

2001 No. 2957

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Official Listing of Securities)
(Transitional Provisions) Order 2001**

Made - - - - - 22nd August 2001

Laid before Parliament 24th August 2001

Coming into force - - in accordance with article 1

The Treasury, in exercise of the powers conferred upon them by sections 426, 427 and 428(3) of the Financial Services and Markets Act 2000(a), hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Official Listing of Securities) (Transitional Provisions) Order 2001 and comes into force on the day on which section 74(1) comes into force.

Interpretation

- 2.—(1) In this Order, unless the context otherwise requires—
- “the 1986 Act” means the Financial Services Act 1986(b);
 - “the 2000 Act” means the Financial Services and Markets Act 2000;
 - “commencement” means the beginning of the day on which this Order comes into force;
 - “competent authority” is to be construed in accordance with section 72;
 - “issuer” has the same meaning as is given, for the purposes of section 103(1), in regulation 4 of the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001(c);
 - “non-Part IV securities” means investments within the meaning of the 1986 Act to which section 142(d) of that Act does not apply;
 - “old listing rules” has the meaning given in article 3(1); and
 - “Part IV securities” means investments within the meaning of the 1986 Act to which section 142 of that Act applies.

(2) Any reference in this Order to a section, Part or Schedule is, unless otherwise stated or unless the context otherwise requires, a reference to that section or Part of, or Schedule to, the 2000 Act.

(a) 2000 c. 8.
(b) 1986 c. 60.
(c) S.I. 2001/2956.
(d) Section 142 is modified in terms of the investments to which it applies by S.I. 1989/29 and by S.I. 1995/3275, Schedule 7 paragraph 35. “Investments” is defined in section 1(1) of the 1986 Act.

(3) For the purposes of articles 10(1)(d) and 11(1)(d) a decision is not to be treated as final until there is no possibility of the decision being reversed or varied on appeal.

(4) For the purposes of articles 4(2) and 9(4) an application is not to be treated as having been finally determined until there is no possibility of the decision on the application being reversed or varied on appeal.

(5) Nothing in this Order prejudices the operation of section 16 or 17 of the Interpretation Act 1978(a) in a case for which provision is not made by this Order.

Continued effect of listing rules

3.—(1) In this Order, “old listing rules” means rules which had effect immediately before commencement and which were made (or treated as having been made) by the Authority—

(a) under Part IV of the 1986 Act(b) in accordance with the procedures applicable to the making of such rules; or

(b) insofar as the rules had effect in relation to non-Part IV securities, in pursuance of rights of the Authority in relation to such securities.

(2) Old listing rules have effect after commencement as if they were listing rules made by the Authority in the exercise of the functions of the competent authority under Part VI.

(3) The validity of listing rules which have effect by virtue of paragraph (2) is not affected by any failure of the Authority to satisfy any requirement of the 2000 Act, in relation to the procedure to be followed when proposing or making rules, which did not apply in relation to the making of the old listing rules.

(4) Listing rules have effect by virtue of paragraph (2) subject to any amendments or revocations made by the competent authority under Part VI which (whether made before or after commencement) have effect after commencement.

(5) Where any provision of listing rules (“the new provision”) provides that a person is required to pay any fee or take any other step which he was required to pay or take under any provision of old listing rules (“the old provision”), he is to be treated as having complied with the new provision to the same extent as he had complied with the old provision.

Applications for listing

4.—(1) This article applies to—

(a) applications made pursuant to section 143 of the 1986 Act for the admission to the official list of Part IV securities; and

(b) applications for the admission to the official list, otherwise than in accordance with Part IV of the 1986 Act, of non-Part IV securities.

(2) Where an application to which this article applies (“the original application”) was made before commencement, in accordance with the procedure applicable to such an application, but was not finally determined before commencement, it is to be treated as if it were an application made under section 75(1) for admission of the securities in question to the official list in accordance with Part VI.

