

2001 No. 2956

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001

Made - - - - - 22nd August 2001

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Coming into force - - in accordance with regulation 1

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The Treasury, in exercise of the powers conferred upon them by sections 75(3), 79(3)(a), 103(1)(b), 417(1)(c) and 428(3) of, and paragraph 9 of Schedule 10(d) and paragraphs 16(3), 16(4) and 20(2) of Schedule 11 to, the Financial Services and Markets Act 2000(e), hereby make the following Regulations:

PART 1 GENERAL

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000;

“competent authority” is to be construed in accordance with section 72;

“the Financial Promotion Order” means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001(f);

“issuer” has the same meaning as is given, for the purposes of section 103(1), in regulation 4 below;

“non-listing prospectus” has the meaning given in section 87(2); and

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(g).

(2) Any reference in these Regulations to a section or Schedule is, unless otherwise stated or unless the context otherwise requires, a reference to that section of or Schedule to the Act.

PART 2

MISCELLANEOUS MATTERS PRESCRIBED FOR THE PURPOSES OF PART VI OF THE ACT

Bodies whose securities may not be listed

3. For the purposes of section 75(3) (which provides that no application for listing may be entertained in respect of securities issued by a body of a prescribed kind) there are prescribed the following kinds of body—

(a) a private company within the meaning of section 1(3) of the Companies Act 1985(h) or article 12(3) of the Companies (Northern Ireland) Order 1986(i);

(b) an old public company within the meaning of section 1 of the Companies Consolidation (Consequential Provisions) Act 1985(j) or article 3 of the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986(k).

(a) By virtue of section 86, and section 87(5) and paragraphs 1 and 2 of Schedule 9, section 79(3) applies to prospectuses required by listing rules in accordance with section 84(1), and to non-listing prospectuses, as it applies to listing particulars.

(b) See the definition of “issuer”.

(c) See the definition of “prescribed”.

(d) Paragraph 9 of Schedule 10 is inserted, for the purposes of the application of Schedule 10 to non-listing prospectuses, by paragraph 5(2) of Schedule 9.

(e) 2000 c. 8. Schedule 11 is amended by S.I. 2001/2955.

(f) S.I. 2001/1335.

(g) S.I. 2001/544.

(h) 1985 c. 6.

(i) S.I. 1986/1032 (N.I. 6).

(j) 1985 c. 9.

(k) S.I. 1986/1035 (N.I. 9).

Meaning of “issuer”

- 4.—(1) For the purposes of section 103(1), “issuer” has the meaning given in this regulation.
- (2) In relation to certificates or other instruments falling within article 80 of the Regulated Activities Order (certificates representing certain securities), “issuer” means—
- (a) for the purposes of paragraph 16 of Schedule 11 (exemption from prospectus requirement for securities issued by a body corporate and offered to qualifying persons), the person by whom the certificates or instruments have been or are to be issued;
 - (b) for all other purposes, the person who issued or is to issue the securities to which the certificates or instruments relate.
- (3) In relation to any other securities, “issuer” means the person by whom the securities have been or are to be issued.

Meaning of “approved exchange”

5. For the purposes of paragraph 9 of Schedule 10(a), “approved exchange” means a recognised investment exchange approved by the Treasury for the purposes of the Public Offers of Securities Regulations 1995(b) (either generally or in relation to dealings in securities).

PART 3

PERSONS RESPONSIBLE FOR LISTING PARTICULARS, PROSPECTUSES AND NON-LISTING PROSPECTUSES

Responsibility for listing particulars

- 6.—(1) Subject to the following provisions of this Part, for the purposes of Part VI of the Act the persons responsible for listing particulars (including supplementary listing particulars) are—
- (a) the issuer of the securities to which the particulars relate;
 - (b) where the issuer is a body corporate, each person who is a director of that body at the time when the particulars are submitted to the competent authority;
 - (c) where the issuer is a body corporate, each person who has authorised himself to be named, and is named, in the particulars as a director or as having agreed to become a director of that body either immediately or at a future time;
 - (d) each person who accepts, and is stated in the particulars as accepting, responsibility for the particulars;
 - (e) each person not falling within any of the foregoing sub-paragraphs who has authorised the contents of the particulars.
- (2) A person is not to be treated as responsible for any particulars by virtue of paragraph (1)(b) above if they are published without his knowledge or consent and on becoming aware of their publication he forthwith gives reasonable public notice that they were published without his knowledge or consent.
- (3) When accepting responsibility for particulars under paragraph (1)(d) above or authorising their contents under paragraph (1)(e) above, a person may state that he does so only in relation to certain specified parts of the particulars, or only in certain specified respects, and in such a case he is responsible under paragraph (1)(d) or (e) above—
- (a) only to the extent specified; and

(a) Paragraph 9 of Schedule 10 is inserted, for the purposes of the application of Schedule 10 to non-listing prospectuses, by paragraph 5(2) of Schedule 9.

