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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

The Official Listing of Securities, Prospectus and  
Transparency (Amendment etc.) (EU Exit) Regulations 2019

PART 1

General

**Citation and commencement**

1.—(1) These Regulations may be cited as the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

**Interpretation**

2. In these Regulations—

“FSMA 2000” means the Financial Services and Markets Act 2000<sup>(1)</sup>;

“the FCA” means the Financial Conduct Authority.

PART 2

Amendments of primary legislation

CHAPTER 1

The Financial Services and Markets Act 2000

**Introduction**

3. FSMA 2000 is amended as follows.

**Part 6 rules**

4. In section 73A (Part 6 rules)<sup>(2)</sup>, omit subsection (5).

**Applications for listing**

5. In section 75 (applications for listing), in subsection (6), for “officially listed in another EEA State” substitute “listed in a country or territory outside the United Kingdom”.

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(1) 2008 c. 8.

(2) Inserted by [S.I. 2005/381](#); subsection (5) inserted by [S.I. 2005/1433](#).

### **Matters which may be dealt with by prospectus rules**

- 6.—(1) Section 84 (matters which may be dealt with by prospectus rules) is amended as follows.
- (2) In subsection (2)(i), omit the words from “or under” to the end.
- (3) For subsection (4) substitute—
- “(4) Prospectus rules may make provision for the purpose of dealing with matters dealt with in the prospectus directive or with matters that, when the United Kingdom was a member State, would have been matters arising out of or related to a provision of the prospectus directive.”.
- (4) Omit subsection (5).
- (5) In subsection (6)—
- (a) for “non-EEA State” substitute “country or territory outside the United Kingdom”, and
- (b) for “that State” substitute “that country or territory”.

### **Prohibition of dealing etc in transferable securities without approved prospectus**

7. In section 85 (prohibition of dealing etc in transferable securities without approved prospectus), in subsection (7), for the words from “competent authority” to the end substitute “FCA”.

### **Exempt offers to the public**

- 8.—(1) Section 86 (exempt offers to the public)(3) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (b), for “per EEA State” substitute “in the United Kingdom”;
- (b) in paragraph (e), for “in the EEA States” substitute “in the United Kingdom”.
- (3) In subsection (1A)(c), omit “or the competent authority of another EEA State”.
- (4) In subsection (1B)—
- (a) in paragraph (a), omit “or the competent authority of another EEA State”;
- (b) in paragraph (b), for “Article 5(4)(b) of the prospectus directive” substitute “rule 2.2.7(2) of the Prospectus Rules sourcebook”.
- (5) In subsection (2), for “point (1) of Section I of Annex II to the markets in financial instruments directive” substitute “paragraph 3(a) of Schedule 1 to the markets in financial instruments regulation”(4).
- (6) In subsection (7)—
- (a) in paragraph (a)—
- (i) for “points (1) to (4) of Section I of Annex II to the markets in financial instruments directive” substitute “paragraph 3 of Schedule 1 to the markets in financial instruments regulation”;
- (ii) for “the final paragraph of Section I of Annex II to that directive” substitute “paragraph 4 of that Schedule”;
- (b) in paragraph (b)—
- (i) for “Section II of Annex II to that directive” substitute “paragraphs 5 and 6 of that Schedule”;

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(3) Section 86 was substituted by [S.I. 2005/1433](#) and subsequently amended, most recently by [S.I. 2018/786](#).

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

- (ii) for “the final paragraph of Section I of Annex II to that directive” substitute “paragraph 4 of that Schedule”;
- (c) for paragraph (c) (including the “or” at the end) substitute—
  - “(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, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) 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) in paragraph (d)(ii) for “may continue to treat as a professional client from 3 January 2018” substitute “was entitled immediately before exit day to continue to treat as a professional client”.
- (7) In subsection (8), after “investment firm or” insert “qualifying”.
- (8) In subsection (9)—
  - (a) after “Investment firms and” insert “qualifying”;
  - (b) in paragraph (b), for “directly applicable” substitute “retained direct”.
- (9) After subsection (9) insert—
  - “(9A) In this section—
    - “the Conduct of Business sourcebook” means the Conduct of Business sourcebook made under this Act by the FCA, as it has effect on exit day;
    - “the Prospectus Rules sourcebook” means the Prospectus Rules sourcebook<sup>(5)</sup> made under this Act by the FCA, as it has effect on exit day.”.
- (10) Omit subsection (10).

### **Election to have prospectus**

**9.** In section 87 (election to have prospectus), in subsection (4), omit “where the United Kingdom is the home State in relation to the issuer of the securities”.

### **Criteria for approval of prospectus by FCA**

- 10.**—(1) Section 87A (criteria for approval of prospectus by FCA)<sup>(6)</sup> is amended as follows.
- (2) In subsection (1)—
    - (a) omit paragraph (a);
    - (b) in paragraph (c), for “this Part or the prospectus directive” substitute “qualifying prospectus legislation”.
  - (3) In subsection (2A), omit “EEA”.
  - (4) In subsection (7)(a), omit the words from “and any competent” to “87I”.
  - (5) After subsection (10) insert—
    - “(11) In this Part “qualifying prospectus legislation” means—

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<sup>(5)</sup> Sourcebooks made by the Financial Conduct Authority are available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where they are also available for inspection.

<sup>(6)</sup> Sections 87A to 87R were inserted by [S.I. 2005/1433](#).

- (a) the provisions of this Part,
- (b) prospectus rules,
- (c) any EU regulation, originally made under the prospectus directive, that is retained direct EU legislation,
- (d) regulations made by the Treasury under regulation 71 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 for a purpose specified in paragraphs 3 to 9 of Schedule 2 to those Regulations, and
- (e) technical standards made by the FCA under regulation 72 of those Regulations for a purpose specified in paragraphs 22 to 30 of that Schedule.”.

