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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**

*Prohibition of public offers of relevant securities*

**Prohibition of public offers of relevant securities**

**12.**—(1) It is unlawful for relevant securities to be offered to the public in the United Kingdom unless—

- (a) the offer is of a kind specified in Part 1 of Schedule 1, or
  - (b) the offer is of a kind that consists entirely of a combination of two or more of the kinds of offer specified in that Part of that Schedule.
- (2) Part 2 of that Schedule contains provision supplementing Part 1 of the Schedule.

**Disclosure of information**

**13.**—(1) Paragraph (2) applies in relation to an offer of relevant securities to the public in the United Kingdom if—

- (a) the offer—
    - (i) is of any of the kinds specified in paragraphs 1 to 11 and 13 of Schedule 1, and
    - (ii) is not also of the kind specified in paragraph 12 of that Schedule, and
  - (b) the total consideration for the relevant securities being offered in the United Kingdom can amount, in value, to at least £1,000,000, or an equivalent amount (see paragraph (4)).
- (2) In the event that material information is disclosed by, or on behalf of, an issuer or offeror and addressed to one or more selected investors in oral or written form, that information must—
- (a) in a case where—
    - (i) the offer is of the kind specified in paragraph 6 of Schedule 1, and
    - (ii) designated activity rules, or rules made by the operator of a primary MTF, require the publication of a prospectus, MTF admission prospectus or other document,be included in the prospectus, MTF admission prospectus or other document or in a supplement to the prospectus, MTF admission prospectus or other document;
  - (b) in any other case, be disclosed to all other investors to whom the offer is addressed.
- (3) In determining whether an offer (“offer A”) falls within paragraph (1)(b), offer A is to be taken together with any other offer of relevant securities issued or to be issued by the same offeror which was open at any time within the period of 12 months ending with the day on which offer A is first made.

(4) Paragraph 18 of Schedule 1 (meaning of an “equivalent amount”) applies for the purposes of paragraph (1)(b) as it applies for the purposes of Part 1 of that Schedule.

### *Rule-making powers of FCA*

#### **FCA rules relating to admissions to trading on regulated market**

**14.—**(1) The FCA may make designated activity rules relating to—

- (a) the carrying on of any of the activities specified in regulation 9—
  - (i) in connection with an admission, or proposed admission, of transferable securities to trading on a regulated market, or
  - (ii) in relation to transferable securities that have already been admitted, or are of a class that has already been admitted, to trading on a regulated market, or
- (b) the carrying on of any of the activities specified in regulation 10.

(2) Designated activity rules made by virtue of this regulation are referred to in these Regulations as “regulated market admission rules”.

#### **FCA rules relating to admissions to trading on primary MTF**

**15.—**(1) The FCA may make designated activity rules relating to—

- (a) the carrying on of any of the activities specified in regulation 9—
  - (i) in connection with an admission, or proposed admission, of transferable securities to trading on a primary MTF, or
  - (ii) in relation to transferable securities that have already been admitted, or are of a class that has already been admitted, to trading on a primary MTF, or
- (b) the carrying on of any of the activities specified in regulation 11.

(2) Designated activity rules made by virtue of this regulation may make provision—

- (a) requiring the operator of a primary MTF that does not meet the qualified investor condition in regulation 16 to include in its rules provision requiring the issuer of transferable securities or a person requesting the admission of transferable securities to trading—
  - (i) in such cases as may be specified in the designated activity rules, to publish a document described as an MTF admission prospectus, as a condition of the admission of the transferable securities to trading on a primary MTF, and
  - (ii) in such cases as may be so specified, to publish a supplementary prospectus;
- (b) relating to the communication of an advertisement relating to the admission, or proposed admission, of transferable securities to trading on a primary MTF.

(3) Apart from the provision mentioned in paragraph (2), designated activity rules made by virtue of this regulation may only make the provision mentioned in—

- (a) regulation 22 (responsibility for prospectus or MTF admission prospectus),
- (b) regulation 32 (withdrawal rights), and
- (c) paragraph 10 (protected forward-looking statements) of Schedule 2 (compensation: exemptions).