(3) For the purposes of subsection (1) of section 76 (time within which an application for listing is to be determined)—

(a) the application is to be treated as received by the competent authority on the day on which the original application was received by the Authority, and

(b) the reference in paragraph (b) of that subsection to further information which the competent authority requires the applicant to provide in connection with the application is to be treated as including further information which, before commencement, the Authority required the applicant to furnish in connection with the original application.

(a) 1978 c. 30.

(b) See, in particular, the power to make listing rules in section 142(6). Relevant amendments to Part IV are found in S.I. 1991/2000, 1995/1537, and 2000/968 (which substituted the Financial Services Authority as the competent authority for the purposes of Part IV).

Listing particulars etc.

5.—(1) Where, before commencement—

- (a) the Authority authorised the omission of any information from an offering document under section 148(1) of the 1986 Act (including that section as applied to a prospectus by section 154A of that Act or as applied to a prospectus of the kind described in section 156A(1) of that Act by section 156A(3)), but
- (b) the document had not been published,

the authorisation to omit that information from the document is to be treated as having been given by the competent authority under section 82(1) (or, as the case may be, under section 82(1) as applied by section 86 or by section 87(5) and Schedule 9).

(2) Where, before commencement—

- (a) an offering document was delivered for registration to the registrar of companies in accordance with section 149(1) of the 1986 Act (including that section as applied to a prospectus by section 154A of that Act or as applied to a prospectus of the kind described in section 156A(1) of that Act by section 156A(3)), but
- (b) the offering document had not been published,

the delivery of the document to the registrar of companies is to be treated as done in compliance with section 83(1) (or, as the case may be, in compliance with section 83(1) as applied by section 86 or by section 87(5) and Schedule 9).

(3) In this article any reference to any thing done under or in accordance with any provision of the 1986 Act includes, in relation to non-Part IV securities, a reference to the doing of that thing in accordance with procedures and practices applied by the Authority in relation to the admission of such securities to the official list.

(4) In relation to Part IV securities, “offering document” means any of the following—

- (a) listing particulars within the meaning of section 144(2A) of the 1986 Act,
- (b) supplementary listing particulars within the meaning of section 147(1) of that Act,
- (c) a prospectus within the meaning of section 144(2) of that Act,
- (d) a prospectus of the kind mentioned in section 156A(1) of that Act, or
- (e) a supplementary prospectus within the meaning of section 147(1) of that Act as applied by section 154A or 156A(3) of that Act.

(5) In relation to non-Part IV securities, “offering document” means any listing particulars, supplementary listing particulars, prospectus or supplementary prospectus the preparation of which was required in accordance with the procedures and practices applied by the Authority in relation to the admission of such securities to the official list.

Supplementary listing particulars etc.

6.—(1) Where, before commencement—

- (a) listing particulars were submitted to the Authority pursuant to old listing rules made for the purposes of section 144(2A)(a) of the 1986 Act, but
- (b) dealings in the securities which were the subject of the particulars had not begun following their admission to the official list,

for the purposes of section 81 (supplementary details to be submitted in the event of a change or new matter arising) the particulars are to be treated as having been submitted to the competent authority under section 79 (and any supplementary particulars published under section 147(1) of that Act are to be treated as having been published under section 81(1)).

(2) In the application of section 81 by virtue of paragraph (1) above, the reference in section 81(1)(a) to section 80 is to be treated as a reference to section 144 of the 1986 Act, the reference to listing rules is to be treated as a reference to old listing rules, and the reference to the competent authority is to be treated as a reference to the competent authority for the purposes of Part IV of the 1986 Act.

(3) Where, before commencement—

- (a) a prospectus was submitted to the Authority pursuant to old listing rules made for the purposes of section 144(2)(a) of the 1986 Act, but
- (b) dealings in the securities which were the subject of the prospectus had not begun following their admission to the official list,

for the purposes of section 81 (supplementary details to be submitted in the event of a change or new matter arising) as applied in relation to a prospectus by section 86, the prospectus is to be treated as having been submitted to the competent authority under section 79 (and any supplementary prospectus published under section 147(1) of that Act as applied by section 154A of that Act is to be treated as having been published under section 81(1) as applied in relation to a prospectus by section 86).

