

2019 No. 1043

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Prospectus)
Regulations 2019**

<i>Made</i> - - - -	<i>24th June 2019</i>
<i>Laid before Parliament</i>	<i>25th June 2019</i>
<i>Coming into force</i> - -	<i>21st July 2019</i>

The Treasury are designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Prospectus) Regulations 2019 and come into force on 21st July 2019.

(2) In these Regulations—

“FSMA” means the Financial Services and Markets Act 2000^(c);

“the FCA” means the Financial Conduct Authority;

“the EU Prospectus Regulation” means Regulation (EU) No 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^(d).

(a) S.I. 2012/1759.

(b) 1972 c. 68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183). The European Communities Act 1972 is repealed on exit day by section 1 of the European Union (Withdrawal) Act 2018 (c.16).

(c) 2000 c. 8.

(d) OJ No. L168 30.06.2017, p.12.

Designation of competent authority

2. The FCA is designated as the competent authority for the purposes of the EU Prospectus Regulation.

PART 2

Amendments of the Financial Services and Markets Act 2000

Introduction

3. FSMA is amended as follows.

Part 6 rules

4. In section 73A (Part 6 Rules)(a), in subsection (5) for “directive” substitute “regulation”.

Matters which may be dealt with by prospectus rules

5.—(1) Section 84 (matters which may be dealt with by prospectus rules)(b) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a) omit “(including a summary)”; and

(b) in paragraph (c) omit “(including a summary)”.

(3) After subsection (1) —

“(1A) In subsection (1) “prospectus” includes any part of a prospectus, and in particular includes a summary and a supplement.”

(4) For subsection (2)(i) substitute—

“(i) the exercise of entitlements under Article 4 of the prospectus regulation, or elections under Article 2(m)(ii) or (iii) of the prospectus regulation as applied for the purposes of this Part by section 102C.”.

(5) In subsection (4), for “directive” substitute “regulation”.

(6) Omit subsections (5) and (6).

Prohibition of dealing etc in transferable securities without approved prospectus

6.—(1) Section 85 (prohibition of dealing etc in transferable securities without approved prospectus)(c) is amended as follows.

(2) In subsection (5), for paragraphs (a) and (b) substitute—

“(a) those listed in Article 1(2) of the prospectus regulation;

(b) any offered in an offer falling within Article 1(3) of the prospectus regulation.”.

(3) In subsection (6), for “other than” to the end, substitute “other than those listed in Article 1(2) of the prospectus regulation.”

(4) After subsection (6) insert—

“(6A) Schedule 11A makes provision that applies for the purposes of Article 1(2)(e) of the prospectus regulation.”

(a) Inserted by S.I. 2005/381; subsection (5) inserted by S.I. 2005/1433.

(b) Section 84 was substituted by S.I. 2005/1433 and subsections (1) and (2) subsequently amended by section 16 of the Financial Services Act 2012 c. 21.

(c) Section 85 was substituted by S.I. 2005/1433.

(5) After subsection (7) insert—

“(8) A prospectus approved by the competent authority of an EEA State other than the United Kingdom is an approved prospectus for the purposes of this section only if the prospectus, and any supplement, has been notified in accordance with Article 25 of the prospectus regulation.”.

Exempt offers to the public

7.—(1) Section 86 (exempt offers to the public)(a) is amended as follows.

(2) In the heading, at the end insert “and admissions to trading”.

(3) In subsection (1)—

(a) for paragraphs (a) to (d) substitute—

“(aa) the offer falls within Article 1(4) of the prospectus regulation; or”; and

(b) omit paragraph (f), and the “or” preceding it.

(4) Omit subsections (1A) and (1B).

(5) In subsection (2)(a), for “who is not a qualified investor (“the client”) substitute “(the client”) who is not a qualified investor (as defined in the first sentence of Article 2(e) of the prospectus regulation)”.

(6) In subsection (3), for “subsection (1)(b)” substitute “subsection (1)”.

(7) Omit subsections (7) to (10).