(4) Designated activity rules made by virtue of this regulation may not—

- (a) impose requirements as to the content of an MTF admission prospectus or a supplementary prospectus relating to an MTF admission prospectus, or

- (b) require an MTF admission prospectus, or a supplementary prospectus relating to an MTF admission prospectus, to be reviewed or approved by the FCA.

### **Qualified investor condition in regulation 15(2)(a)**

**16.—**(1) For the purposes of regulation 15(2)(a), “the qualified investor condition” is that the rules of the primary MTF provide that—

- (a) only qualified investors are permitted to trade on the primary MTF, and
- (b) no qualified investor is permitted to trade on the primary MTF when acting (directly or through one or more intermediaries) on behalf of persons who are not themselves qualified investors.

(2) Where—

- (a) a person who is not a qualified investor (“the client”) has engaged a qualified investor falling within paragraph 3(a) of Schedule 1 to the markets in financial instruments regulation to act as the client’s agent, and
- (b) the terms on which the qualified investor is engaged enable the qualified investor to make decisions concerning trading on a primary MTF on the client’s behalf without reference to the client,

trading on the primary MTF by or on behalf of the qualified investor is not to be treated for the purposes of paragraph (1) as done on behalf of the client.

(3) In this regulation “qualified investor” means—

- (a) a person described in paragraph 3 of Schedule 1 to the markets in financial instruments regulation(1), other than a person who has agreed in writing with a relevant firm to be treated as a non-professional client in accordance with paragraph 4 of that Schedule;
- (b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with paragraphs 5 and 6 of that Schedule and has not subsequently agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of that Schedule;
- (c) a person who—
  - (i) is an eligible counterparty for the purposes of Section 6 of Chapter 3 of the Conduct of Business sourcebook, and
  - (ii) has not agreed in writing with a relevant firm to be treated as a non-professional client in accordance with paragraph 4 of Schedule 1 to the markets in financial instruments regulation; or

(d) a person whom—

- (i) a relevant firm was authorised to continue to treat as a professional client immediately before 3 January 2018 by virtue of Article 71.6 (transitional provisions) of [Directive 2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives [85/611/EEC](#) and [93/6/EEC](#) and [Directive 2000/12/EC](#) of the European Parliament and of the Council and repealing Council Directive [93/22/EEC](#), and
- (ii) the firm was entitled immediately before IP completion day to continue to treat as a professional client by virtue of Section II.2 of Annex II to [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending [Directive 2002/92/EC](#) and [Directive 2011/61/EU](#).

(4) In paragraph (3)—

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(1) Schedule 1 was inserted by [S.I. 2018/1403](#).

- (a) “relevant firm”, in relation to a person, means an investment firm or qualifying credit institution which (in either case)—
  - (i) is the operator of a primary MTF, or
  - (ii) is to trade on a primary MTF on the person’s behalf;
- (b) the reference to the Conduct of Business sourcebook is a reference to that sourcebook in the Handbook of Rules and Guidance published by the FCA under FSMA 2000, as it has effect from time to time.

### **FCA rules relating to public offers unconnected with admissions to trading**

17. The FCA may also make designated activity rules relating to the carrying on of any of the activities specified in regulation 9 in cases where the offer of relevant securities to the public does not fall within regulation 14(1)(a) or 15(1)(a).