(4) Where, before commencement—

- (a) a prospectus was submitted to the Authority pursuant to old listing rules made for the purposes of section 156A(1) of the 1986 Act, but
- (b) the period during which the offer to which the prospectus relates remains open had not come to end,

for the purposes of section 81 (supplementary details to be submitted in the event of a change or new matter arising) as applied in relation to a non-listing prospectus by section 87(5) and Schedule 9, the prospectus is to be treated as having been submitted to the competent authority under section 87 (and any supplementary prospectus published under section 147(1) of that Act as applied by section 156A of that Act is to be treated as having been published under section 81(1) as applied in relation to a non-listing prospectus by section 87(5) and Schedule 9).

(5) In this article any reference to any provision of old listing rules includes, in relation to non-Part IV securities, a reference to that provision as applied by the Authority to such securities as part of its procedures and practices in relation to the admission of such securities to the official list.

Compensation in relation to listing particulars etc. published before commencement

7.—(1) Notwithstanding the repeal of sections 150 and 151 of the 1986 Act (compensation for false or misleading particulars) by virtue of any provision made under the 2000 Act, those sections (including those sections as applied by sections 154A and 156A(3) of the 1986 Act) are to be treated as continuing to apply in relation to—

- (a) any offering document which was published before commencement, or
- (b) any failure at any time before commencement to comply with section 147 of the 1986 Act (including that section as applied by sections 154A and 156A(3) of the 1986 Act) as it then had effect,

whether the securities in question were acquired, or any loss was suffered, before or after commencement.

(2) For the purpose of sections 150 and 151 of the 1986 Act as they continue to have effect by virtue of paragraph (1) above—

- (a) the person responsible for any offering document is the person who was responsible for it under Part VI of the 1986 Act at the time of the publication,
- (b) the reference in subsection (2) of section 150 of the 1986 Act (information required to be included in listing particulars, etc.) to listing rules is to be treated as a reference to old listing rules in force at the relevant time, and
- (c) subsection (2) of section 148 of the 1986 Act is to be treated as continuing to apply in relation to any authorisation granted before commencement under that section (exemptions from disclosure).

(3) Nothing in section 90 or Schedule 10 (compensation for false or misleading particulars) (including that section and Schedule as applied to a prospectus by section 86 or to a non-listing prospectus by section 87(5) and Schedule 9) is to be treated as giving rise to any liability in respect of any document published before commencement or any failure to do anything before commencement.

(4) “Offering document” has the meaning given in article 5(4).

Suspension of listing

8.—(1) This article applies where, immediately before commencement—

- (a) the listing of any Part IV securities was suspended pursuant to section 145(2) of the 1986 Act; or

(b) the listing of any non-Part IV securities was suspended in pursuance of rights of the Authority in relation to such securities.

(2) In paragraph (1) references to listing are references to admission to the official list maintained by the Authority immediately before the coming into force of section 74.

(3) At commencement, the securities are to be treated as if they were the subject of a listing which has been suspended pursuant to section 77(2).

(4) In paragraph (4), the reference to listing is to be construed in accordance with section 74(5).

Sponsors

9.—(1) Paragraph (2) applies to persons who immediately before commencement were on the register of approved sponsors maintained by the Authority for the purposes of old listing rules.

(2) A person to whom this paragraph applies is to be treated, on commencement, as approved by the competent authority for the purposes of listing rules made pursuant to section 88.

(3) Paragraph (4) applies to an application made pursuant to old listing rules to be included in the register of approved sponsors maintained by the Authority for the purposes of old listing rules.

(4) Where an application to which this paragraph applies (“the original application”) was made before commencement, in accordance with the procedure applicable to such an application, but was not finally determined before commencement, it is to be treated after commencement as if it were an application made for the approval, of the person in respect of whom it was made, as a sponsor for the purposes of listing rules made pursuant to section 88.