(8) After subsection (4) insert—

“(4A) A person does not contravene section 85(2) if the admission to trading falls within Article 1(5) of the prospectus regulation.”.

Election to have prospectus

8.—(1) Section 87 (election to have a prospectus)(b) is amended as follows.

(2) Omit subsections (1) and (2).

(3) In subsection (3), for “which are the subject of an election” substitute “for which a prospectus is drawn up voluntarily in exercise of entitlement to do so under Article 4 of the prospectus regulation”.

(4) Omit subsection (4).

Criteria for approval of prospectus by FCA

9.—(1) Section 87A (criteria for approval of prospectus by FCA)(c) is amended as follows.

(2) In subsection (1)(b), for “necessary information” insert “information required by Article 6(1) or 14(2) of the prospectus regulation”.

(3) In subsection (1)(c), for “or the prospectus directive” substitute “, the prospectus regulation or prospectus rules”.

(4) For subsection (2) substitute—

“(2) The necessary information is—

(a) the information required by Article 6(1) of the prospectus regulation, or

(b) in a case within Article 14(1) of that regulation, the information required by Article 14(2) of that regulation.”.

(a) Section 86 was substituted by S.I. 2005/1433 and subsequently amended, most by S.I. 2012/1538, 2013/1125 and 2018/786.

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

(c) Section 87A to 87R were inserted by S.I. 2005/1433. Section 87A was amended by section 16 of the Financial Services and Markets Act 2012, c. 21 and S.i. 2012/1538.

- (5) Omit subsections (3) to (7).
- (6) In subsection (8), omit “(except in subsection (5))”.
- (7) Omit subsections (9) and (10).

Exemptions from disclosure

- 10.**—(1) Section 87B (exemptions from disclosure) is amended as follows.
- (2) Omit subsection (1).
- (3) In subsection (3), for “subsection (1)(a)” substitute “Article 18(1)(a) of the prospectus regulation”.
- (4) Omit subsection (5).

Consideration of application for approval

- 11.**—(1) Section 87C (consideration of application for approval) is amended as follows.
- (2) Omit subsections (1) to (3) and (5).
- (3) In subsection (9)—
 - (a) omit the words before “subsections”, and
 - (b) for “such an application” substitute “an application for approval of a supplementary prospectus”.
- (4) Omit subsections (10) to (11).

Procedure for decision on application for approval

- 12.**—(1) Section 87D (procedure for decision on application for approval)(a) is amended as follows.
- (2) In the heading, for “on” substitute “to refuse an”.
- (3) Omit subsections (1) and (1A).

Repeal of sections 87E and 87F

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

Repeal of sections 87FA and 87FB

- 14.** Omit section 87FA (final terms) and section 87FB (communication of final terms by FCA)(b).

Supplementary prospectus

- 15.**—(1) Section 87G (supplementary prospectus) is amended as follows.
- (2) Omit subsections (1) to (4).
- (3) In subsection (5)—
 - (a) for “responsible for the prospectus” substitute “who is responsible for a prospectus approved by the FCA and”;
 - (b) after “factor,” for “mistake or inaccuracy” substitute “material mistake or material inaccuracy”; and

(a) Section 87D was substituted by S.I. 2005/1433 and (1A) subsequently inserted by S.I. 2016/1095.
(b) Sections 87FA and 87FB were inserted by S.I. 2014/3293.

- (c) for “subsection (2)” substitute “Article 23 of the prospectus regulation”.
- (4) Omit subsections (6) and (7).

Repeal of sections 87H and 87I

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

Power of FCA to suspend scrutiny of prospectus

17. After section 87J (requirements imposed as condition of approval) insert—

“Power to suspend scrutiny of prospectus

87JA.—(1) Where the FCA has received an application for approval of a prospectus, it may suspend its scrutiny of the prospectus on the ground that—

- (a) before receiving the application, it had imposed a prohibition or restriction under Article 42 of the markets in financial instruments regulation in relation to any financial activity or practice of the applicant;
- (b) in considering the application, it has decided to impose a prohibition or restriction under that Article in relation to the transferable securities to which the prospectus relates or any financial activity or practice of the applicant;
- (c) before receiving the application, it had found that a financial activity or practice of the applicant had contravened product intervention rules; or
- (d) in considering the application, it has decided that the approval of the prospectus would be likely to result in a contravention of product intervention rules.

