

**2012 No. 1538**

**FINANCIAL SERVICES AND MARKETS**

**The Prospectus Regulations 2012**

<i>Made</i> - - - -	<i>14th June 2012</i>
<i>Laid before Parliament</i>	<i>15th June 2012</i>
<i>Coming into force</i> - -	<i>1st July 2012</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—

- (a) matters relating to the listing of securities on a stock exchange and information concerning listed securities; and
- (b) measures relating to prospectuses on offers of transferable securities to the public.

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

**Citation, commencement and interpretation**

- 1.—(1) These Regulations may be cited as the Prospectus Regulations 2012 and come into force on 1st July 2012.
- (2) In these Regulations, “the 2000 Act” means the Financial Services and Markets Act 2000(c).

**Amendments to exemptions**

- 2.—(1) In section 86(1) of the 2000 Act(d) (exempt offers to the public)—
  - (a) in paragraphs (c) and (d), for “50,000 euros” substitute “100,000 euros”;
  - (b) omit the “or” following paragraph (d);
  - (c) in paragraph (e), after “being offered” insert “in the EEA States”; and
  - (d) insert after paragraph (e)—
    - “; or
    - (f) the offer falls within subsection (1A).”
- (2) In section 86 of the 2000 Act, after subsection (1) insert—

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(a) S.I. 1992/1315.  
(b) 1972 c.68; section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). 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, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p.572).  
(c) 2000 c.8.  
(d) Section 86 was substituted by S.I. 2005/1433 and amended by S.I. 2011/1668.

“(1A) An offer (“the current offer”) falls within this subsection if the transferable securities are being sold or placed through a financial intermediary where—

- (a) the transferable securities have previously been the subject of one or more offers to the public;
- (b) in respect of one or more of those previous offers any of paragraphs (a) to (e) of subsection (1) applied;
- (c) a prospectus is available for the securities which has been approved by the competent authority no earlier than 12 months before the date the current offer is made; and
- (d) the issuer or other person who was responsible for drawing up the prospectus has given written consent to the use of the prospectus for the purpose of the current offer.”.

(3) In section 87A of the 2000 Act(a) (criteria for approval of prospectus by competent authority), after subsection (2) insert—

“(2A) If, in the case of transferable securities to which section 87 applies, the prospectus states that the guarantor is a specified EEA State, the prospectus is not required to include other information about the guarantor.”.

(4) In paragraph 8(2) of Schedule 11A to the 2000 Act(b) (transferable securities), for paragraph (a) substitute—

“(a) that the total consideration for the transferable securities being offered in the EEA States is less than 75,000,000 euros (or an equivalent amount); and”.

(5) In paragraph 9(1) of Schedule 11A to the 2000 Act (transferable securities), for “the total consideration of the offer in the European Union” substitute “the total consideration for the transferable securities being offered in the EEA States”.

### **New definition of qualified investor**

3.—(1) Omit section 84(3) of the 2000 Act(c) (matters to be dealt with by prospectus rules).

(2) In section 86 of the 2000 Act (exempt offers to the public)—

- (a) in subsection (2)(a), for “Article 2.1(e)(i) of the prospectus directive” substitute “point (1) of Section I of Annex II to the markets in financial instruments directive”;
- (b) for subsection (7) substitute—

“(7) “Qualified investor”, in relation to an offer of transferable securities, means—

- (a) a person described in points (1) to (4) of Section I of Annex II to the markets in financial instruments directive, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;
- (b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to that directive and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;
- (c) a person who is an eligible counterparty in accordance with Article 24 of that directive and 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

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(a) Section 87A was substituted by S.I. 2005/1433.

(b) Schedule 11A was inserted by S.I. 2005/1433 and amended by S.I. 2006/3221, S.I. 2011/99 and S.I. 2011/1668. There are other amendments not relevant to these Regulations.