Contravention of listing rules by sponsors before commencement

10.—(1) Paragraph (2) applies to a person who—

- (a) is a sponsor approved in accordance with listing rules made pursuant to section 88;
- (b) was before commencement a person on the register of approved sponsors maintained by the Authority for the purposes of old listing rules;
- (c) before commencement had contravened a requirement imposed on him by virtue of old listing rules, in relation to which the Authority had power under those rules to censure him;
- (d) had not, before commencement, been censured in accordance with those rules (or been the subject of a final decision that he should not be so censured) in respect of that contravention; and
- (e) would, if the actions or omissions constituting such contravention had taken place after commencement, have been in contravention of a requirement imposed on him by rules made (or treated as made) under Part VI.

(2) Where, pursuant to subsection (1) of section 89, listing rules provide for the competent authority to publish a statement as described in that subsection, the competent authority may under those rules publish a statement that a person to whom this paragraph applies has contravened a requirement of the kind described in paragraph (1)(c) above.

(3) Subsections (2) to (4) of section 89 (which provide for the giving of warning notices and decision notices and for references to the Tribunal), and listing rules made in connection with that section, apply in relation to a statement made by virtue of paragraph (2) above as they apply in relation to a statement of the kind described in subsection (1) of that section, but subject to articles 12 and 13 below.

Contravention of listing rules by issuer or director before commencement

11.—(1) Paragraph (2) applies to a person who—

- (a) is an issuer of listed securities (or, as the case may be, a director of such an issuer);
- (b) was before commencement an issuer of securities which were admitted to the official list as it then had effect (or, as the case may be, a director of such an issuer);

- (c) before commencement had contravened a requirement imposed on it by virtue of old listing rules, in relation to which the Authority had power under those rules to censure it (or, in the case of a director of the issuer, had been knowingly concerned in such a contravention by the issuer);
- (d) had not, before commencement, been censured in accordance with those rules (or been the subject of a final decision that it or he should not be so censured) in respect of that contravention; and
- (e) would, if the actions or omissions constituting such contravention had taken place after commencement, have been in contravention of a requirement imposed on it by rules made (or treated as made) under Part VI (or, in the case of a director of an issuer, would have been knowingly concerned in such a contravention by the issuer).

(2) The competent authority may publish a statement that a person to whom this paragraph applies has contravened a requirement of the kind described in paragraph (1)(c) above (or, in the case of a director of an issuer, been knowingly concerned in such a contravention by the issuer).

(3) Subsections (1), (3), (4), (6) and (7) of section 92 (which provide for the giving of warning notices and decision notices and for references to the Tribunal), and listing rules made in connection with that section, apply in relation to a statement made under paragraph (2) above as they apply in relation to a statement of the kind described in section 91(3), but subject to articles 12 and 13 below.

(4) Subsections (6) and (7) of section 91 (which provide that action may not be taken after two years from the date when a contravention is known) apply in relation to the making of a statement under paragraph (2) above as they apply in relation to the making of a statement under section 91(3), but subject to paragraphs (5) and (6) below.

(5) For the purposes of subsections (6) and (7)(a) of section 91, where at any time before commencement information was known to the competent authority for the purposes of Part IV the 1986 Act, that information is to be treated as having been known at that time to the competent authority for the purposes of Part VI of the 2000 Act.

(6) For the purposes of the application of section 91(6) to any case to which article 12 or 13 below applies, section 91(7)(b) does not apply, but the proceedings are to be treated as begun when the question was referred to a referral committee as mentioned in article 12(2)(a).

(7) Paragraph (2) above does not affect any power which the competent authority has, under listing rules, to publish information which an issuer failed to publish as required by those rules or old listing rules.

Procedure for exercising powers where referral procedures begun before commencement

12.—(1) In this article—

“referral committee” means a committee of the Authority duly constituted in accordance with relevant provisions to decide questions referred to it (but does not include a body whose function is to hear appeals from decisions of such a committee); and

“relevant provisions” means any provisions contained in old listing rules, or in any procedures published by the Authority for the purposes of those rules, in relation to the determination of such questions by a referral committee.