(2) The FCA must resume its consideration of the application for approval of the prospectus—

- (a) where it suspended scrutiny of the prospectus on the ground specified in subsection (1)(a) or (b)—
 - (i) upon revoking the prohibition or restriction under Article 42(6) of the markets in financial instruments regulation; or
 - (ii) when it is satisfied that the prohibition or restriction does not have, or no longer has, any bearing on the approval of the prospectus;
- (b) where it suspended scrutiny of the prospectus on the ground specified in subsection (1)(c), when it is satisfied that the contravention of product intervention rules does not have, or no longer has, any bearing on the approval of the prospectus;
- (c) where it suspended scrutiny of the prospectus on the ground specified in subsection (1)(d), when it is satisfied that its approval of the prospectus would not result in a contravention of product intervention rules;
- (d) upon giving notice under section 87O(5) revoking its decision to suspend scrutiny of the prospectus;
- (e) where its decision to suspend scrutiny of the prospectus is quashed on a reference to the Tribunal or in other legal proceedings, on the date of the judgment of the Tribunal or of the court concerned.

(3) “Product intervention rules” has the same meaning as in section 137D.

Power to refuse approval of a prospectus

87JB.—(1) Where the FCA is satisfied that a person has repeatedly and seriously infringed provision within subsection (2) (whether or not each infringement is of the same

provision), the FCA may decide that, for a period not exceeding 5 years, the FCA will not accept from the person any application for approval of a prospectus.

(2) The provisions referred to in subsection (1) are—

- (a) any provision of this Part so far as relating to prospectuses;
- (b) any provision of prospectus rules;
- (c) any provision of the prospectus regulation;
- (d) any provision made in accordance with the prospectus regulation.

(3) If the FCA proposes that for a period it will not accept any application from a person for approval of a prospectus, the FCA must give the person a warning notice specifying the length of the proposed period.

(4) If the FCA decides for a period that it will not accept any application from a person for approval of a prospectus—

- (a) the FCA must give the person a decision notice;
- (b) the period starts with the date of the notice;
- (c) the person may refer that matter to the Tribunal; and
- (d) the notice must—
 - (i) be dated;
 - (ii) specify the length of the period;
 - (iii) state that the period begins with the date of the notice; and
 - (iv) state that the person may refer the matter to the Tribunal.

(5) If the FCA decides not to accept any application from a person for the approval of a prospectus for a specified period, the person may refer the matter to the Tribunal.”.

Power to restrict offer to the public

18.—(1) Section 87K (power to suspend or prohibit offer to the public) is amended as follows.

(2) In the heading, after “suspend” insert “, restrict”.

(3) In subsection (5) for paragraph (c) substitute—

“(c) any provision of, or made in accordance with, the prospectus regulation.”.

(4) After subsection (5) insert—

“(6) The FCA may require the offeror to suspend or restrict the offer on the ground that—

- (a) before the offer was made, the FCA had imposed a prohibition or restriction under Article 42 of the markets in financial instruments regulation in relation to any financial activity or practice of the offeror;
- (b) the FCA has decided to impose a prohibition or restriction under that Article in relation to the transferable securities to which the offer relates or any financial activity or practice of the offeror;
- (c) before the offer was made, the FCA had found that a financial activity or practice of the offeror had contravened product intervention rules; or
- (d) the FCA has decided that the offer, if not suspended or restricted, would be likely to result in a contravention of product intervention rules.