### **Further provision about regulated market admission rules**

- 18.—(1) Regulated market admission rules may (among other things) make provision—
- (a) requiring a person proposing to request the admission of transferable securities to trading on a regulated market to notify the FCA before making the request;
  - (b) requiring a person proposing to request the admission of transferable securities to trading on a regulated market to publish a prospectus or other document before making the request;
  - (c) about the publication of a prospectus by a person proposing to request the admission of transferable securities to trading in a case where the person is not required to publish a prospectus, and about the approval or other validation of a prospectus in such a case;
  - (d) requiring that, where there is an offer to the public of transferable securities that are of the same class as transferable securities already admitted to trading, the offeror must publish specified information relating to the offer;
  - (e) requiring that before a prospectus or supplementary prospectus is published—
    - (i) it must be submitted to, and approved by, the FCA, or
    - (ii) specified conditions must be met;
  - (f) requiring specified documents to be filed with the FCA and, if the rules so provide, to be included in a database made available to the public by the FCA;
  - (g) that a prospectus may be treated as having constituent parts which may be separately submitted, approved or otherwise validated, published or filed;
  - (h) specifying circumstances in which any requirement falling within sub-paragraph (a), (b), (d), (e), (f) or (g) applies or does not apply.
- (2) Regulated market admission rules may also make provision as to—
- (a) the form and content of a prospectus, including any constituent part of, summary of, or supplement to, a prospectus;
  - (b) the procedure for the review by the FCA of a prospectus, supplementary prospectus or other document;
  - (c) the circumstances in which the FCA may decide to suspend the review of a prospectus or other document;
  - (d) the grounds on which the FCA may refuse to approve a prospectus or supplementary prospectus or may determine that a constituent part of a prospectus cannot form part of a valid prospectus;
  - (e) how and when a prospectus or supplementary prospectus must be published;

- (f) the conditions that must be met for a prospectus, a constituent part of a prospectus, or a supplementary prospectus to become valid in a case where the rules do not require it to be approved by the FCA;
  - (g) the period during which an approved (or otherwise validated) or filed constituent part of a prospectus may form part of a valid prospectus;
  - (h) the period of validity of a prospectus;
  - (i) 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;
  - (j) 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;
  - (k) the manner in which applications to the FCA for approval of a prospectus or supplementary prospectus are to be made;
  - (l) the ways in which a prospectus or supplementary prospectus may be made available to the public;
  - (m) the disclosure, publication or other communication of other information relating to—
    - (i) transferable securities already admitted to trading on a regulated market, or
    - (ii) the admission of transferable securities to trading on a regulated market;
  - (n) the suspension of trading in transferable securities where continued trading would be detrimental to the interests of investors.
- (3) Regulated market admission rules may require the market operator not to admit transferable securities to trading on a regulated market unless conditions specified in the rules are met.
- (4) Paragraphs (1) to (3) do not limit regulation 14(1).
- (5) No obligation under regulated market admission rules to publish a prospectus is to apply in relation to the admission to trading on a regulated market of—
- (a) transferable securities resulting from the conversion or exchange, directly or indirectly, of other securities, own funds or other liabilities under the special resolution provisions, or
  - (b) existing transferable securities modified under the special resolution provisions.
- (6) In paragraph (5), “the special resolution provisions” means—
- (a) Part 1 of the Banking Act 2009 (special resolution regime)(2), or
  - (b) Schedule 11 to the Financial Services and Markets Act 2023 (central counterparties).

### **Matters to which FCA must have regard when making certain rules**

**19.** The desirability of facilitating offers of transferable securities in the United Kingdom being made to a wide range of investors is a matter specified for the purposes of section 138EA of FSMA 2000(3) in relation to the making of—

- (a) regulated market admission rules, and
- (b) rules made by virtue of regulation 15.

### **Waiver or modification of rules**

**20.** Designated activity rules made by virtue of these regulations may include provision—

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(2) 2009 c. 1.

(3) Section 138EA was inserted by section 31(2) of the Financial Services and Markets Act 2023.

- (a) enabling requirements imposed by the rules to be dispensed with, or modified, in such cases or circumstances as may be determined by the FCA under the rules;
- (b) enabling publication of any decision made under paragraph (a) in the way appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it.

### *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>(4)</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>(5)</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).

(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

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

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



- (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>(6)</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.

