) unless he is notified of it by a person responsible for the prospectus; but any person responsible for the prospectus who is aware of such a matter shall be under a duty to give him notice of it.

(5) Where a supplementary prospectus has been registered under this regulation in respect of an offer, the preceding paragraphs of this regulation have effect as if any reference to a prospectus were a reference to the prospectus originally registered and that supplementary prospectus, taken together.

Exceptions

11.—(1) The Treasury or the Secretary of State may authorise the omission from a prospectus or supplementary prospectus of information whose inclusion would otherwise be required by these Regulations if they or he consider that disclosure of that information would be contrary to the public interest.

(2) An offeror may omit from a prospectus or supplementary prospectus information with respect to an issuer whose inclusion would otherwise be required by these Regulations if—

- (a) he is not that issuer, nor acting in pursuance of an agreement with that issuer;
- (b) the information is not available to him because he is not that issuer; and
- (c) he has been unable, despite making such efforts (if any) as are reasonable, to obtain the information.

(3) The competent authority for the purposes of Part IV of the Act (“the competent authority”) may authorise the omission from a prospectus or supplementary prospectus of information whose inclusion would otherwise be required by these Regulations, if—

- (a) the information is of minor importance only, and is not likely to influence assessment of the issuer’s assets and liabilities, financial position, profits and losses and prospects; or
- (b) disclosure of that information would be seriously detrimental to the issuer and its omission would not be likely to mislead investors with regard to facts and circumstances necessary for an informed assessment of the securities.

(4) Paragraph (4) of regulation 9 applies for the purposes of paragraph (3) as it applies for the purposes of that regulation.

(5) The competent authority may make rules providing for the payment of fees to it for the discharge of its functions under paragraph (3).

(6) Section 156 of the Act shall apply to rules made under paragraph (5) as it applies to listing rules.

Advertisements etc. in connection with offer of securities

12. An advertisement, notice, poster or document (other than a prospectus) announcing a public offer of securities for which a prospectus is or will be required under this Part of these Regulations shall not be issued to or caused to be issued to the public in the United Kingdom by the person proposing to make the offer unless it states that a prospectus is or will be published, as the case may be, and gives an address in the United Kingdom from which it can be obtained or will be obtainable.

Persons responsible for prospectus

13.—(1) For the purpose of this Part of these Regulations the persons responsible for a prospectus or supplementary prospectus are—

- (a) the issuer of the securities to which the prospectus or supplementary prospectus relates;
- (b) where the issuer is a body corp[orate, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus is published;
- (c) where the issuer is a body corporate, each person who has authorised himself to be named, and is named, in the prospectus or supplementary prospectus as a director or as having agreed to become a director of that body either immediately or at a future time;

- (d) each person who accepts, and is stated in the prospectus or supplementary prospectus as accepting, responsibility for, or for any part of, the prospectus or supplementary prospectus;
- (e) the offeror of the securities, where he is not the issuer;
- (f) where the offeror is a body corporate, but is not the issuer and is not making the offer in association with the issuer, each person who is a director of that body corporate at the time when the prospectus or supplementary prospectus is published; and
- (g) each person not falling within any of the foregoing paragraphs who has authorised the contents of, or of any part of, the prospectus or supplementary prospectus.

(2) A person is not responsible under paragraph (1)(a), (b) or (c) unless the issuer has made or authorised the offer in relation to which the prospectus or supplementary prospectus was published; and a person is not responsible for a prospectus or supplementary prospectus by virtue of paragraph (1)(b) if it is published without his knowledge or consent and on becoming aware of its publication he forthwith gives reasonable public notice that it was published without his knowledge.

(3) Where a person has accepted responsibility for, or authorised, only part of the contents of any prospectus or supplementary prospectus, he is responsible under paragraph (1)(d) or (g) only for that part and only if it is included in (or substantially in) the form and context to which he has agreed.

(4) Nothing in this regulation shall be construed as making a person responsible for any prospectus or supplementary prospectus by reason only of giving advice as to its contents in a professional capacity.

(5) Where by virtue of this regulation the issuer of any shares pays or is liable to pay compensation under regulation 14 for loss suffered in respect of shares for which a person has subscribed no account shall be taken of that liability or payment in determining any question as to the amount paid on subscription of those shares or as to the amount paid up or deemed to be paid up on them.

Compensation for false or misleading prospectus

14.—(1) Subject to regulation 15 the person or persons responsible for a prospectus or supplementary prospectus shall be liable to pay compensation to any person who has acquired the securities to which the prospectus relates and suffered loss in respect of them as a result of any untrue or misleading statement in the prospectus or supplementary prospectus or the omission from it of any matter required to be included by regulation 9 or 10.