(7) A requirement imposed under subsection (6) ceases to have effect—

- (a) where it was imposed on the ground specified in subsection (6)(a) or (b)—
 - (i) upon revocation of the prohibition or restriction under Article 42(6) of the markets in financial instruments regulation; or
 - (ii) when the FCA notifies the offeror that it is satisfied that the prohibition or restriction does not have, or no longer has, any bearing on the transferable securities to which the offer relates;

- (b) where it was imposed on the ground specified in subsection (6)(c), when the FCA notifies the offeror that it is satisfied that the contravention of product intervention rules does not have, or no longer has, any bearing on the transferable securities to which the offer relates;
 - (c) where it was imposed on the ground specified in subsection (6)(d), when the FCA notifies the offeror that it is satisfied that the offer, if no longer suspended or restricted, would not result in a contravention of product intervention rules;
 - (d) upon the FCA giving notice under section 87O(5) revoking its decision to impose the requirement;
 - (e) where the FCA’s decision to impose the requirement is quashed on a reference to the Tribunal or in other legal proceedings, on the date of the judgment of the Tribunal or of the court concerned.
- (8) “Product intervention rules” has the same meaning as in section 137D. ”.

Power of FCA to restrict admission to trading on a regulated market

19.—(1) Section 87L (power to suspend or prohibit admission to trading on a regulated market) is amended as follows.

- (2) In the heading after “suspend” insert “, restrict”; and
- (3) In subsection (5) for paragraph (c) substitute—
 - “(c) any provision of, or made in accordance with, the prospectus regulation.”.
- (4) After subsection (5) insert—
 - “(6) Subsections (7) and (8) apply where—
 - (a) before the request was made for the admission of the securities to trading on the regulated market in question (“the request”), the FCA had imposed a prohibition or restriction under Article 42 of the markets in financial instruments regulation in relation to any financial activity or practice of the person who made the request;
 - (b) the FCA has decided to impose a prohibition or restriction under that Article in relation to the securities or any financial activity or practice of the person who made the request;
 - (c) before the request was made, the FCA had found that a financial activity or practice of the person who made the request had contravened product intervention rules; or
 - (d) the FCA has decided that the admission of the securities to trading on the regulated market in question, if not suspended or restricted, would be likely to result in a contravention of product intervention rules.
 - (7) Where the securities have not yet been admitted to trading on the regulated market in question, the FCA may—
 - (a) require the person who made the request to suspend or restrict the request;
 - (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertising in connection with the securities.
 - (8) Where the securities have been admitted to trading on the regulated market in question, the FCA may—
 - (a) require the market operator to suspend or restrict trading in the securities;
 - (b) require a person not to advertise the securities, or to take such steps as the FCA may specify to suspend any existing advertising in connection with the securities.
- (9) A requirement imposed under subsection (7) or (8) ceases to have effect—
 - (a) where it was imposed on the ground mentioned in subsection (6)(a) or (b)—
 - (i) upon revocation of the prohibition or restriction under Article 42(6) of the markets in financial instruments regulation; or

- (ii) when the FCA notifies the person who made the request that it is satisfied that the prohibition or restriction does not have, or no longer has, any bearing on the securities;
- (b) where it was imposed on the ground mentioned in subsection (6)(c), when the FCA notifies the person who made the request that it is satisfied that the contravention of product intervention rules does not have, or no longer has, any bearing on the securities;
- (c) where it was imposed on the ground mentioned in subsection (6)(d), when the FCA notifies the person who made the request that it is satisfied that the admission of the securities to trading on the regulated market in question, if no longer suspended or restricted, would not result in a contravention of product intervention rules;
- (d) upon the FCA giving notice under section 87O(5) revoking its decision to impose the requirement;
- (e) where the FCA’s decision to impose the requirement is quashed on a reference to the Tribunal or in other legal proceedings, on the date of the judgment of the Tribunal or of the court concerned.

(10) “Product intervention rules” has the same meaning as in section 137D.

(11) Where the FCA considers that the financial or other situation of a person at whose request transferable securities have been admitted to trading on a regulated market is such that trading would be detrimental to the interests of investors, it may require the market operator to suspend trading in the securities.”.

Power of FCA to suspend or prohibit trading on a trading facility

20. After section 87L insert—

“Power of FCA to suspend or prohibit trading on a trading facility

87LA.—(1) This section applies in relation to the trading of transferable securities on a trading facility.