### **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>(7)</sup>.

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<sup>(6)</sup> 2006 c. 46. The definition was inserted by S.I. 2019/685, Schedule 1, paragraph 21(d).

<sup>(7)</sup> Section 417(1) of the Financial Services and Markets Act 2000 contains a definition of “the Tribunal” for the purposes of that Act.

(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;
- (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>(8)</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,

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(8) 2012 c. 21.

- (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.
- (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.

### *Further powers of FCA*

### **Withdrawal rights**

**32.**—(1) A person who has agreed to buy or subscribe for relevant securities offered to the public may withdraw the acceptance in such circumstances and in such manner as may be specified in the appropriate rules.

(2) Regulated market admission rules or rules made by virtue of regulation 17 may include provision requiring the offeror, or an intermediary through whom the relevant securities are bought or subscribed for, to take such steps as may be specified in the rules in question to inform any person entitled to withdraw an acceptance of any right conferred by virtue of paragraph (1).

(3) Rules made by virtue of regulation 15 may require the operator of a primary MTF to include in its rules provision requiring the offeror, or an intermediary through whom the relevant securities are bought or subscribed for, to take such steps as may be specified in the rules to inform any person entitled to withdraw an acceptance of any right conferred by virtue of paragraph (1).

(4) The appropriate rules may provide that, in the event of a failure by the offeror or an intermediary to comply with any duty imposed under paragraph (2) or by virtue of paragraph (3), any transaction resulting from the person's acceptance of the offer is to be void or unenforceable.

(5) In paragraphs (1) and (4) “the appropriate rules” means—

- (a) in the case of an offer made in connection with an admission, or proposed admission, to trading on a regulated market, regulated market admission rules,
- (b) in the case of an offer made in connection with an admission, or proposed admission, to trading on a primary MTF, rules made by virtue of regulation 15,
- (c) in any other case, rules made by virtue of regulation 17.

(6) This regulation does not limit any rights that a person falling within paragraph (1) may have apart from this regulation.

### **FCA's power to require information**

**33.**—(1) The FCA may, by notice in writing given to a person, require the person—

- (a) to provide specified information or information of a specified description, or
- (b) to produce specified documents or documents of a specified description.

(2) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified, and
- (b) at such place as may be specified.

(3) An officer who has written authorisation from the FCA to do so may require a person without delay—

- (a) to provide the officer with specified information or information of a specified description, or
- (b) to produce to the officer specified documents or documents of a specified description.

(4) “Officer” means an officer of the FCA and includes a member of the FCA’s staff or an agent of the FCA,

(5) This regulation applies only to information and documents reasonably required by the FCA in connection with the exercise by the FCA of its functions under or by virtue of these Regulations.

(6) The FCA may require any information provided under this regulation to be provided in such form as it may reasonably require.

(7) 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.

(8) “Specified” means—

- (a) in paragraphs (1) and (2), specified in the notice, and
- (b) in paragraph (3), specified in the authorisation.

### **Powers exercisable to protect investors or advance FCA’s operational objectives**

**34.**—(1) The FCA may give directions under section 71O of FSMA 2000 (designated activities: directions)<sup>(9)</sup> to a person imposing on the person such requirements as the FCA considers appropriate in relation to the carrying on of an activity that is a designated activity by virtue of regulation 9, 10 or 11.

(2) The FCA may exercise the power conferred by virtue of paragraph (1) only if the FCA considers it desirable to do so for either or both of the following purposes—

- (a) protecting the interests of investors;
- (b) advancing any of its operational objectives.

(3) The power to impose requirements under section 71O of FSMA 2000 by virtue of paragraph (1) includes (among other things) power—

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(9) Section 71O is inserted by section 8(2) of the Financial Services and Markets Act 2023.

- (a) to require a person to suspend an offer of relevant securities to the public for a period specified in the direction;
- (b) to prohibit the offering of relevant securities to the public in circumstances specified in the direction;
- (c) to require a person not to advertise the offer, or to take such steps as the FCA may specify in the direction to suspend any existing advertisement for a period specified in the direction;
- (d) to require a person to withdraw an offer or an advertisement.