#### **Procedure for decision on application for approval**

- 11.—(1) Section 87D (procedure for decision on application for approval) is amended as follows.
- (2) In subsection (1), omit “and ESMA”.
  - (3) Omit subsection (1A).

#### **Repeal of sections 87E and 87F**

12. Omit section 87E (transfer by FCA of application for approval) and section 87F (transfer to FCA of application for approval).

#### **Repeal of section 87FB**

13. Omit section 87FB (communication of final terms by FCA)(7).

#### **Repeal of sections 87H and 87I**

14. Omit section 87H (prospectus approved in another EEA State) and section 87I (provision of information to host Member State).

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

15. In section 87K (power to suspend or prohibit offer to the public), in subsection (5), for the words from “means” to the end substitute “means a provision of qualifying prospectus legislation applicable in relation to the offer”.

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

16. In section 87L (power to suspend or prohibit admission to trading on a regulated market), in subsection (5), for the words from “means” to the end substitute “means a provision of qualifying prospectus legislation applicable in relation to the admission of the transferable securities to trading on the regulated market in question”.

#### **Public censure of issuer**

17. In section 87M (public censure of issuer), in subsection (4), for the words from “means” to the end substitute “means a provision of qualifying prospectus legislation applicable to a prospectus in relation to the transferable securities in question”.

## Repeal of section 87P

18. Omit section 87P (exercise of powers at request of competent authority of another EEA State).

## Transparency rules

19.—(1) Section 89A (transparency rules)(8) is amended as follows.

(2) For subsection (1) substitute—

“(1) The FCA may make rules—

- (a) imposing requirements in relation to the disclosure of periodic or ongoing information about issuers whose securities are admitted to trading on a regulated market, and
- (b) dealing with matters arising out of or relating to such requirements.”

(3) In subsection (2), after “any matters” insert “dealt with in the transparency obligations directive or with any matters that, when the United Kingdom was a member State, would have been matters”.

(4) After subsection (4) insert—

“(4A) The provision that may be made by virtue of subsection (4)(g) includes (but is not limited to) provision, in the case of an issuer whose registered office is situated in a country or territory outside the United Kingdom, allowing exemption from specified provisions of rules under this section if—

- (a) the law of that country or territory is considered by the FCA to lay down equivalent requirements, or
- (b) the issuer complies with the requirements of the law of a country or territory that the FCA considers as equivalent.”

## Provision of voteholder information

20.—(1) Section 89B (provision of voteholder information) is amended as follows.

(2) In subsection (4), for the words from “person” to the end substitute “person in accordance with the following provisions”.

(3) In subsection (5), omit “under subsection (4)(b)”.

## Provision of information by issuers of transferable securities

21.—(1) Section 89C (provision of information by issuers of transferable securities) is amended as follows.

(2) In subsection (2), for paragraphs (a) and (aa) (except the final “and”) substitute—

- “(a) an annual financial report which complies with subsection (5) and with such other requirements as may be specified;
- (aa) in the case of an issuer which is—
  - (i) a mining or quarrying undertaking, or
  - (ii) a logging undertaking,reports complying with specified requirements on payments to governments;”

(3) In subsections (3) and (4)(a), for “information required by Article 5 of the transparency obligations directive” substitute “a half-yearly financial report which covers the first 6 months of

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(8) Sections 89A to 89G were inserted by the Companies Act 2006 (c. 46) section 1266(1).

the financial year and complies with subsection (6) and with such other requirements as may be specified”.

(4) After subsection (4) insert—

“(5) An issuer’s annual financial report must include—

- (a) audited financial statements complying with specified requirements,
- (b) a management report complying with specified requirements, and
- (c) statements which—
  - (i) relate to the financial statements and the management report,
  - (ii) are made by the persons responsible within the issuer, and
  - (iii) comply with specified requirements.

(6) An issuer’s half-yearly financial report must include—

- (a) a condensed set of financial statements complying with specified requirements,
- (b) an interim management report complying with specified requirements, and
- (c) statements which—
  - (i) relate to the condensed set of financial statements and the interim management report,
  - (ii) are made by the persons responsible within the issuer, and
  - (iii) comply with specified requirements.

(7) In subsection (2)(aa), “mining or quarrying undertaking”, “logging undertaking”, “payment” and “government” have the same meanings as in the Reports on Payments to Governments Regulations 2014<sup>(9)</sup>.

(8) In this section “specified” means specified in, or referred to in, transparency rules.”.

#### **Notification of voting rights held by issuer**

**22.**—(1) Section 89D (notification of voting rights held by issuer) is amended as follows.

(2) In subsection (1), for the words from “the issuer” to the end substitute “the issuer in accordance with the following provisions”.

(3) In subsection (2), omit “under subsection (1)(b)”.

#### **Transparency rules: interpretation etc**

**23.** In section 89F (transparency rules: interpretation etc), after subsection (1) insert—

“(1A) The FCA must establish, publish and periodically update an indicative list of financial instruments that are subject to notification requirements by virtue of subsection (1)(b)(iii), taking into account developments on financial markets.

(1B) Publication of the indicative list is to be in such manner as the FCA considers appropriate.”.

#### **Public censure of issuer**

**24.**—(1) Section 89K (public censure of issuer)<sup>(10)</sup> is amended as follows.

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<sup>(9)</sup> S.I. 2014/3209.

<sup>(10)</sup> Sections 89K to 89N were inserted by the Companies Act 2006 section 1268.

(2) In subsection (5), for the words from “under” to the end substitute “under qualifying transparency legislation”.