(2) If—

- (a) the FCA has reasonable grounds for suspecting that an applicable provision has been infringed, and
- (b) the securities have not yet been traded on the trading facility in question,

the FCA may require the person who proposes to trade the securities to suspend taking any action to implement the proposal for a period not exceeding 10 working days.

(3) If—

- (a) the FCA has reasonable grounds for suspecting that an applicable provision has been infringed, and
- (b) the securities have been traded on the trading facility in question,

the FCA may require the operator of the facility to suspend trading in the securities for a period not exceeding 10 working days.

(4) If the FCA finds that an applicable provision has been infringed, it may require the operator of the trading facility in question to prohibit trading in the securities on that facility.

(5) In this section—

“applicable provision” means—

- (a) a provision of this Part,
- (b) a provision contained in prospectus rules, or
- (c) any provision of, or made in accordance with, the prospectus regulation;

“multilateral trading facility” has the meaning given by section 102B(6);
“organised trading facility” has the meaning given in Article 4.1.23 of the markets in financial instruments directive;
“trading facility” means a multilateral trading facility or an organised trading facility;”.

Public censure of issuer

21.—(1) Section 87M (public censure of issuer) is amended as follows.

(2) In subsection (4) for paragraph (c) substitute—

“(c) any provision of, or made in accordance with, the prospectus regulation.”.

(3) In subsection (5), after “supplementary prospectus” insert “and also includes, where final terms (see Article 8 of the prospectus regulation) are contained in a separate document that is neither a prospectus nor a supplementary prospectus, that separate document”.

Procedure under sections 87K and 87L

22.—(1) Section 87O (procedure under sections 87K and 87L) is amended as follows.

(2) For the heading substitute “Procedure under sections 87JA, 87K, 87L and 87LA”.

(3) In subsection (1) for “or 87L” substitute “, 87L or 87LA, or a suspension under section 87JA(1),”.

(4) In subsection (2)(a) for “87K or 87L” substitute “87JA, 87K, 87L or 87LA”.

Exercise of powers at request of competent authority of another EEA State

23.—(1) In section 87P (exercise of powers at request of competent authority of another EEA State) is amended as follows.

(2) For subsection (1)(c) substitute—

“(c) that competent authority makes a request that the FCA assist it in the performance of its functions under—

(i) the prospectus regulation;

(ii) any directly applicable EU regulation made under the prospectus regulation;

(iii) the law of that State in connection with the prospectus regulation.”.

(3) In subsection (2) for “87K and 87L” substitute “87JA, 87K, 87L or 87LA”.

Repeal of section 87Q

24. Omit section 87Q (right of investor to withdraw).

Compensation for false or misleading statements

25.—(1) Section 90 (compensation for statements in listing particulars or prospectus) is amended as follows—

(2) In subsection (11)(a)(a), for “sections 87A, 87G and 87B” substitute “Articles 6 and 14(2), Article 23 and Article 18 of the prospectus regulation”;

(3) After subsection (11) insert—

“(11A) In subsection (11)(a) “supplementary prospectus” includes, where final terms (see Article 8 of the prospectus regulation) are contained in a separate document that is neither a prospectus nor a supplementary prospectus, that separate document.”.

(a) Subsection (11) was inserted by S.I. 2005/1433.

(4) in subsection (12)(b)(a), for “(as defined in section 87A(9) and (10))” substitute “specified by Article 7 of the prospectus regulation”.

Penalties for breach of Part 6 rules

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

(2) In subsection (1A)(b)—

- (a) in paragraph (e) for the words after “whom” substitute “any provision of, or made in accordance with, the prospectus regulation applies”; and
- (b) in the words after paragraph (e)—
 - (i) for “otherwise” substitute “of or”; and
 - (ii) for “prospectus directive” substitute “prospectus regulation.”.

Appointment by FCA of persons to carry out investigations

27.—(1) Section 97 (appointment by FCA of persons to carry out investigations) is amended as follows.