(2) Where regulation 8 requires a prospectus to include information as to any particular matter on the basis that the prospectus must include a statement either as to that matter or, if such is the case, that there is no such matter, the omission from the prospectus of the information shall be treated for the purposes of paragraph (1) as a statement that there is no such matter.

(3) Subject to regulation 15, a person who fails to comply with regulation 10 shall be liable to pay compensation to any person who has acquired any of the securities in question and suffered loss in respect of them as a result of the failure.

(4) This regulation does not affect any liability which any person may incur apart from this regulation.

(5) References in this regulation to the acquisition by any person of securities include references to his contracting to acquire them or an interest in them.

Exemption from liability to pay compensation

15.—(1) A person shall not incur any liability under regulation 14(1) for any loss in respect of securities caused by any such statement or omission as is there mentioned if he satisfies the court that at the time when the prospectus or supplementary prospectus was delivered for registration he

reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter whose omission caused the loss was properly omitted and—

- (a) that he continued in that belief until the time when the securities were acquired; or
- (b) that they were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire the securities in questions; or
- (c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that a correction was forthwith brought to the attention of those persons; or
- (d) that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused, and, if the securities are dealt in on an approved exchange, that he continued in that belief until after the commencement of dealings in the securities on that exchange.

(2) A person shall not incur any liability under regulation 14(1) for any loss in respect of securities caused by a statement purporting to be made by or on the authority of another person as an expert which is, and is stated to be, included in the prospectus or supplementary prospectus with that other person's consent if he satisfies the court that at the time when the prospectus or supplementary prospectus was delivered for registration he believed on reasonable grounds that the other person was competent to make or authorise the statement and had consented to its inclusion in the form and context in which it was included and—

- (a) that he continued in that belief until the time when the securities were acquired; or
- (b) that they 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 securities in question; or
- (c) that before the securities were acquired he had taken all such steps as it was reasonable for him to have taken to secure that that fact was forthwith brought to the attention of those persons; or
- (d) that the securities were acquired after such a lapse of time that he ought in the circumstances to be reasonably excused and, if the securities are dealt in on an approved exchange, that he continued in that belief until after the commencement of dealings in the securities on that exchange.

(3) Without prejudice to paragraph (1) and (2), a person shall not incur any liability under regulation 14(1) for any loss in respect of any securities caused by any such statement or omission as is there mentioned if he satisfies the court—

- (a) that before the securities were acquired a correction or, where the statement was such as is mentioned in paragraph (2), 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 securities in question; or
- (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the securities were acquired.

(4) A person shall not incur any liability under regulation 14(1) for any loss resulting from a statement made by an official person or contained in a public official document which is included in the prospectus or supplementary prospectus if he satisfies the court that the statement is accurately and fairly reproduced.

(5) A person shall not incur any liability under regulation 14(1) or (3) if he satisfies the court that the person suffering the loss acquired the securities in question with knowledge that the statement was false or misleading, of the omitted matter or of the change, new matter or inaccuracy, as the case may be.

(6) A person shall not incur any liability under regulation 14(3) if he satisfies the court that he reasonably believed that the change, new matter or inaccuracy in question was not such as to call for a supplementary prospectus.

(7) In this regulation “expert” includes any engineer, valuer, accountant or other person whose profession, qualifications or experience give authority to a statement made by him; and references to the acquisition of securities include references to contracting to acquire them or an interest in them.

Contraventions

16.—(1) An authorised person who contravenes regulation 4(1) or, where it applies regulation 4(2), or who contravenes regulation 12, or who assists another person to contravene any of those provisions, shall be treated as having contravened rules made under Chapter V of Part I of the Act or, in the case of a person who is an authorised person by virtue of membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

(2) A person other than an authorised person who contravenes regulation 4(1) or, where it applies, regulation 4(2), or who contravenes regulation 12, or who assists another person to contravene any of those provisions, shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale.

(3) Without prejudice to any liability under regulation 14, a person shall not be regarded as having contravened regulation 4 by reason only of a prospectus not having fully complied with the requirements of these Regulations as to its form or content.

(4) Any contravention to which this regulation applies shall be 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) In this regulation “authorised person” means a person authorised under Chapter III of Part I of the Act and “recognised professional body” and “recognised self-regulating organisation” have the meanings given in section 207(1) of the Act.

(6) A European institution carrying on home-regulated investment business in the United Kingdom which contravenes regulation 4(1) or, where it applies, 4(2) or which contravenes regulation 12, or which assists another person to contravene any of those provisions, shall be treated for all purposes—

- (a) if it is not a member of a recognised self-regulating organisation, as having contravened rules made under Chapter V of Part 1 of the Act; or
- (b) if it is a member of a recognised self-regulating organisation, as having contravened the rules of that organisation;

and the reference in paragraph (2) to a person other than an authorised person shall be treated as not including a reference to such an institution.