(3) After subsection (5) insert—

“(5A) In this Part “qualifying transparency legislation” means—

- (a) transparency rules,
- (b) any EU regulation, originally made under the transparency obligations directive, that is retained direct EU legislation,
- (c) regulations made by the Treasury under regulation 71 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 for a purpose specified in paragraphs 10 to 20 of Schedule 2 to those Regulations, or
- (d) technical standards made by the FCA under regulation 72 of those Regulations for a purpose specified in paragraphs 31 to 35 of that Schedule.”.

(4) Omit subsection (6).

### **Power to suspend or prohibit trading of securities**

**25.**—(1) Section 89L (power to suspend or prohibit trading of securities) is amended as follows.

(2) In subsection (3), for the words from “a provision” to “directive” substitute “an applicable transparency obligation”.

(3) In subsection (5), for the words from “under” to the end substitute “under qualifying transparency legislation”.

(4) Omit subsection (6).

### **Voting rights suspension orders**

**26.** In section 89NA (voting rights suspension orders)(11), in subsection (11), in the definition of “relevant transparency provision”—

- (a) in paragraph (a), for “implements” substitute “implemented”;
- (b) omit the “or” at the end of paragraph (a);
- (c) for paragraph (b) substitute—
  - “(b) a provision, originally made under any of those Articles, that is retained direct EU legislation,
  - (c) a provision of regulations made by the Treasury under regulation 71 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 for a purpose specified in paragraphs 13 to 16 of Schedule 2 to those Regulations, or
  - (d) a provision of technical standards made by the FCA under regulation 72 of those Regulations for a purpose specified in paragraphs 32 to 35 of that Schedule.”.

### **Corporate governance rules**

**27.**—(1) Section 89O (corporate governance rules)(12) is amended as follows.

(2) For subsection (1) substitute—

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(11) Inserted by S.I. 2015/1755.

(12) Inserted by the Companies Act 2006 section 1269.

“(1) The FCA may make rules (“corporate governance rules”) relating to the corporate governance of issuers who have requested or approved admission of their securities to trading on a regulated market.”.

(3) Omit subsections (3) and (4).

### Storage of regulated information

**28.**—(1) Section 89W (storage of regulated information)(**13**) is amended as follows.

(2) In subsection (1), omit the words from “meeting” to the end.

(3) After that subsection insert—

“(1A) The mechanism must comply with minimum quality standards of security, certainty as to the information source, time recording and easy access by end users (see provision made under regulation 71 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 for the purpose specified in paragraph 19(b) of Schedule 2 to those Regulations).

(1B) The mechanism must be aligned with the procedure for filing the regulated information with the FCA.”.

(4) For subsection (2) substitute—

“(2) In this section “regulated information” means information which an issuer, or a person who has applied for the admission of securities to trading on a regulated market without the issuer’s consent, is required to disclose under—

- (a) listing rules,
- (b) qualifying transparency legislation, or
- (c) Articles 17 to 19 of the market abuse regulation.”.

### Liability for key investor information

**29.** In section 90ZA (liability for key investor information)(**14**), for “implementing” substitute “originally made in implementation of”.

### Penalties for breach of Part 6 rules

**30.**—(1) Section 91 (penalties for breach of Part 6 rules) is amended as follows.

(2) In subsection (1A)(**15**)—

- (a) in paragraph (e), for “the prospectus directive” substitute “qualifying prospectus legislation”;
- (b) for the words from “contravened” to “directive” substitute “contravened a provision of qualifying prospectus legislation”.

(3) In subsection (1B)(a)(i)(**16**), for the words from “transparency rules” to “directive” substitute “qualifying transparency legislation”.

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

**31.** In section 97 (appointment by FCA of persons to carry out investigations), in subsection (1)—

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(13) Inserted by [S.I. 2015/1755](#).

(14) Inserted by [S.I. 2011/1613](#).

(15) Inserted by [S.I. 2005/1433](#).

(16) Subsection (1B) was inserted by the Companies Act 2006 Schedule 15, paragraph 6, and was amended by the Financial Services Act 2012 (c. 21) section 16.



- (a) in paragraph (a), for sub-paragraph (ii) substitute—
  - “(ii) any other provision of qualifying prospectus legislation or qualifying transparency legislation;”;
- (b) in paragraph (b), for sub-paragraph (ii) substitute—
  - “(ii) any other provision of qualifying prospectus legislation or qualifying transparency legislation;”;
- (c) in paragraph (ba)(17), for the words from “by that person of” to the end substitute “by that person of qualifying transparency legislation;”.

### Repeal of section 100A

32. Omit section 100A (exercise of powers where UK is host member state)(18).

### Meaning of “securities” etc.

- 33.—(1) Section 102A (meaning of “securities” etc.)(19) is amended as follows.
- (2) In subsection (3), for “directive”, in both places where it occurs, substitute “regulation”.
  - (3) For subsection (3A)(20) substitute—
    - “(3A) “Debt securities” means bonds or other forms of transferable securitised debts, with the exception of—
      - (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 equivalent to shares.”.
  - (4) In subsection (4), for the words from “has” to the end substitute “means those instruments specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001”(21).
  - (5) For subsection (5) substitute—
    - “(5) “Non-equity transferable securities” means all transferable securities that are not equity securities; and for this purpose the following are “equity securities”—
      - (a) shares,
      - (b) other transferable securities which are equivalent to shares, and
      - (c) transferable securities which—
        - (i) are within neither of paragraphs (a) and (b),
        - (ii) give the right to acquire securities within paragraph (a) or (b) if converted or if the rights conferred by them are exercised, and
        - (iii) are issued by the issuer of the underlying shares or by an entity belonging to the group of that issuer.”.

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(17) Paragraph (ba) was inserted by [S.I. 2015/1755](#).