### **Power to suspend, restrict or prohibit offer to the public**

**35.**—(1) This regulation applies where a person has made an offer of relevant securities to the public (“the offer”).

(2) If the FCA has reasonable grounds for suspecting that an applicable provision has been contravened, it may—

- (a) require the offeror to suspend the offer for a period not exceeding 10 working days;
- (b) require a person not to advertise the offer, or to take such steps as the FCA may specify to suspend any existing advertisement of the offer, for a period not exceeding 10 working days.

(3) If the FCA has reasonable grounds for suspecting that it is likely that an applicable provision will be contravened, it may require the offeror to withdraw the offer.

(4) If the FCA finds that an applicable provision has been contravened, it may require the offeror to withdraw the offer.

(5) “An applicable provision” means—

- (a) a provision of Part 6 of FSMA 2000;
- (b) a provision of these Regulations;
- (c) a provision of—
  - (i) regulated market admission rules, or
  - (ii) designated activity rules made by virtue of regulation 15 or 17.

(6) The FCA may require the offeror to suspend or restrict the offer on the ground that—

- (a) before the offer was made, the FCA had imposed a prohibition or restriction under Article 42 of the markets in financial instruments regulation in relation to any financial activity or practice of the offeror,
- (b) the FCA has decided to impose a prohibition or restriction under that Article in relation to the relevant securities to which the offer relates or any financial activity or practice of the offeror,
- (c) before the offer was made, the FCA had found that a financial activity or practice of the offeror had contravened product intervention rules or financial promotion rules, or
- (d) the FCA has decided that the offer, if not suspended or restricted, would be likely to result in a contravention of product intervention rules or financial promotion rules.

(7) A requirement imposed under paragraph (6) ceases to have effect—

- (a) where it was imposed on the ground specified in paragraph (6)(a) or (b)—
  - (i) upon revocation of the prohibition or restriction under Article 42(6) of the markets in financial instruments regulation; or

- (ii) when the FCA notifies the offeror that it is satisfied that the prohibition or restriction does not have, or no longer has, any bearing on the relevant securities to which the offer relates;
  - (b) where it was imposed on the ground specified in paragraph (6)(c), when the FCA notifies the offeror that it is satisfied that the contravention of product intervention rules or financial promotion rules does not have, or no longer has, any bearing on the relevant securities to which the offer relates;
  - (c) where it was imposed on the ground specified in subsection (6)(d), when the FCA notifies the offeror that it is satisfied that the offer, if no longer suspended or restricted, would not result in a contravention of product intervention rules or financial promotion rules;
  - (d) upon the FCA giving notice under regulation 38(5) revoking its decision to impose the requirement;
  - (e) where the FCA's decision to impose the requirement is quashed on a reference to the Tribunal or in other legal proceedings, on the date of the judgment of the Tribunal or of the court concerned.
- (8) "Product intervention rules" has the same meaning as in section 137D of FSMA 2000 (FCA general rules: product intervention)(10).

#### **Power to suspend, restrict or prohibit admission to trading on regulated market**

**36.**—(1) This regulation applies where a person has requested the admission of transferable securities to trading on a regulated market.

(2) If the FCA has reasonable grounds for suspecting that an applicable provision has been contravened and the securities have not yet been admitted to trading on the regulated market in question, it may—

- (a) require the person requesting admission to suspend the request for a period not exceeding 10 working days;
- (b) require a person not to advertise the securities to which it relates, or to take such steps as the FCA may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.

(3) If the FCA has reasonable grounds for suspecting that an applicable provision has been contravened and the securities have been admitted to trading on the regulated market in question, it may—

- (a) require the market operator to suspend trading in the securities for a period not exceeding 10 working days;
- (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertisement in connection with those securities, for a period not exceeding 10 working days.