(c) Section 84 was inserted by S.I. 2005/1433.

client in accordance with the final paragraph of Section I of Annex II to that directive; or

(d) a person whom any relevant firm is authorised to continue to treat as a professional client in accordance with Article 71(6) of that directive.”.

(c) after subsection (7) insert—

“(8) In subsection (7) “relevant firm” means an investment firm or credit institution acting in connection with the offer.

(9) Investment firms and credit institutions which are authorised persons must communicate their classification of their clients as being or not being qualified investors on request to an issuer subject to complying with the Data Protection Act 1998 or any directly applicable EU legislation relating to data protection.

(10) In subsections (8) and (9), “credit institution” means—

(a) a credit institution authorised under the banking consolidation directive; or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have one, its head office) in an EEA State.”.

(3) Omit section 87R of the 2000 Act(a) (register of investors).

### Summaries and final terms

4. In section 87A of the 2000 Act (criteria for approval of prospectus by competent authority)—

(a) for subsection (6) substitute—

“(6) The summary must convey concisely, in non-technical language and in an appropriate structure, the key information relevant to the securities which are the subject of the prospectus and, when read with the rest of the prospectus, must be an aid to investors considering whether to invest in the securities.”; and

(b) in subsection (7) for the words from “the applicant must” to the end substitute—

“the applicant must, as soon as that element is finalised—

(a) inform, in writing, the competent authority and any competent authority of any EEA State which the applicant has requested be supplied with a certificate of approval under section 87I; and

(b) make that information available, in writing, to prospective investors.”.

(c) after subsection (7) insert—

“(7A) The document containing the final offer price or the amount of transferable securities to be offered to the public may only contain information that relates to the securities note and must not be used to supplement the prospectus.”.

(d) after subsection (8) insert—

“(9) “the key information” means the information which is essential to enable investors to understand the transferable securities to which the prospectus relates and to decide whether to consider the offer further.

(10) The key information must include —

(a) the essential characteristics of, and risks associated with, the issuer and any guarantor, including their assets, liabilities and financial positions;

(b) the essential characteristics of, and risks associated with, investment in the transferable securities, including any rights attaching to the securities;

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(a) Section 87R was inserted by S.I. 2005/1433.

- (c) the general terms of the offer, including an estimate of the expenses charged to an investor by the issuer and the person offering the securities to the public, if not the issuer;
- (d) details of the admission to trading; and
- (e) the reasons for the offer and proposed use of the proceeds.”.

### Supplementary prospectus

**5.**—(1) In section 87G of the 2000 Act(**a**) (supplementary prospectus) after subsection (3) insert—

“(3A) But where the prospectus relates both to an offer of transferable securities to the public and the admission of those securities to trading on a regulated market, subsection (3) does not apply and the relevant period begins when the prospectus is approved and ends with the later of—

- (a) the closure of the offer to the public to which the prospectus relates, or
- (b) the time when trading in those securities on a regulated markets begins.”.

(2) In section 87Q of the 2000 Act(**b**) (right of investor to withdraw)—

(a) for subsection (4) substitute—

“(4) A person (“P”) may withdraw P’s acceptance of an offer of transferable securities to the public before the specified time where the conditions in subsection (5) are satisfied.”.

(b) after subsection (4) insert—

“(5) The conditions are that—

- (a) a prospectus which relates to an offer of transferable securities to the public has been published;
- (b) a supplementary prospectus has been published;
- (c) prior to the publication of the supplementary prospectus, P agreed to buy or subscribe for transferable securities to which the offer relates; and
- (d) the significant new factor, material mistake or inaccuracy referred to in section 87G(1) which caused the supplementary prospectus to be published arose before delivery of the securities.

(6) The specified time is—

- (a) the end of the second working day after the day on which the supplementary prospectus was published; or
- (b) such later time as may be specified in the supplementary prospectus.”.