(2) This article applies where—

- (a) before commencement, a question had been referred to a referral committee as to whether it was appropriate to censure a person (“A”) in accordance with old listing rules, or whether such censure should be published, in respect of a contravention of the kind described in article 10(1)(c) or 11 (1)(c) above, but
- (b) that question had not been decided by the committee before commencement.

(3) Notwithstanding the revocation or amendment of the relevant provisions, the referral committee is to continue to consider the matter in accordance with the relevant provisions as they applied immediately before commencement, but subject to the following provisions of this article.

(4) In the case of a contravention of the kind described in article 10(1)(c) above, the referral committee must decide whether to give a decision notice to A under section 89(3) indicating that the competent authority has decided to publish a statement in respect of the contravention by virtue of article 10(2) above.

(5) In the case of a contravention of the kind described in article 11(1)(c) above, the referral committee must decide whether to give a decision notice to A under section 92(4) indicating that the competent authority has decided to publish a statement in respect of the contravention under article 11(2) above.

(6) If the referral committee decides to give a decision notice to A under paragraph (4) above, it may do so without giving a warning notice to A under section 89(2).

(7) If the referral committee decides to give a decision notice to A under paragraph (5) above, it may do so without giving a warning notice to A under section 92(1).

(8) For the purposes of section 133(6), a decision notice given under paragraph (4) or (5) above is to be treated as if it had been preceded by a warning notice stating that the competent authority proposed to take the action referred to in the decision notice.

(9) Subsections (1) and (9) of section 395 (which require the Authority to determine the procedure that it proposes to follow in relation to the giving of notices including decision notices, and to follow the stated procedure) do not apply in relation to the giving of decision notices under paragraphs (4) or (5) above.

Appeals in relation to decisions taken before commencement

13.—(1) In this article—

- (a) “decision” means a decision which was taken before commencement which gave rise to a right to bring an appeal under relevant appeal provisions;
- (b) “appeal” means an appeal against a decision;
- (c) “relevant appeal provisions” means any provisions contained in the old listing rules, or in any procedures published by the Authority for the purposes of those rules, in relation to an appeal; and
- (d) “appeal body” means the body to whom an appeal may be brought in accordance with the relevant appeal provisions.

(2) This article applies where—

- (a) before commencement, an appeal was brought in accordance with the relevant appeal provisions, but the appeal had not been determined by the appeal body, or
- (b) at commencement, the period within which an appeal could be brought had not expired, but no appeal had been brought.

(3) Notwithstanding the revocation or amendment of the relevant appeal provisions, an appeal may be brought (or, if brought before commencement, may be continued), and any such appeal is to be considered and determined by the appeal body in accordance with the relevant appeal provisions as they applied immediately before commencement, but subject to the following provisions of this article.

(4) The appeal body must determine what (if any) is the appropriate action for the competent authority to take in relation to the matters which gave rise to the appeal, and for this purpose the appeal body may consider any evidence relating to the subject-matter of the appeal, whether or not it was available to the person who took the decision at the material time.

(5) On determining the appeal, the appeal body must remit the matter to the competent authority with such directions (if any) as it considers appropriate for giving effect to its determination, and the competent authority must act in accordance with the determination.

(6) But the appeal body may only direct the competent authority to take action which it would have power to take, in circumstances of the kind which gave rise to the decision—

- (a) under any provision of Part VI or listing rules, other than a provision which permits the competent authority to impose a financial penalty, or
- (b) by virtue of article 10(2) or under article 11(2) of this Order.

(7) Where the competent authority gives effect to a determination of the appeal body by taking any action, it must give the parties written notice setting out the action being taken (or the terms of any order or direction being given) and the date on which it takes effect.

(8) Where the competent authority gives a written notice in accordance with paragraph (7) above setting out action being taken—

- (a) subsections (4), (6) and (7) of section 391 (which make provision about publication of final notices) apply to the notice as they apply to a final notice under the 2000 Act; but
- (b) any provision of the 2000 Act which requires a warning notice or decision notice to be issued in relation to such action, or which confers a right to refer such action to the Tribunal, does not apply.