(b) S.I. 1995/1537, as modified by S.I. 1995/3275 and amended by S.I. 1999/734 and 1999/1146. By virtue of an approval dated 16th June 1995, the London Stock Exchange was approved by the Treasury for the purposes of the Regulations with effect from 19th June 1995, in relation to securities within the meaning of Part II of the Regulations which are admitted to dealings on, or are the subject of an application for admission to dealings on, the Alternative Investment Market. (The approval also related to dealings in securities on the Unlisted Securities Market, but that market no longer operates.)

- (b) only if the material in question is included in (or substantially in) the form and context to which he has agreed.

(4) Nothing in this regulation is to be construed as making a person responsible for any particulars by reason of giving advice as to their contents in a professional capacity.

(5) Where by virtue of this regulation the issuer of any shares pays or is liable to pay compensation under section 90 for loss suffered in respect of shares for which a person has subscribed no account is to be taken of that liability or payment in determining any question as to the amount paid on subscription for those shares or as to the amount paid up or deemed to be paid up on them.

Securities issued in connection with takeovers and mergers

7.—(1) This regulation applies where—

- (a) listing particulars relate to securities which are to be issued in connection with—
 - (i) an offer by the issuer (or by a wholly-owned subsidiary of the issuer) for securities issued by another person (“A”);
 - (ii) an agreement for the acquisition by the issuer (or by a wholly-owned subsidiary of the issuer) of securities issued by another person (“A”); or
 - (iii) any arrangement whereby the whole of the undertaking of another person (“A”) is to become the undertaking of the issuer (or of a wholly-owned subsidiary of the issuer, or of a body corporate which will become such a subsidiary by virtue of the arrangement); and
- (b) each of the specified persons is responsible by virtue of regulation 6(1)(d) above for any part (“the relevant part”) of the particulars relating to A or to the securities or undertaking to which the offer, agreement or arrangement relates.

(2) In paragraph (1)(b) above the “specified persons” are—

- (a) A; and
- (b) where A is a body corporate—
 - (i) each person who is a director of A at the time when the particulars are submitted to the competent authority; and
 - (ii) each other person who has authorised himself to be named, and is named, in the particulars as a director of A.

(3) Where this regulation applies, no person is to be treated as responsible for the relevant part of the particulars under regulation 6(1)(a), (b) or (c) above but without prejudice to his being responsible under regulation 6(1)(d).

(4) In this regulation—

- (a) “listing particulars” includes supplementary listing particulars; and
- (b) “wholly-owned subsidiary” is to be construed in accordance with section 736 of the Companies Act 1985(a) (and, in relation to an issuer which is not a body corporate, means a body corporate which would be a wholly-owned subsidiary of the issuer within the meaning of that section if the issuer were a body corporate).

Successor companies under legislation relating to electricity

8.—(1) Where—

- (a) the same document contains listing particulars relating to the securities of—
 - (i) two or more successor companies within the meaning of Part II of the Electricity Act 1989(b), or
 - (ii) two or more successor companies within the meaning of Part III of the Electricity (Northern Ireland) Order 1992(c); and

(a) 1985 c. 6. Section 736 was substituted by the Companies Act 1989 (c. 40), section 144(1).

(b) 1989 c. 29.

(c) S.I. 1992/231 (N.I. 2).

(b) the responsibility of any person for any information included in the document (“the relevant information”) is stated in the document to be confined to its inclusion as part of the particulars relating to the securities of any one of those companies, that person is not to be treated as responsible, by virtue of regulation 6 above, for the relevant information in so far as it is stated in the document to form part of the particulars relating to the securities of any other of those companies.

(2) “Listing particulars” includes supplementary listing particulars.

Specialist securities

9.—(1) This regulation applies where listing particulars relate to securities of a kind specified by listing rules for the purposes of section 82(1)(c), other than securities which are to be issued in the circumstances mentioned in regulation 7(1)(a) above.

(2) No person is to be treated as responsible for the particulars under regulation 6(1)(a), (b) or (c) above but without prejudice to his being responsible under regulation 6(1)(d).

(3) “Listing particulars” includes supplementary listing particulars.