(4) If the FCA finds that an applicable provision has been contravened, it may require the market operator to prohibit trading in the securities on the regulated market in question.

(5) "An applicable provision" means—

- (a) a provision of Part 6 of FSMA 2000;
- (b) a provision of these Regulations;
- (c) a provision of regulated market admission rules.

(6) Paragraphs (7) and (8) apply where—

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(10) Section 137D was inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

- (a) before the request was made for the admission of the securities to trading on the regulated market in question (“the request”), the FCA had imposed a prohibition or restriction under Article 42 of the markets in financial instruments regulation (product intervention) in relation to any financial activity or practice of the person who made the request;
  - (b) the FCA has decided to impose a prohibition or restriction under that Article in relation to the securities or any financial activity or practice of the person who made the request;
  - (c) before the request was made, the FCA had found that a financial activity or practice of the person who made the request had contravened product intervention rules or financial promotion rules; or
  - (d) the FCA has decided that the admission of the securities to trading on the regulated market in question, if not suspended or restricted, would be likely to result in a contravention of product intervention rules or financial promotion rules.
- (7) Where the securities have not yet been admitted to trading on the regulated market in question, the FCA may—
- (a) require the person who made the request to suspend or restrict the request;
  - (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertising in connection with the securities.
- (8) Where the securities have been admitted to trading on the regulated market in question, the FCA may—
- (a) require the market operator to suspend or restrict trading in the securities;
  - (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertising in connection with the securities.
- (9) A requirement imposed under paragraph (7) or (8) ceases to have effect—
- (a) where it was imposed on the ground mentioned in paragraph (6)(a) or (b)—
    - (i) upon revocation of the prohibition or restriction under Article 42(6) of the markets in financial instruments regulation; or
    - (ii) when the FCA notifies the person who made the request that it is satisfied that the prohibition or restriction does not have, or no longer has, any bearing on the securities;
  - (b) where it was imposed on the ground mentioned in paragraph (6)(c), when the FCA notifies the person who made the request that it is satisfied that the contravention of product intervention rules or financial promotion rules does not have, or no longer has, any bearing on the securities;
  - (c) where it was imposed on the ground mentioned in paragraph (6)(d), when the FCA notifies the person who made the request that it is satisfied that the admission of the securities to trading on the regulated market in question, if no longer suspended or restricted, would not result in a contravention of product intervention rules or financial promotion rules;
  - (d) upon the FCA giving notice under regulation 38(5) revoking its decision to impose the requirement;
  - (e) where the FCA’s decision to impose the requirement is quashed on a reference to the Tribunal or in other legal proceedings, on the date of the judgment of the Tribunal or of the court concerned.
- (10) Where the FCA considers that the financial or other situation of a person at whose request transferable securities have been admitted to trading on a regulated market is such that trading would be detrimental to the interests of investors, it may require the market operator to suspend trading in the securities.



(11) “Product intervention rules” has the same meaning as in section 137D of FSMA 2000.

### **Power to suspend or prohibit trading on a trading facility**

**37.**—(1) This regulation applies in relation to the trading of transferable securities on a trading facility.

(2) If—

- (a) the FCA has reasonable grounds for suspecting that an applicable provision has been contravened, and
- (b) the securities have not yet been traded on the trading facility in question,

the FCA may require the person who proposes to trade the securities to suspend taking any action to implement the proposal for a period not exceeding 10 working days.

(3) If—

- (a) the FCA has reasonable grounds for suspecting that an applicable provision has been contravened, and
- (b) the securities have been traded on the trading facility in question,

the FCA may require the operator of the facility to suspend trading in the securities for a period not exceeding 10 working days.

(4) If the FCA finds that an applicable provision has been contravened, it may require the operator of the trading facility in question to prohibit trading in the securities on that trading facility.