### Provision of information

**6.** In section 87I of the 2000 Act(**c**) (provision of information to host Member State)—

(a) in subsection (1A), for “to ESMA” substitute:

“to—

- (a) the person who made the request under this section; and
- (b) ESMA”;

(b) in subsection (5)(a), for “the date of the request” substitute “the date the request is received”.

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(a) Section 87G was inserted by S.I. 2005/1433.

(b) Section 87Q was inserted by S.I. 2005/1433.

(c) Section 87I was inserted by S.I. 2005/1433; subsection (1A) was inserted by S.I. 2012/916

### **Civil liability attaching to the summary**

**7.** In section 90 of the 2000 Act(**a**) (compensation for statements in listing particulars or prospectus) for subsection (12) substitute—

“(12) A person is not to be subject to civil liability solely on the basis of a summary in a prospectus unless the summary, when read with the rest of the prospectus—

- (a) is misleading, inaccurate or inconsistent; or
- (b) does not provide key information (as defined in section 87A(9) and (10)),

and in this subsection a summary includes any translation of it.”.

### **Disclosure of information requirements**

**8.** In section 96A(1)(c)(ii), for “who is required to file annual information in relation to the shares in the United Kingdom in accordance with Article 10 of the prospectus directive” substitute “whose home State is the United Kingdom”.

### **Definitions**

**9.** In section 103 of the 2000 Act(**b**) (interpretation of Part 6)—

- (a) in the definition of “the prospectus directive” after “admitted to trading” insert “as amended by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 and by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010”;
- (b) in the definition of “the transparency obligations directive” after “a regulated market” insert “as amended by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 and by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010”.

### **Review**

**10.**—(1) The Treasury must from time to time—

- (a) carry out a review of the Prospectus Regulations 2011(**c**) and these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how those parts of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading that are amended by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 (which is implemented by means of the instruments mentioned in paragraph (1)(a) and rules made by the Financial Services Authority under the 2000 Act) are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by the instruments mentioned in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved, and

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(a) Section 90 was inserted by S.I. 2005/1433 and amended by the Companies Act 2006 (c.46), section 1272, Schedule 15, Part 1, paragraphs 1, 4, 5.

(b) Section 103 was substituted by S.I. 2005/1433 and amended by the Companies Act 2006, sections 1265 and 1272, Schedule 15, Part 1, paragraphs 1 and 11.

(c) S.I. 2011/1668.

- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published not later than 30th June 2017.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

*Jeremy Wright*  
*Brooks Newmark*

14th June 2012

Two of the Lords Commissioners of Her Majesty's Treasury

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend provisions of the Financial Services and Markets Act 2000 (c. 8) (“the Act”) to implement in part Directive 2010/73/EU (OJ No L 327, 11.12.2010, p.1) of the European Parliament and of the Council. That Directive amends Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (“the Prospectus Directive”) and Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

Regulation 2 makes amendments to exemptions to the obligation to produce a prospectus. Regulation 3 substitutes a definition of qualified investor based on concepts derived from Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No L 145, 30.4.2004, p.1). Regulation 4 amends the purpose of prospectus summaries and the obligation to notify competent authorities of final terms of an offer of securities, and make these available to investors.

Regulation 5 amends the last date before which a supplementary prospectus must be prepared if a significant new factor, material mistake or inaccuracy arises, and the last date on which an investor may exercise their right to withdraw their acceptance of an offer in this situation. Regulation 6 makes minor amendments to the obligation to provide information to the competent authority of a host EEA State. Regulation 7 extends the scope of section 90 of the Act to provide that the omission of key information from a summary may also attract civil liability and regulation 9 inserts up-to-date definitions into the Act.

Regulation 10 provides for a review of the United Kingdom's implementation of the amendments made to the Prospectus Directive at five yearly intervals.

An Impact Assessment of the effect of this instrument on the costs of business and the voluntary sector has been prepared and is available on HM Treasury's website ([www.hmtreasury.gov.uk](http://www.hmtreasury.gov.uk)) or from the Securities and Markets Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available alongside the instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).