(18) Inserted by the Companies Act 2006 section 1271.

(19) Sections 102A to 102C were inserted by [S.I. 2005/1433](#).

(20) Inserted by the Companies Act 2006 Schedule 15, paragraph 10(2).

(21) [S.I. 2001/544](#). Part 1 of Schedule 2 was substituted by [S.I. 2006/3384](#) and amended by [S.I. 2017/488](#).

### Meaning of “offer of transferable securities to the public” etc.

**34.**—(1) Section 102B (meaning of “offer of transferable securities to the public” etc.) is amended as follows.

(2) In subsection (5)(a), after “a regulated market” insert “, as defined in Article 2(1)(13) of the markets in financial instruments regulation(22)”.

(3) For subsection (6) substitute—

“(6) “Multilateral trading facility” has the same meaning as in the markets in financial instruments regulation (see Article 2(1)(14) of that Regulation)(23).”.

### Repeal of section 102C

**35.** Omit section 102C (meaning of “home State” in relation to transferable securities).

### Interpretation of Part 6 of FSMA 2000

**36.** In section 103 (interpretation of Part 6), in subsection (1)—

(a) after the definition of “prospectus rules” insert—

““qualifying prospectus legislation” has the meaning given in section 87A(11);

“qualifying transparency legislation” has the meaning given in section 89K(5A);”;

(b) for the definition of “regulated market” substitute—

““regulated market” (except in section 102B and Schedule 10A) means a UK regulated market, as defined in Article 2(1)(13A) of the markets in financial instruments regulation(24);”.

### Liability of issuers in connection with published information

**37.**—(1) Schedule 10A (liability of issuers in connection with published information)(25) is amended as follows.

(2) In paragraph 1, for sub-paragraph (3) substitute—

“(3) For the purposes of this Schedule the United Kingdom is the home State of an issuer if—

(a) the transparency rules impose requirements on the issuer in relation to the securities, or

(b) the issuer has its registered office (or, if it does not have a registered office, its head office) in the United Kingdom.”.

(3) In paragraph 2(4)—

(a) in paragraph (a)—

(i) for “EEA” substitute “United Kingdom”;

(ii) for “Article 21 of the transparency obligations directive” substitute “transparency rules”;

(b) in paragraph (b)—

(i) for “EEA” substitute “United Kingdom”;

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(22) Article 2(1)(13) is substituted by [S.I. 2018/1403](#).

(23) Article 2(1)(14) is inserted by [S.I. 2018/1403](#).

(24) Article 2(1)(13A) is substituted by [S.I. 2018/1403](#).

(25) Inserted by [S.I. 2010/1192](#).

- (ii) for “that directive” substitute “transparency rules”.
- (4) In paragraph 8—
  - (a) in sub-paragraph (1)—
    - (i) for paragraph (a) substitute—
      - “(a) “securities” means transferable securities as defined in Article 2(1)(24) of the markets in financial instruments regulation, other than money market instruments as defined in Article 2(1)(25A) of that regulation that have a maturity of less than 12 months (and includes instruments outside the United Kingdom);”(26)
    - (ii) in paragraph (b), for sub-paragraphs (i) to (iii) substitute—
      - “(i) a regulated market as defined in Article 2(1)(13) of the markets in financial instruments regulation, or
      - (ii) a multilateral trading facility as defined in Article 2(1)(14) of that regulation.”
  - (b) omit sub-paragraph (6)(b).

#### **Transferable securities excluded from certain provisions of section 85 of FSMA 2000**

- 38.**—(1) Schedule 11A (transferable securities)(27) is amended as follows.
- (2) In paragraph 2—
    - (a) in paragraphs (a) and (b), for “an EEA State” substitute “any country or territory”;
    - (b) in paragraphs (c) and (e), for “an EEA State” substitute “any State”.
  - (3) In paragraph 3, for “an EEA State” substitute “any State”.
  - (4) In paragraph 4, for “an EEA State” substitute “any country or territory”.
  - (5) In paragraph 5—
    - (a) for the words from “a deposit” to the end substitute “the compensation scheme”;
    - (b) after sub-paragraph (2) insert—
      - “(3) “Credit institution” means a credit institution as defined in Article 4(1)(1) of the capital requirements regulation.”
  - (6) In paragraph 7, omit sub-paragraph (2)(e).
  - (7) In paragraph 8, in sub-paragraph (2)(a), for “the EEA States” substitute “the United Kingdom”.
  - (8) In paragraph 9(1), for “the EEA States” substitute “the United Kingdom”.

## CHAPTER 2

### The Companies Act 2006

#### **Repeal of section 1273 of the Companies Act 2006**

- 39.** Omit section 1273 of the Companies Act 2006(28) (corporate governance regulations).

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(26) Articles 1(1)(24) and (25A) are substituted by S.I. 2018/1403.

(27) Inserted by S.I. 2005/1433.

(28) 2006 c. 46.

## PART 3

### Amendments of EU Regulations and EU Decision

#### CHAPTER 1

##### Amendments of [Commission Regulation \(EC\) No. 809/2004](#)

#### Introduction

**40.** [Commission Regulation \(EC\) No 809/2004](#) of 29 April 2004 implementing [Directive 2003/71/EC](#) of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements is amended as follows.

#### Subject-matter of Regulation

- 41.** In Article 1 (subject-matter)—
- (a) in point (1), for “Article 5 of [Directive 2003/71/EC](#)” substitute “section 87A of FSMA 2000”;
  - (b) in point (2), for “provided for in Article 7 of [Directive 2003/71/EC](#)” substitute “for the purposes of that section”;
  - (c) in point (4), for “Article 11 of [Directive 2003/71/EC](#)” substitute “Section 4 of Chapter 2 of the Prospectus Rules sourcebook”.