Tony McNulty
John Heppell

22nd August 2001

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

Part VI of the Financial Services and Markets Act 2000 (c. 8) (“the 2000 Act”) replaces Part IV of the Financial Services Act 1986 (c. 60) (“the 1986 Act”) in relation to the official listing of securities. Like that Part, it implements Council Directive No. 79/279/EEC (OJ No. L66, 16.3.1979, p.21), Council Directive No. 80/390/EEC (OJ No. L100, 17.4.1980, p.1) and Council Directive No. 82/121/EEC (OJ No. L48, 20.2.1982, p.26) and partly implements Council Directive No. 89/298/EEC (OJ No. L124, 5.5.1989, p.8). Council Directive No. 80/390/EEC has been amended by Council Directives 82/148/EEC, 87/345/EEC and 90/211/EEC (OJ Nos. L62, 5.3.1982, p.22, L185, 4.7.1987 p.81, and L112, 3.5.1990, p.24) and Parliament Directive 94/18/EC (OJ No. L135, 31.5.1994, p.1).

The Financial Services Authority will continue to be the competent authority for listing under the 2000 Act (as it has been under the 1986 Act since 1st May 2000 by virtue of the Official Listing of Securities (Change of Competent Authority) Regulations 2000 (S.I. 2000/968)). Securities admitted to the official list prior to commencement will continue to be listed after commencement by virtue of section 74(1) of the 2000 Act and the definition of “official list” in section 103(1). This Order makes certain further transitional provisions. Many reflect the fact that, whilst section 142(9) of the 1986 Act permitted securities to be admitted to the official list either in accordance with Part IV of the 1986 Act (“Part IV securities”) or else outside the statutory provisions (“non-Part IV securities”), the 2000 Act brings all official listing within Part VI.

Article 3 provides for listing rules made under the 1986 Act to continue in force but treated as if made under the 2000 Act. Article 4 ensures that applications for listing made before commencement are treated as made under the 2000 Act. Article 5 ensures that delivery of a copy of listing particulars or a prospectus to the registrar of companies before commencement can be treated as compliance with section 83(1) of the 2000 Act, and carries forward authorisations to omit material from such documentation. By virtue of articles 6 and 7, listing particulars or a prospectus published before commencement are subject to section 81 of the 2000 Act (requirement to provide supplementary details of subsequent changes) and sections 150 and 151 of the 1986 Act (obligation to pay compensation for loss arising from misleading particulars).

Article 8 provides for a suspension of listing before commencement to be carried forward under the 2000 Act. Article 9 carries forward the approval of persons who were approved as sponsors immediately before commencement, or applications for such approval.

Articles 10 and 11 provide that, where a sponsor, or an issuer of listed securities or a director of an issuer, was liable to disciplinary action prior to commencement because of a contravention of the old listing rules, the competent authority may take action against it or him in accordance with the relevant provisions of the 2000 Act after commencement. If in such a case a referral procedure had previously been begun under the old listing rules, article 12 provides for the committee to whom the matter was referred to continue to hear the case. The committee will then decide whether to issue a decision notice under the 2000 Act (without first having to issue a warning notice). The 2000 Act confers a right to refer the decision contained in such a decision notice to the Financial Services and Markets Tribunal. Article 13 deals with the situation where, before commencement, a case had reached the subsequent appeal stage under the old listing rules. In such cases the existing appeal body is empowered to continue hearing the appeal, but subject to provisions as to the way in which it considers the case and gives its decision.

The definition of “issuer” for the purposes of this Order is provided by regulation 4 of the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001 (S.I. 2001/2956). That defines “issuer” as the issuer of the listed securities, except that if the listed securities are certificates representing securities the “issuer” is the issuer of those underlying securities. The definition of “director” is provided by section 417(1) of the 2000 Act, and includes shadow directors.

2001 No. 2957

FINANCIAL SERVICES AND MARKETS

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(Official Listing of Securities)
(Transitional Provisions) Order 2001

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