(5) In this regulation—

“an applicable provision” means—

- (a) a provision of Part 6 of FSMA 2000,
- (b) a provision of these Regulations, or
- (c) a provision of designated activity rules made by virtue of regulation 15;

“trading facility” means a multilateral trading facility or organised trading facility, each of those expressions having the same meaning as in Part 18 of FSMA 2000 (see section 313(1) of that Act).

### **Regulations 34 to 37: procedure and right to refer to Tribunal**

**38.**—(1) If the FCA—

- (a) proposes to exercise the powers in any of regulations 34 to 37 in relation to a person, or
- (b) exercises any of those powers in relation to a person with immediate effect,

it must give that person written notice.

(2) A requirement under any of regulations 34 to 37 takes effect—

- (a) immediately, if the notice under paragraph (1) states that that is the case;
- (b) in any other case, on such date as may be specified in that notice.

(3) The notice under paragraph (1) must—

- (a) give details of the FCA’s action or proposed action;
- (b) state the FCA’s reasons for taking the action in question and choosing the date on which it took effect or takes effect;
- (c) inform the recipient that the recipient may make representations to the FCA within such period as may be specified by the notice (whether or not the recipient has referred the matter to the Tribunal);

- (d) inform the recipient of the date on which the action takes effect or took effect, and
  - (e) inform the recipient of the recipient's right to refer the matter to the Tribunal.
- (4) The FCA may extend the period within which representations may be made to it.
- (5) If, having considered any representations made to it, the FCA decides to maintain, vary or revoke its earlier decision, it must give written notice to that effect to the person mentioned in paragraph (1).
- (6) A notice under paragraph (5) must, where relevant, inform the person to whom it is given of the person's right to refer the matter to the Tribunal.
- (7) If a notice informs a person of the person's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (8) If a notice under this regulation relates to the exercise of the power conferred by regulation 36(3), the notice must also be given to the person at whose request the transferable securities were admitted to trading on the regulated market.
- (9) A person to whom a notice is given under this regulation may refer the matter to the Tribunal.

### Public censure

**39.**—(1) If the FCA finds that—

- (a) an issuer of relevant securities,
- (b) a person offering relevant securities to the public, or
- (c) a person requesting the admission of transferable securities to trading on a regulated market,

is failing or has failed to comply with the person's obligations under an applicable provision, it may publish a statement to that effect.

(2) In this regulation "an applicable provision" means—

- (a) a provision of these Regulations, or
- (b) a provision of regulated market admission rules or of designated activity rules made by virtue of regulation 15 or 17.

### Penalties for contraventions

**40.**—(1) If the FCA finds that a person is failing or has failed to comply with the person's obligations under an applicable provision, it may impose on that person a penalty of such amount as it considers appropriate.

(2) If, in the case of a contravention by a person (P) of an applicable provision, the FCA considers that a person who was at the material time a relevant officer of P was knowingly concerned in the contravention, it may impose on that person a penalty of such amount as it considers appropriate.

(3) In this regulation—

"an applicable provision" means—

- (a) a provision of these Regulations, or
- (b) a provision of regulated market admission rules or of designated activity rules made by virtue of regulation 15 or 17;

"relevant officer" of a person means—

- (a) a director or other similar officer of the person, or
- (b) if the affairs of the person are managed by its members, a member of the person.

### **Regulations 39 and 40: procedure and right to refer to Tribunal**

**41.**—(1) If the FCA proposes to take action against a person under regulation 39 or 40, it must give the person a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(3) A warning notice about a proposal to impose a penalty must state the amount of the proposed penalty.

(4) If the FCA decides to take action against a person under regulation 39 or 40, it must give the person a decision notice.

(5) A decision notice about the publication of a statement must set out the terms of the statement.

(6) A decision notice about the imposition of a penalty must state the amount of the penalty.

(7) If the FCA decides to take action against a person under regulation 39 or 40, the person may refer the matter to the Tribunal.

### **Statement of policy**

**42.**—(1) The FCA must prepare and issue a statement of its policy with respect to—

(a) the imposition of penalties under regulation 40, and

(b) the amount of penalties under that regulation.