#### Definitions

- 42.**—(1) Article 2 (definitions) is amended as follows.
- (2) In the opening words, omit “in addition to those laid down in [Directive 2003/71/EC](#)”.
  - (3) Before point (1) insert—
    - A1.** “the FCA” means the Financial Conduct Authority;
    - A2.** “FSMA 2000” means the Financial Services and Markets Act 2000;
    - A3.** “the Prospectus Rules sourcebook” means the Prospectus Rules sourcebook made under FSMA 2000 by the FCA, as it has effect on exit day;
    - A4.** “securities” means transferable securities as defined by Article 2(1)(24) of Regulation (EU) No. 600/2014 with the exception of money market instruments as defined by Article 2(1)(25A) of that Regulation having a maturity of less than 12 months;
    - A5.** “equity securities” means shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any such shares or other transferable securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of that issuer;
    - A6.** “non-equity securities” means all securities that are not equity securities;
    - A7.** “offer of securities to the public” means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. This definition is also applicable to the placing of securities through financial intermediaries;

**A8.** “small and medium-sized enterprises” means companies which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding 43,000,000 euros and an annual net turnover not exceeding 50,000,000 euros;

**A9.** “credit institution” means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;

**A10.** “issuer” means a legal entity which issues or proposes to issue securities;

**A12.** “person making an offer” (or “offeror”) means a legal entity or individual which offers securities to the public;

**A13.** “regulated market” has the meaning given in section 103(1) of FSMA 2000;

**A14.** “base prospectus” means a prospectus that, alone or with a supplementary prospectus, contains all the necessary information concerning the issuer and the securities to be offered to the public or admitted to trading and, at the choice of the issuer, the final terms of the offering; and for the purposes of this definition “the necessary information” has the same meaning as in section 87A of FSMA 2000;

**A15.** “key information” has the same meaning as in section 87A of FSMA 2000;

**A16.** “company with reduced market capitalisation” means a company listed on a regulated market that had an average market capitalisation of less than 10,000,000 euros on the basis of end-year quotes for the previous three calendar years;

**A17.** “UK accounting standards” means accounting standards as defined by section 464 of the Companies Act 2006;

**A18.** “UK-adopted international accounting standards” has the meaning given by section 474(1) of the Companies Act 2006(29).”

(4) In point (8), for “Member” substitute “sovereign”.

(5) In point (12), for the words from “[Directive 2001/34/EC](#)” to the end substitute “listing rules, as defined by section 73A(2) of FSMA 2000, or under Article 7 of the market abuse regulation, as defined by section 417(1) of FSMA 2000, and includes information that immediately before exit day was “regulated information” for the purposes of this Regulation”.

(6) In point (13)(e), for “Article 29(3) of Council [Directive 77/91/EEC](#)” substitute “section 562 of the Companies Act 2006(30)”.

### Categories of information in the base prospectus and the final terms

**43.** In Article 2a (categories of information in the base prospectus and the final terms)(31), in paragraph 2, for “Article 16(1) of [Directive 2003/71/EC](#)” substitute “section 87G of FSMA 2000”.

### Minimum information to be included in a prospectus

**44.** In Article 3 (minimum information to be included in a prospectus)—

(a) in the second paragraph, for “a competent authority” substitute “the FCA”;

(b) in the third paragraph—

(i) for the words from the beginning to “Member State” substitute “The FCA”;

(29) [2006 c. 46](#); the definition is inserted in section 474(1) by regulation 46 of S.I. 2019/XXX The Adoption and Use of International Accounting Standards (Amendment etc.) (EU Exit) Regulations.

(30) Section 562 is amended by [S.I. 2009/2022](#).

(31) Inserted by Commission Delegated Regulation 486/2012/EU.

- (ii) for “Article 13 of that Directive” substitute “section 85 of FSMA 2000”;
- (c) in the fourth paragraph—
  - (i) for the words from “Article 5(2)” to “Member State,” substitute “section 87A(5) of FSMA 2000, the FCA,”;
  - (ii) for “Article 13 of that Directive” substitute “section 85 of that Act”.

### Share registration document schedule

**45.** In Article 4 (share registration document schedule), in paragraph 2(2)(b), for “Community” substitute “United Kingdom”.

### Share registration document in cases of complex financial history or significant financial commitment

**46.—**(1) Article 4a (share registration document in cases of complex financial history or significant financial commitment)(**32**) is amended as follows.

- (2) In paragraph 1, in the first subparagraph—
  - (a) for “Article 5(1) of [Directive 2003/71/EC](#)” substitute “section 87A(1)(b), (2) and (3) of FSMA 2000”;
  - (b) for “The competent authority of the home Member State” substitute “The FCA”.
- (3) In paragraph 2—
  - (a) in the first subparagraph, for “competent authority” substitute “FCA”;
  - (b) in the second subparagraph, for “Article 5(1) of [Directive 2003/71/EC](#)” substitute “section 87A(1)(b), (2) and (3) of FSMA 2000”.
- (4) In paragraph 3—
  - (a) for “referred to in Article 6(1) of [Directive 2003/71/EC](#)” substitute “specified in Section 5 of Chapter 5 of the Prospectus Rules sourcebook”;
  - (b) for “competent authority” substitute “FCA”.
- (5) In paragraph 4(b), for “Article 5(1) of [Directive 2003/71/EC](#)” substitute “section 87A(2) of FSMA 2000”.