Responsibility for prospectuses and non-listing prospectuses

10.—(1) This part of these Regulations applies in relation to a prospectus required by listing rules in accordance with section 84(1), or to a non-listing prospectus, as it applies in relation to listing particulars, but as if—

- (a) any reference to listing particulars were a reference to a prospectus and any reference to supplementary listing particulars were a reference to a supplementary prospectus; and
- (b) notwithstanding the definition of “issuer” given in regulation 2(1) above, any reference in this Part (other than in regulation 6(1)(b) or (c) or in paragraph (2) below) to the issuer of securities included a reference to the person offering or proposing to offer them.

(2) In the application of regulation 6 above to a prospectus or non-listing prospectus in accordance with this regulation, a person is not responsible under regulation 6(1)(a) where—

- (a) he is not the issuer, but is making the offer in association with the issuer; and
- (b) the prospectus or supplementary prospectus was drawn up primarily by the issuer, or by one or more persons acting on behalf of the issuer.

PART 4

MATTERS PRESCRIBED FOR THE PURPOSES OF SCHEDULE 11 (OFFERS NOT TO BE TREATED AS PUBLIC OFFERS OF SECURITIES)

Offers of securities to “qualifying persons”: definitions

11.—(1) For the purposes of paragraph 16(3) of Schedule 11 (offers of securities to “qualifying persons”) and for the purposes of paragraph (2) below, a body corporate is “connected with” another body corporate if—

- (a) they are in the same group; or
- (b) one is entitled, either alone or with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or its holding company.

(2) For the purposes of paragraph 16(4) of Schedule 11, “relevant trustee” means a person holding shares in or debentures of a body corporate as trustee, in pursuance of arrangements made by that body corporate (or by another body corporate connected with it) for the purpose of enabling or facilitating the holding of such shares or debentures by or for the benefit of qualifying persons (within the meaning of paragraph 16(2) of Schedule 11), or enabling or facilitating transactions in such shares or debentures between or for the benefit of such persons.

- (3) In paragraph (2) above, “shares” and “debentures” include—
- (a) any investment of the kind specified by article 76 of the Regulated Activities Order (shares) or article 77 of that Order (instruments creating or acknowledging indebtedness);
 - (b) any investment of the kind specified by article 79 or 80 of that Order (instruments giving entitlements to investments, and certificates representing certain securities) so far as relevant to articles 76 and 77; and
 - (c) any investment of the kind specified by article 89 of that Order (rights to or interests in investments) so far as relevant to investments of the kind mentioned in sub-paragraph (a) or (b) above.

(4) For the purposes of paragraph 16(4) of Schedule 11 and for the purposes of paragraph (1) above, “group”, in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary, and any other body corporate which is a subsidiary of that holding company, together with any body corporate in which a member of the group holds a qualifying capital interest.

- (5) In this regulation—
- (a) “equity share capital” is to be construed in accordance with section 744 of the Companies Act 1985^(a) (or, in relation to a company registered in Northern Ireland, in accordance with article 2(3) of the Companies (Northern Ireland) Order 1986^(b));
 - (b) “holding company” and “subsidiary” are to be construed in accordance with section 736 of the Companies Act 1985 (or, in relation to a company registered in Northern Ireland, in accordance with article 4 of the Companies (Northern Ireland) Order 1986^(c));
 - (c) “qualifying capital interest”, in relation to a body corporate, means an interest, in relevant shares of the body corporate, which is held on a long-term basis for the purpose of securing a contribution to the holder’s own activities by the exercise of control or influence arising from that interest, and a holding of 20 per cent. or more of the nominal value of the relevant shares of a body corporate is to be presumed to be a qualifying capital interest unless the contrary is shown; and
 - (d) “relevant shares”, in relation to a body corporate, means shares, comprised in the equity share capital of the body corporate, of a class carrying rights to vote in all circumstances at general meetings of the body.

Euro-securities: permitted advertisements

12.—(1) For the purposes of paragraph 20(2) of Schedule 11 (advertisements which may be issued in relation to offers of Euro-securities), there is prescribed any advertisement which is issued only to persons who are on reasonable grounds believed, by the person issuing the advertisement or causing it to be issued, to be permitted recipients.

- (2) A person is a permitted recipient for the purposes of paragraph (1) above if he is—
- (a) an investment professional within the meaning of article 19 of the Financial Promotion Order;
 - (b) a person to whom paragraph (2) of article 47 of that Order (communications to persons in the business of disseminating information) applies by virtue of sub-paragraph (a) or (b) of that paragraph;
 - (c) a person to whom paragraph (2) of article 49 of that Order (communications to high net worth companies, unincorporated associations etc.) applies by virtue of any of sub-paragraphs (a) to (d) of that paragraph (read with paragraphs (5) to (7) of that article); or
 - (d) a person who is a certified sophisticated investor within the meaning of article 50 of that Order in relation to investments of a description which includes the securities which are the subject of the offer.