(2) In subsection (1)(a)(c)—

- (a) at the end of sub-paragraph (i) omit “or”,
- (b) in sub-paragraph (ii) omit “prospectus directive or the”, and for “directive;” substitute “directive, or”,
- (c) after sub-paragraph (ii) insert—
 - “(iii) any provision of, or made in accordance with, the prospectus regulation;”.

(3) In subsection (1)(b)—

- (a) at the end of sub-paragraph (i) omit “or”,
- (b) in sub-paragraph (ii) omit “prospectus directive or the”, and for “directive;” substitute “directive, or”,
- (c) after sub-paragraph (ii) insert—
 - “(iii) any provision of, or made in accordance with, the prospectus regulation;”.

(4) Omit subsection (1)(d).

(5) In subsection (3)(c), for “those mentioned in subsection (1)(d)” substitute “the offences under section 85”.

Reporting of infringements

28. After section 97 (appointment by FCA of persons to carry out investigations) insert—

“Reporting of infringements

97A.—(1) This section applies to a person—

- (a) who is the employer of any employees, and
- (b) who—
 - (i) provides regulated financial services,
 - (ii) carries on regulated activities in reliance on the exemption in section 327, or

(a) Subsection (12) was substituted by S.I. 2012/1538.

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

(c) Paragraphs (a) and (b) were substituted by paragraph 6 of Schedule 15 to the Companies Act 2006 Schedule 15, paragraph 6, and subsequently amended by S.I. 2015/1755.

(iii) is a recognised investment exchange, a recognised clearing house, a recognised CSD, an EEA central counterparty or a third country central counterparty.

(2) The person must have in place appropriate internal procedures for the person's employees to report, through an independent channel, contraventions and potential contraventions of—

- (a) the prospectus regulation, or
- (b) any directly applicable EU regulation made under the prospectus regulation.

(3) In this section—

“employer” and “employee” have the same meaning given in section 230(1) to (5) of the Employment Rights Act 1996(a);

“regulated financial services” has the meaning given by section 1H.”.

Exercise of powers where UK is host member state

29.—(1) Section 100A (exercise of powers where UK is host member state)(b) is amended as follows.

(2) In subsection (1), for paragraph (a) (including the “or” at the end) substitute—

“(a) a provision—

- (i) of this Part so far as relating to prospectuses,
- (ii) of prospectus rules,
- (iii) of the prospectus regulation, or
- (iv) made in accordance with the prospectus regulation, or”.

(3) After subsection (1) insert—

“(1A) The FCA may act in a case within subsection (1)(a) only in respect of the infringement of a provision of or required by—

- (a) the prospectus regulation, or
- (b) any EU regulation made under the prospectus regulation.

Any reference in this Part to an applicable provision is to be read accordingly.”.

(4) In subsection (2)—

- (a) for “such a case” substitute “a case within subsection (1)(b)”,
- (b) for “relevant” substitute “transparency obligations”, and
- (c) omit “applicable provision or”.

(5) In subsection (4), for “87K(2), 87L(2) or (3)” substitute “87JA(1), 87JB(1), 87K(2) or (6), 87L(2), (3), (7), (8) or (11)”.

Meaning of “securities” etc

30.—(1) Section 102A (meaning of “securities” etc)(c) is amended as follows.

(2) Omit subsection (5).

(3) In subsection (6)(a), for “as a result of section 85” substitute “under the prospectus regulation”.

(a) 1996 c. 18.

(b) Inserted by the Companies Act 2006 section 1271 and subsequently amended by Financial Services Act 2012 (c. 21).

(c) Sections 102A to 102C were inserted by S.I. 2005/1433.

Meaning of “home State” in relation to transferable securities

31. In section 102C (meaning of “home State” in relation to transferable securities), in paragraph (b) for “prospectus directive” to the end substitute “prospectus regulation (which is to be determined in accordance with Article 2(m) of that regulation).”.

Interpretation of Part 6

32. In section 103 (interpretation of Part 6)(a) in subsection (1)—

(a) omit the definition of “the prospectus directive” and insert—

““the prospectus regulation” means Regulation (EU) No 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;”(b);

(b) for the definition of “supplementary prospectus” substitute—

““supplementary prospectus” means a supplement to a prospectus (and here “supplement” has the same meaning as in Article 23 of the prospectus regulation);”.