### Securities note schedule for certain debt securities

**47.** In Article 8 (securities note schedule for debt securities with a denomination per unit of less than 100,000 euros) after paragraph 5 insert—

**“6.** In this Article “regulated market” includes an equivalent market outside the United Kingdom.”.

### Guarantees building block

**48.** In Article 9 (guarantees building block), in the second paragraph, omit “Member”.

### Banks registration document schedule

**49.** In Article 14 (banks registration document schedule), in paragraph 2, for the first subparagraph substitute—

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(32) Inserted by Commission Regulation 211/2007/EC.

“The schedule referred to in paragraph 1 applies to—

- (a) a credit institution which has permission under Part 4A of FSMA 2000 to carry on the regulated activity of accepting deposits and has its registered office, or if it has no registered office, its head office, in the United Kingdom, and
- (b) a credit institution established outside the United Kingdom which does not fall within point (a) but has its registered office in a state which is a member of the OECD.”.

#### **Securities note schedule for certain debt securities**

**50.** In Article 16 (securities note schedule for debt securities with a denomination per unit of at least 100,000 euros) after paragraph 5 insert—

“6. In this Article “regulated market” includes an equivalent market outside the United Kingdom.”.

#### **Additional information building block on the underlying share**

**51.** In Article 17 (additional information building block on the underlying share), in paragraph 2(2), for “Union” substitute “United Kingdom”.

#### **Registration document schedule for collective investment undertakings of closed-end type**

**52.** In Article 18 (registration document schedule for collective investment undertakings of the closed-end type), in paragraph 2(1), omit “Member”.

#### **Registration document schedule for States and regional and local authorities**

**53.**—(1) Article 19 (registration document schedule for Member States, third countries and their regional and local authorities) is amended as follows.

(2) In the heading, for the words from “Member States” to the end substitute “UK and foreign governments or regional or local authorities”.

(3) In paragraphs 1 and 2, for the words from “Member States” to “authorities” substitute “the government of the United Kingdom or of any other country or by a regional or local authority in the United Kingdom or any other country”.

#### **Additional building block for consent given in accordance with Article 3(2) of Directive 2003/71/EC**

**54.**—(1) Article 20a (additional building block for consent given in accordance with Article 3(2) of Directive 2003/71/EC)(33) is amended as follows.

(2) In the heading, for “Article 3(2) of Directive 2003/71/EC” substitute “section 86(1A) of FSMA 2000”.

(3) In paragraph 1, for “the third subparagraph of Article 3(2) of Directive 2003/71/EC” substitute “section 86(1A) of FSMA 2000”.

(4) In paragraph 2, for “the second paragraph of Article 3(2) of Directive 2003/71/EC” substitute “section 85(1) of FSMA 2000”.

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(33) Inserted by Commission Delegated Regulation 862/2012/EU.

### Minimum information to be included in a base prospectus and its related final terms

**55.**—(1) Article 22 (minimum information to be included in a base prospectus and its related final terms) is amended as follows.

(2) In paragraph 1—

- (a) in the second subparagraph, for “Competent authorities” substitute “The FCA”;
- (b) in the third subparagraph, for the words from the beginning to “that Directive,” substitute “In order to ensure conformity with subsection (1)(b) of section 87A of FSMA 2000, the FCA, when approving a base prospectus in accordance with that section,”;
- (c) in the fourth subparagraph, for the words from “Article 5(2)” to “that Directive,” substitute “subsection (5) of section 87A of FSMA 2000, the FCA, when approving the base prospectus in accordance with that section,”.

(3) In paragraph 5(3), for “point (a) of Article 5(4) of [Directive 2003/71/EC](#)” substitute “rule 2.2.7(1) of the Prospectus Rules sourcebook”.

(4) In paragraph 6(3), for “point (b) of Article 5(4) of [Directive 2003/71/EC](#)” substitute “rule 2.2.7(2) of the Prospectus Rules sourcebook”.

(5) In paragraph 7—

- (a) in the first subparagraph, for “Article 16(1) of [Directive 2003/71/EC](#)” substitute “section 87G(1) of FSMA 2000”;
- (b) in the second subparagraph, for “Article 16(2) of [Directive 2003/71/EC](#)” substitute “section 87Q(4) of FSMA 2000”.

### Adaptations to minimum information given in prospectuses and base prospectuses

**56.**—(1) Article 23 (adaptations to minimum information given in prospectuses and base prospectuses) is amended as follows.

(2) In paragraph 1—

(a) in the first subparagraph—

- (i) for “competent authority of the home Member State” substitute “FCA”;
- (ii) for “Article 5(1) of [Directive 2003/71/EC](#)” substitute “section 87A(1)(b) of FSMA 2000”;
- (iii) omit the second sentence;

(b) omit the second subparagraph.

(3) In paragraph 3—

(a) in the first subparagraph, for “competent authority of the home Member State” substitute “FCA”;

(b) in the second subparagraph—

- (i) for “competent authority”, in the first place where it occurs, substitute “FCA”;
- (ii) for “Article 5(1) of [Directive 2003/71/EC](#)” substitute “section 87A(1)(b) of FSMA 2000”;
- (iii) omit the second sentence.

### Content of the summary etc.

**57.** In Article 24 (content of the summary etc.), in paragraph 1, for “Article 5(2) of [Directive 2003/71/EC](#)”, in both places where it occurs, substitute “section 87A(5) of FSMA 2000”.



### Format of the prospectus

**58.**—(1) Article 25 (format of the prospectus) is amended as follows.

(2) In paragraph 1—

- (a) for “Article 5(3) of [Directive 2003/71/EC](#)” substitute “rule 2.2.1 of the Prospectus Rules sourcebook”;
- (b) in point (2), for “Article 5(2) of [Directive 2003/71/EC](#)” substitute “section 87A(5) of FSMA 2000”.

(3) In paragraph 2, for “Article 5(3) of [Directive 2003/71/EC](#)” substitute “rules 2.2.1 and 2.2.2 of the Prospectus Rules sourcebook”.

