

2005 No. 1433

FINANCIAL SERVICES AND MARKETS

The Prospectus Regulations 2005

<i>Made</i>	<i>26 May 2005</i>
<i>Laid before Parliament</i>	<i>27 May 2005</i>
<i>Coming into force</i>	<i>1st July 2005</i>

The Treasury are a government department designated **(a)** for the purposes of section 2(2) of the European Communities Act 1972 **(b)** in relation to listing of securities on a stock exchange and information concerning listed securities and also in relation to measures relating to prospectuses on offers of transferable securities to the public;

The Treasury, in exercise of the powers conferred on them by section 2(2) of that Act, hereby make the following Regulations:

Citation, commencement and interpretation

1.-(1) These Regulations may be cited as the Prospectus Regulations 2005 and come into force on 1st July 2005.

(2) In these Regulations, “the Act” means the Financial Services and Markets Act 2000 **(c)** as amended by the Financial Services and Markets Act 2000 (Market Abuse) Regulations 2005 **(d)**.

Amendments to primary and secondary legislation

2.-(1) Schedule 1 (which contains amendments to the Act) has effect.

(a) S.I. 1992/1315, regulation 9.

(b) 1972 c. 68. By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(c) 2000 c.8.

(d) S. I. 2005/381 (which also comes fully into force on 1st July 2005).

(2) In the Act, insert the Schedule contained in Schedule 2 as Schedule 11A to the Act.

(3) Schedule 3 (which contains miscellaneous amendments) has effect.

Signed on original

[Date]
Commissioners
Majesty's Treasury

Two of the Lords
of Her

SCHEDULE 2

Regulation 2(2)

“SCHEDULE 11A

Section 85(5)(a)

TRANSFERABLE SECURITIES

PART 1

1. Units (within the meaning in section 237(2)) in an open-ended collective investment scheme.
2. Non-equity transferable securities issued by—
 - (a) the government of an EEA State;
 - (b) a local or regional authority of an EEA State;
 - (c) a public international body of which an EEA State is a member;
 - (d) the European Central Bank;
 - (e) the central bank of an EEA State.
3. Shares in the share capital of the central bank of an EEA State.
4. Transferable securities unconditionally and irrevocably guaranteed by the government, or a local or regional authority, of an EEA State.
- 5.-(1) Non-equity transferable securities, issued in a continuous or repeated manner by a credit institution, which satisfy the conditions in sub-paragraph (2).
 - (2) The conditions are that the transferable securities—
 - (a) are not subordinated, convertible or exchangeable;
 - (b) do not give a right to subscribe to or acquire other types of securities and are not linked to a derivative instrument;
 - (c) materialise reception of repayable deposits; and
 - (d) are covered by a deposit guarantee under directive 94/19/EC of the European Parliament and of the Council on deposit-guarantee schemes.
6. Non-fungible shares of capital—
 - (a) the main purpose of which is to provide the holder with a right to occupy

any immoveable property, and

(b) which cannot be sold without that right being given up.

PART 2

7.-(1) Transferable securities issued by a body specified in sub-paragraph (2) if, and only if, the proceeds of the offer of the transferable securities to the public will be used solely for the purposes of the issuer's objectives.

(2) The bodies are—

(a) a charity within the meaning of—

- (i) section 96(1) of the Charities Act 1993 (c. 10), or
- (ii) section 35 of the Charities Act (Northern Ireland) 1964 (c. 33 (N.I.));

(b) a recognised body within the meaning of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40);

(c) a housing association within the meaning of—

- (i) section 5(1) of the Housing Act 1985 (c. 68),
- (ii) section 1 of the Housing Associations Act 1985 (c. 69), or
- (iii) Article 3 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));

(d) an industrial or provident society registered in accordance with—

- (i) section 1(2)(b) of the Industrial and Provident Societies Act 1965 (c. 12), or
- (ii) section 1(2)(b) of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));

(e) a non-profit making association or body recognised by an EEA State with objectives similar to those of a body falling within any of sub-paragraphs (a) to (d).

8.-(1) Non-equity transferable securities, issued in a continuous or repeated manner by a credit institution, which satisfy the conditions in sub-paragraph (2).