(a) 1985 c. 6. There are amendments to that section which are not relevant to these Regulations.

(b) S.I. 1986/1032 (N.I. 6).

(c) Article 4 was substituted by S.I. 1990/1504 (N.I. 10).

(3) For the purposes of paragraph (2)(a) above, article 19(5) of the Financial Promotion Order is to be read as if—

- (a) in sub-paragraph (b) for the words from “where” to the end there were substituted “who is exempt in relation to regulated activities of a kind which are capable of being carried on in relation to the investments of the kind to which the offer relates”;
- (b) in sub-paragraph (c)(i) for the words “the controlled activity to which the communication relates” there were substituted “a controlled activity, in relation to investments of that kind,”;
- (c) in sub-paragraph (e) for the words “communication is made” there were substituted “advertisement is issued”; and
- (d) after sub-paragraph (e) there were added—
 - “(f) a person with or for whom any credit institution or other financial institution through which the Euro-securities may be acquired pursuant to the offer has effected or arranged for the effecting of a transaction within the period of twelve months ending with the date on which the offer is first made.”.

Tony McNulty
John Heppell

22nd August 2001

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part VI of the Financial Services and Markets Act 2000 (c. 8) (“the Act”) replaces Part IV of the Financial Services Act 1986 (“the 1986 Act”) in relation to the official listing of securities. Like that Part, it implements Council Directive No. 79/279/EEC (OJ No. L66, 16.3.1979, p.21), Council Directive No. 80/390/EEC (OJ No. L 100, 17.4.1980, p.1) and Council Directive No. 82/121/EEC (OJ No. L 48, 20.2.1982, p.26) and partly implements Council Directive No. 89/298/EEC (OJ No. L124, 5.5.1989, p.8). Council Directive No. 80/390/EEC has been amended by Council Directives 82/148/EEC, 87/345/EEC and 90/211/EEC (OJ Nos. L62, 5.3.1982, p.22, L185, 4.7.1987 p.81, and L112, 3.5.1990, p.24) and Parliament Directive 94/18/EC (OJ No. L135, 31.5.1994, p.1).

Part 2 of the Regulations makes various provisions for the purposes of Part VI of the Act, broadly continuing the effect of provisions currently in sections 142 and 143 of the 1986 Act. Regulation 3 prescribes private companies and old public companies as bodies which may not apply for their securities to be admitted to the official list. Regulation 4 defines who is an “issuer” of securities for the purposes of Part VI of the Act (and, by virtue of regulation 2(1), for the purposes of the Regulations themselves). Regulation 5 defines an “approved exchange” for the purposes of Schedule 9 of the Act (which modifies Part VI of and Schedule 10 to the Act in their application to non-listing prospectuses under section 87).

Part 3 of the Regulations prescribes the persons responsible for listing particulars and supplementary listing particulars. It broadly carries forward the existing provisions (mainly from section 152 of the 1986 Act) although with some changes. In particular regulation 9 replaces the old provision about “international securities” with a new provision covering a wider category of “specialist securities”, defined by reference to listing rules made for the purposes of section 82 of the Act. Following the approach of the 1986 Act, regulation 10 also applies Part 3 to prospectuses (including non-listing prospectuses under section 87). Persons who are responsible for such documents may be required to pay compensation under section 90 of the Act to a person who suffers loss because the document contains false or misleading information. In some cases the Regulations make a director of an issuer responsible for listing particulars etc. There is a definition of “director” in section 417(1) of the 2000 Act which includes shadow directors.

Schedule 11 to the Act broadly carries forward the effect of Schedule 11A to the 1986 Act (inserted by the Public Offers of Securities Regulations 1995 (S.I. No. 1995/1537)). It sets out situations where an offer of securities is not to be treated as being made to the public in the United Kingdom, and where accordingly no prospectus is required under section 84. Part 4 of the Regulations prescribes certain matters for the purposes of Schedule 11. Regulation 11 defines various terms used in paragraph 16 of Schedule 11 to the Act (offers of securities to qualifying persons). Regulation 12 sets out the categories of advertisements which are permitted for the purposes of paragraph 20 of that Schedule (offers of Euro-securities), by reference to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (“the Financial Promotion Order”).

Further provision is made in connection with section 87 of and Schedule 11 to the Act in the Financial Services and Markets Act 2000 (Offers of Securities) Order 2001 (S.I. 2001/2958). Transitional provisions in relation to Part VI of the Act are contained in the Financial Services and Markets Act 2000 (Official Listing of Securities) (Transitional Provisions) Order 2001 (S.I. 2001/2957).

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