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STATUTORY INSTRUMENTS

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**2024 No. 105**

**The Public Offers and Admissions to Trading Regulations 2024**

**PART 3**

**Regulation of public offers and admissions to trading**

*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.

(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<sup>(1)</sup>, 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;
- (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<sup>(2)</sup>.

(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).

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

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

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

### **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.

(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.

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(3) 2006 c. 46. The definition was inserted by S.I. 2019/685, Schedule 1, paragraph 21(d).

### **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<sup>(4)</sup>.
- (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;

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(4) Section 417(1) of the Financial Services and Markets Act 2000 contains a definition of “the Tribunal” for the purposes of that Act.

- (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<sup>(5)</sup> (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) acquired securities of the kind in question, and
- (b) suffered loss in respect of them as a result of the failure.

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(5) 2012 c. 21.

- (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 2 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.