(4) In paragraph 4, for “competent authority of the home Member State” substitute “FCA”.

(5) In paragraph 5, for “Article 16(1) of [Directive 2003/71/EC](#)” substitute “section 87G of FSMA 2000”.

### Format of base prospectus and its related final terms

**59.**—(1) Article 26 (format of base prospectus and its related final terms) is amended as follows.

(2) In paragraph 1—

- (a) for “Article 5(4) of [Directive 2003/71/EC](#)” substitute “rule 2.2.7 of the Prospectus Rules sourcebook”;
- (b) in point (2), for “Article 5(2) of [Directive 2003/71/EC](#)” substitute “section 87A(5) of FSMA 2000”.

(3) In paragraph 3, for “home competent authority” substitute “FCA”.

(4) In paragraph 4, for “points (a) and (b) of Article 5(4) of [Directive 2003/71/EC](#)” substitute “rule 2.2.7 of the Prospectus Rules sourcebook”.

(5) In paragraph 5, in the fourth subparagraph—

- (a) in point (a), for “Article 5(4) of [Directive 2003/71/EC](#)” substitute “rules 2.2.9 and 2.2.9A of the Prospectus Rules sourcebook”;
- (b) in point (b), for “Article 14 of [Directive 2003/71/EC](#)” substitute “rules 3.2.2 to 3.2.6 of the Prospectus Rules sourcebook”.

(6) Omit paragraph 5a.

(7) In paragraph 7, in the first subparagraph, for “Article 16(1) of [Directive 2003/71/EC](#)” substitute “section 87G of FSMA 2000”.

### Proportionate schedule for rights issues

**60.**—(1) Article 26a (proportionate schedule for rights issues)<sup>(34)</sup> is amended as follows.

(2) In paragraph 1, for “a multilateral trading facility as defined in point 15 of Article 4(1) of [Directive 2004/39/EC](#) of the European Parliament and of the Council” substitute “a UK multilateral trading facility as defined in Article 2(1)(14A) of the markets in financial instruments regulation”.

(3) In paragraph 2—

- (a) after “trading on a” insert “UK”;
- (b) in point (a), for “point 1 of the first paragraph of Article 1 of [Directive 2003/6/EC](#) pursuant to Article 6 of that Directive” substitute “Article 7(1) of Regulation 596/2014/EU pursuant to Article 17 of that Regulation”;

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(34) Articles 26a to 26c were inserted by Commission Delegated Regulation 486/2012/EU.

(c) in point (c) for “[Directive 2003/6/EC](#)” substitute “Regulation 596/2014/EU”.

#### **Proportionate schedules for small and medium-sized enterprises etc.**

**61.** In Article 26b (proportionate schedules for small and medium-sized enterprises and companies with reduced market capitalisation), in the first paragraph, omit the words from “situated” to the end.

#### **Proportionate requirements for issues by certain credit institutions**

**62.** In Article 26c (proportionate requirements for issues by credit institutions referred to in Article 1(2)(j) of [Directive 2003/71/EC](#))—

- (a) in the heading, for the words from “Article” to the end substitute “paragraph 8 of Schedule 11A to FSMA 2000”;
- (b) for “Article 1(2)(j) of [Directive 2003/71/EC](#)” substitute “paragraph 8 of Schedule 11A to FSMA 2000”;
- (c) for “Article 1(3) of that Directive” substitute “section 87 of that Act”.

#### **Arrangements for incorporation by reference**

**63.** In Article 28 (arrangements for incorporation by reference), in paragraph 2, for “Article 19 of [Directive 2003/71/EC](#)” substitute “section 1 of Chapter 4 of the Prospectus Rules sourcebook”.

#### **Historical financial information**

**64.**—(1) Article 35 (historical financial information) is amended as follows.

(2) Omit paragraphs 1 to 4.

(3) Before paragraph 5 insert—

“**4A.** In relation to any financial year beginning on or before the day on which exit day falls, issuers established in the United Kingdom must present their historical financial information in accordance with—

- (a) International Financial Reporting Standards adopted pursuant to Regulation ([EC](#)) [No 1606/2002](#) as it applies in the European Union;
- (b) if those standards are not applicable, UK accounting standards.

**4B.** In relation to any accounting year beginning on or before the day on which exit day falls, issuers established in an EEA State must present their historical financial information in accordance with—

- (a) International Financial Reporting Standards adopted pursuant to Regulation ([EC](#)) [No 1606/2002](#) as it applies in the European Union, or
- (b) if not applicable, national accounting standards of that EEA State.”.

(4) In paragraph 5—

(a) in the first subparagraph—

- (i) for “third country issuers” substitute “, in relation to any financial year beginning on or before the day on which exit day falls, issuers established outside the United Kingdom and the EEA States”;
- (ii) in paragraph (a), after “Regulation ([EC](#)) [No 1606/2002](#)” insert “as it applies in the European Union”;

- (b) in the second subparagraph, for “third country issuers” substitute “, in relation to any financial year beginning on or before the day on which exit day falls, issuers established outside the United Kingdom and the EEA States”.
- (5) In paragraph 5a—
  - (a) for “Third country issuers” substitute “Issuers established outside the United Kingdom and the EEA States”;
  - (b) after “1606/2002” insert “as it applies in the European Union”.

### Omission of Article 36

- 65. Omit Article 36 (entry into force).

### Amendments of Annexes

- 66. The Annexes are amended in accordance with Schedule 1 to these Regulations.

## CHAPTER 2

### Amendments of other EU Regulations and of EU Decision

#### Commission Regulation (EC) No 1569/2007

67.—(1) [Commission Regulation \(EC\) No 1569/2007](#) of 21 December 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 is amended as follows.