(2) The FCA's policy in determining what the amount of a penalty should be must include having regard to—

(a) the seriousness of the contravention in question in relation to the nature of the requirement contravened,

(b) the extent to which that contravention was deliberate or reckless, and

(c) whether the person on whom the penalty is to be imposed is an individual.

(3) The FCA may at any time alter or replace its policy statement.

(4) If its policy statement is altered or replaced, the FCA must issue the altered or replacement statement.

(5) In exercising, or deciding whether to exercise, its power under regulation 40 in the case of any particular contravention, the FCA must have regard to any policy statement published under this regulation and in force at the time when the contravention in question occurred.

(6) The FCA must publish a statement issued under this regulation in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(7) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

(8) The FCA must, without delay, give the Treasury a copy of any policy statement which it publishes under this regulation.

### **Statements of policy: procedure**

**43.**—(1) Before issuing a statement under regulation 42, the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it in accordance with paragraph (2).

- (4) If the FCA issues the proposed statement, it must publish an account, in general terms, of—
- (a) the representations made to it in accordance with paragraph (2), and
  - (b) its response to them.
- (5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with paragraph (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under paragraph (1).
- (7) This regulation also applies to a proposal to alter or replace a statement.

### **Appointment by FCA of persons to carry out investigations**

- 44.**—(1) Paragraph (3) applies if it appears to the FCA that there are circumstances suggesting that—
- (a) there may have been a contravention of an applicable provision, or
  - (b) a person who was at the material time a relevant officer of a person to whom an applicable provision has applied has been knowingly concerned in a contravention by that person of an applicable provision.
- (2) “Relevant officer” of a person means—
- (a) a director or other similar officer of the person, or
  - (b) if the affairs of the person are managed by its members, a member of the person.
- (3) The FCA may appoint one or more competent persons to conduct an investigation on its behalf.
- (4) Part 11 of FSMA 2000 applies in relation to an investigation under paragraph (3) as if—
- (a) the investigator were appointed under section 167(1) of that Act;
  - (b) references to the investigating authority in relation to the investigator were references to the FCA;
  - (c) references to the offences mentioned in section 168 of that Act were to the offence under section 85 of that Act;
  - (d) references to an authorised person were references to the person under investigation.
- (5) In this regulation “an applicable provision” means—
- (a) a provision of these Regulations, or
  - (b) a provision of regulated market admission rules or of designated activity rules made by virtue of regulation 15 or 17.

### **Reporting of infringements**

- 45.**—(1) This regulation applies to an employer who—
- (a) provides regulated financial services,
  - (b) carries on regulated activities in reliance on the exemption in section 327 of FSMA 2000 (exemption from the general prohibition), or

- (c) is a recognised investment exchange, a recognised clearing house, a recognised CSD or a third country central counterparty<sup>(11)</sup>.
- (2) The employer must have in place appropriate internal procedures for their employees to report, through an independent channel, contraventions or potential contraventions of an applicable provision.
- (3) In this regulation—
- “an applicable provision” has the same meaning as in regulation 44;
  - “employer” and “employee” each has the meaning given in section 230 of the Employment Rights Act 1996<sup>(12)</sup>;
  - “regulated financial services” has the meaning given in section 1H(2) of FSMA 2000<sup>(13)</sup>.

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<sup>(11)</sup> Section 417(1) of the Financial Services and Markets Act 2000 contains definitions of “recognised investment exchange”, “recognised clearing house” and “recognised CSD” for the purposes of that Act. Section 285(1)(d) of that Act defines “third country central counterparty” for the purposes of that Act.

<sup>(12)</sup> 1996 c. 18. There are amendments that are not relevant to these definitions.

<sup>(13)</sup> Section 1H was inserted by section 6(1) of the Financial Services Act 2012. Subsection (2) was repealed in part by S.I. 2013/1881 and amended by section 27 of the Financial Guidance and Claims Act 2018 and by S.I. 2019/632.