(2) The conditions are—

(a) that the total consideration of the offer is less than 50,000,000 euros (or an equivalent amount); and

- (b) those mentioned in paragraph 5(2)(a) and (b).
- (3) In determining whether sub-paragraph (2)(a) is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which–
- (a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and
- (b) had previously satisfied sub-paragraph (2)(a).
- (4) For the purposes of this paragraph, an amount (in relation to an amount denominated in euros) is an “equivalent amount” if it is an amount of equal value denominated wholly or partly in another currency or unit of account.
- (5) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.
- (6) “Credit institution” means a credit institution as defined in Article 1.1(a) of the banking consolidation directive.
- 9.-(1) Transferable securities included in an offer where the total consideration of the offer is less than 2,500,000 euros (or an equivalent amount).
- (2) Sub-paragraphs (3) to (5) of paragraph 8 apply for the purposes of this paragraph but with the references in sub-paragraph (3) to “sub-paragraph (2)(a)” being read as references to “paragraph 9(1)”.

SCHEDULE 3

Regulation 2(3)

MISCELLANEOUS AMENDMENTS

Companies Act 1989 (c. 40)

1. In section 82(2)(a)(iii)(a) of the Companies Act 1989, omit “in relation to the listing of shares”.

The Public Offers of Securities Regulations 1995 (S.I. 1995/1537)

2. The Public Offers of Securities Regulations 1995 are revoked.

The Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001 (S.I. 2001/2956)

(a) Subsection (2)(a) was substituted by S.I. 2001/3649, article 76(2).

3. Sub-paragraph (a) of regulation 4(2) and regulations 10 to 12 of the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001 are revoked.

The Financial Services and Markets Act 2000 (Offers of Securities) Order 2001 (S.I. 2001/2958)

4. The Financial Services and Markets Act 2000 (Offers of Securities) Order 2001 is revoked.

Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27)

5. In section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (supervision of periodic accounts and reports of issuers of listed securities), in subsection (12), for the definition of “issuer”, “listing rules” and “security” substitute-

““listed securities” and “listing rules” have the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation of Part 6);
“issuer”, in relation to listed securities, has the meaning given by section 102A(6)(b) of that Act;”.

6. In section 16 of that Act (grants to bodies concerned with accounting standards etc.), in subsection (5), for the definition of “issuer”, “listing rules” and “security” substitute-

““listed securities” and “listing rules” have the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation of Part 6);
“issuer”, in relation to listed securities, has the meaning given by section 102A(6)(b) of the Financial Services and Markets Act 2000 (meaning of “securities” etc.);”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2003/71/EC of the European Parliament and of the Council of 4th November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (“the prospectus directive”).

These Regulations are made under section 2(2) of the European Communities Act 1972 (c. 68). They substitute sections 84 to 87 of the Financial Services and Markets Act

2000 (c. 8) (“the Act”) with sections 84 to 87R (see regulation 2(1) and Schedule 1 to the Regulations).

Section 84 sets out the matters that may be dealt with in prospectus rules which the Financial Services Authority (“the FSA”) will make. These matters include the form and content of a prospectus, the period of validity of a prospectus and the ways in which a prospectus may be published. Section 85 states the general rule that a person may not make an offer of securities to the public in the UK, or seek admission to trading on a regulated market in the UK, unless a prospectus approved by the FSA has been published. Prospectuses approved by the competent authorities of other EEA States are treated in the same way as those approved by the FSA provided the conditions in section 87H are complied with. Section 85 and Schedule 11A exempt certain securities from the section 85 requirement. Section 86 exempts certain offers from that requirement.

Section 87A states the criteria by which the FSA will approve a prospectus. Section 87B allows the FSA to authorise the omission of information which a prospectus would otherwise have to contain. Section 87C contains the time limits during which applications need to be processed by the FSA and allows the FSA to seek further information in relation to applications for approval of a prospectus. Section 87D contains the procedure to be followed when the FSA approves, proposes not to approve or decides not to approve a prospectus. Sections 87E and 87F allow applications for approval to be transferred between competent authorities within the EEA. Section 87G states when a supplementary prospectus must be produced.

Sections 87J to 87M deal with the powers of the FSA, including conditions precedent to approval (section 87J), the power to suspend or prohibit offers to the public (section 87K), the power to suspend or prohibit admission to trading on a regulated market (section 87L) and the power publicly to censure (section 87M).

These Regulations replace Schedule 11 to the Act with Schedule 11A: see regulation 2(2) and Schedule 2 to the Regulations.

These Regulations also make minor and consequential amendments to primary and secondary legislation: see regulation 2(3) and Schedule 3 to the Regulations.

A full regulatory impact assessment of the effect of this instrument on the costs of business may be obtained from the Capital Markets and Governance Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. A transposition note showing how the main provisions of the prospectus directive are being transposed into UK law is available from the same address. Both documents are available on the Treasury’s website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.