- (2) In Article 1 (subject matter)—
  - (a) after “considered” insert “for the specified purposes as”;
  - (b) for the words from “International” to “IFRS)” substitute “UK-adopted international accounting standards”;
  - (c) at the end insert—

“In this Regulation—

    - (a) “third country” means a country outside the United Kingdom, and
    - (b) “the specified purposes” means the purposes of—
      - (i) rules made by the Financial Conduct Authority that are “prospectus rules” as defined by section 73A(4) of the Financial Services and Markets Act 2000 or “transparency rules” as defined by section 89A(5) of that Act, and
      - (ii) [Commission Regulation \(EC\) No 809/2004](#) of 29 April 2004 implementing [Directive 2003/71/EC](#) of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements;
    - (c) “UK-adopted international accounting standards” has the meaning given by section 474(1) of the Companies Act 2006.”
- (3) In Article 2 (equivalence)—
  - (a) after “considered” insert “for the specified purposes as”;
  - (b) for the words from “IFRS adopted” to “No 1606/2002” substitute “UK-adopted international accounting standards”;

- (c) for “in accordance with IFRS” substitute “in accordance with UK-adopted international accounting standards”.
- (4) In Article 3 (equivalence mechanism)—
  - (a) in the first paragraph—
    - (i) for “Commission” substitute “Treasury”;
    - (ii) for “competent authority of a Member State” substitute “Financial Conduct Authority”;
  - (b) for the second paragraph substitute—
 

“Before making a determination of equivalence, the Treasury must consult the Secretary of State.

A determination of equivalence is to be made by the Treasury by regulations made by statutory instrument.”.
- (5) After Article 3 insert—

*“Article 3A*

*Treasury regulations under Article 3*

1. Regulations made by the Treasury under Article 3 may—
  - (a) contain incidental, supplemental, consequential and transitional provision,
  - (b) make different provision for different purposes, and
  - (c) amend or revoke Commission Decision (EC) No 2008/961 on the use by third countries’ issuers of securities of certain third country’s national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements.
2. A statutory instrument containing regulations made by the Treasury under Article 3 is subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (6) Omit Article 4 (conditions for the acceptance of third country accounting standards for a period ending no later than 31 March 2016).
- (7) Omit Article 5 (entry into force and application).

**Commission Decision (EC) No 2008/961**

68.—(1) Commission Decision (EC) No 2008/961 of 12 December 2008 on the use by third countries’ issuers of securities of certain third country’s national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements is amended as follows.

- (2) In Article 1—
  - (a) in the first paragraph—
    - (i) for the words from the beginning to “No 1606/2002:”, in the second place where it occurs, substitute “From exit day, with regard to annual consolidated financial statements and half-yearly consolidated financial statements, the following standards are to be considered as equivalent to UK-adopted international accounting standards:”;
    - (ii) after point (c) insert—
      - “(d) 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, as it applies in the European Union.”;

- (b) in the second paragraph, for the words from the beginning to “No 1606/2002:” substitute “From exit day, with regard to annual consolidated financial statements and half-yearly consolidated financial statements, the following standards are to be considered as equivalent to UK-adopted international accounting standards:”;
- (c) omit the paragraph beginning “Third country issuers”;
- (d) at the end insert—

“In this Decision “third country” means a country outside the United Kingdom.”.

(3) Omit Article 1a.

(4) Omit Articles 2 and 3.

### **European Parliament and Council Regulation (EU) 2017/1129**

**69.** In Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing [Directive 2003/71/EC](#) the following provisions are omitted—

- (a) in Article 1—
  - (i) paragraph 3;
  - (ii) points (a), (b) and (c) of the first subparagraph of paragraph 5, and
  - (iii) the second subparagraph of paragraph 5, and
- (b) Article 3(2).

## **PART 4**

Transfer of directive functions to the Treasury or the FCA

### **Interpretation of Schedule 2**

**70.** Part 1 of Schedule 2 contains interpretative provisions for the purposes of that Schedule.

### **Transfer of directive functions to the Treasury**

- 71.**—(1) The Treasury may make regulations for the purposes specified in Part 2 of Schedule 2.
- (2) The power to make regulations conferred on the Treasury by this regulation is exercisable by statutory instrument.
- (3) The regulations may—
- (a) contain incidental, supplemental, consequential and transitional provision, and
  - (b) make different provision for different purposes.
- (4) A statutory instrument containing regulations under this regulation is subject to annulment in pursuance of a resolution of either House of Parliament.

### **Transfer of directive functions to the FCA**

**72.** The FCA may make technical standards for the purposes specified in Part 3 of Schedule 2.

## PART 5

### Transitional provision

#### **Prospectus approved before exit day by competent authority of other EEA state**

73.—(1) Paragraph (2) applies to a prospectus which—

- (a) was approved before exit day by the competent authority of an EEA state other than the United Kingdom which is for the purposes of the prospectus directive the home State in relation to the issuer of the securities (“the home State authority”),
- (b) in respect of which the home State authority has before exit day provided the FCA with the documents specified in section 87H(1)(a) to (c) of FSMA 2000, and
- (c) which is immediately before exit day an approved prospectus for the purposes of section 85 of FSMA 2000.

(2) On and after exit day, the prospectus is to be treated for the purposes of Part 6 of FSMA 2000 as if it had been approved by the FCA at the time when it was approved by the home State authority.

(3) Paragraphs (1) and (2) apply in relation to a supplementary prospectus approved in accordance with Article 16 of the prospectus directive as they apply in relation to a prospectus approved in accordance with Article 13 of that directive.

(4) “The prospectus directive” has the same meaning as in Part 6 of FSMA 2000.

Date

*name*  
*name*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury