

## **Explanatory Memorandum To The**

### **Investment Recommendation (Media) Regulations 2005**

2005 No.

#### **1. Introduction**

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

#### **2. Description**

2.1 These Regulations give effect in part to the EU's Market Abuse Directive ("the Directive")<sup>1</sup> and to certain secondary EC legislation<sup>2</sup> adopted under it. They aim to ensure that investors are properly informed by requiring that investment recommendations are fairly presented and that relevant interests or conflicts of interest of the producer of the recommendations, and those involved in its preparation, are disclosed. The Regulations will take effect from 1 July 2005.

#### **3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

#### **4. Legislative Background**

4.1 The Regulations are made under section 2(2) of the European Communities Act 1972, which enables the implementation of European Community legislation by statutory instrument.

4.2 In addition to these Regulations, the Directive will be implemented through changes to the Financial Service Authority's (FSA) Handbook of rules and guidance, made under the Financial Services and Markets Act 2000 ("FSMA"), and by the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005. A transposition note setting out how the main elements of the Directive, and the secondary legislation adopted under it, will be given effect in UK law is attached at Annex A.

4.3 Article 6.5 of the Directive requires that appropriate regulation is in place governing those producing investment recommendations or disseminating investment recommendations produced by a third party. Most people undertaking these activities in the UK are authorised by the

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<sup>1</sup> Article 6.5 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)(OJ No L 96, 12.4.2003, p16)

<sup>2</sup> Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (OJ No L339, 24.12.2003, p.73).

FSA and subject to its rules. But, in the main, the media do not require FSA authorisation to conduct these activities. The Regulations therefore introduce provisions governing the production of investment recommendations and the dissemination of investment recommendations made by a third party, in and through the media.

4.4 An Explanatory Memorandum (EM 9763/01 COM (2001) 281 – Market Abuse) on the Commission's proposal for a Directive was approved by the Scrutiny Committee in the House of Lords on 11 December 2001 and the Scrutiny Committee in the House of Commons on 20 March 2002.

## **5. Extent**

5.1 These Regulations apply to all of the UK.

## **6. European Convention on Human Rights**

6.1 Not applicable.

## **7. Policy Background**

7.1 The Directive contains provisions to proscribe market abuse and preventative provisions to make market abuse less likely. The provisions on investment recommendations fall into the latter category. They place more onerous obligations on banks and brokers than others. In addition, because of different national approaches to media regulation, the Directive permits media organisations producing investment recommendations and disseminating investment recommendations produced by a third party to be covered by self-regulation.

7.2 The UK has split the implementation of this part of the Directive between legislation and FSA rules. Most of those producing investment recommendations or disseminating investment recommendations produced by a third party will be regulated by the Financial Services Authority as advising on investments is a regulated activity under FSMA.

7.3 The Regulations are designed to cover those not subject to the FSA's regulation. The key exclusion from regulation the FSA in this respect relates to the media, and therefore it is the media that fall within the scope of these Regulations. However, consistent with existing practice and the Directive, these Regulations do not apply to media organisations in defined circumstances. This is where a media organisation is subject to self-regulation, through either one of the codes specified by the Regulations or an appropriate internal system or procedure, provided the publication, programme or service in which the investment recommendations are produced or disseminated contains a reference to the code, system or procedure.

7.4 The Treasury held a three-month consultation on a draft of the Regulations between June and September 2004. This was as part of a

joint HM Treasury/FSA consultation on the implementation of the Directive. Subsequent drafts were also shown to interested parties. Details of the main changes made in response to the formal consultation are included in the feedback statement on the consultation on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)). Amongst the media organisations that commented on the Regulations were: the BBC, Reuters, Bloomberg, the Press Complaints Commission, the Newspaper Society, the European Publishers Council and Ofcom. Their main objective was to ensure that the Regulations protected the operation of existing systems of media self-regulation.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached as Annex B to this Memorandum.

8.2 There should be no impact on the public sector.

## **9. Contact**

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