Publication of Notices

33.—(1) Section 391(publication) is amended as follows—

(a) in subsection (4A)(c), for “and 391D” substitute “391D, 391E and 391F”(d);

(b) after subsection (8F)(e) insert—

“(8G) Where a decision notice or final notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by the prospectus regulation or any directly applicable EU regulation made under the prospectus regulation, this section has effect subject to Article 42 of the prospectus regulation (publication of decisions).”.

(2) After section 391E insert—

“Publication: special provisions relating to the prospectus regulation

391F.—(1) Subsection (2) applies where a decision notice or final notice relates to the imposition of a sanction or measure to which Article 42 of the prospectus regulation applies, and —

(a) following an assessment by the FCA of the proportionality of publishing personal data of a person on whom the sanction or measure is imposed, the FCA considers it disproportionate to do so, or

(b) publication of personal data of a person on whom the sanction or measure is imposed would jeopardise the stability of financial markets or an ongoing investigation.

(2) The FCA—

(a) if publication on an anonymous basis of information about the matter to which the notice relates would ensure the effective protection of the personal data, must publish the information on an anonymous basis;

(b) otherwise, must defer publication of the information until the conditions in subsection (1) cease to be met,

(a) Substituted by S.I. 2005/1433.

(b) OJ No. L168 30.06.2017, p.12.

(c) Subsection (4A) was inserted by S.I. 2013/3115.

(d) S.I. 2018/546 omitted to amend (4A) in consequence of inserting section 391E. This amendment is made in this S.I instead.

(e) Subsection (8F) was inserted by S.I. 2018/1288.

but this is subject to subsection (4).

(3) The FCA may make such arrangements as to the publication of information under subsection (2)(a) (including as to the timing of publication) as the FCA considers necessary to ensure effective protection of the personal data.

(4) The FCA must not publish the notice, or information about the matter to which the notice relates, if actions under subsection (2) are considered by the FCA to be insufficient to ensure —

- (a) that the stability of the financial markets would not be put in jeopardy; or
- (b) that, in cases involving sanctions or measures considered by the FCA to be of a minor nature, information is published only where it is proportionate to do so.

(5) In this section, “personal data”, in relation to a person who is not an individual, means the person’s identity.”.

Misleading FCA or PRA: residual cases

34.—(1) Section 398 (misleading FCA or PRA: residual cases)(a) is amended as follows.

(2) In subsection (1A)(b)—

- (a) at the end of paragraph (h), omit the “or”,
- (b) in paragraph (i), at the end insert “;or”, and
- (c) after paragraph (i) insert—

“(j) the prospectus regulation (as defined by section 103).”.

Amendments of Schedule 11A

35.—(1) Schedule 11A (transferable securities)(c) is amended as follows.

(2) Omit Part 1.

(3) In Part 2—

- (a) omit paragraph 7(1),
- (b) in paragraph 7(2) for “The bodies are” substitute “The bodies recognised for the purposes of Article 1(2)(e) of the prospectus regulation are”, and
- (c) omit paragraphs 8 and 9.

(4) In the shoulder reference, for “85(5)(a)” substitute “85(6A)”.

PART 3

Amendments of primary legislation

Amendments of the Financial Services Act 2012

36. In section 16 of the Financial Services Act 2012(d), omit subsections (3)(b), (6)(b) and (7) to (10).

(a) Section 398 (including the heading) is amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012.
(b) Paragraph (1A) was inserted by S.I. 2013/1773, and amended by S.I. 2015/1882, S.I. 2016/680, S.I. 2017/701, S.I. 2018/135 and S.I. 2018/698.
(c) Inserted by S.I. 2005/1433.
(d) 2012 c. 21.

Amendments of the Data Protection Act 2018

37. In Schedule 19 to the Data Protection Act 2018(a), omit paragraph 49.

PART 4

Amendments of secondary legislation

Amendments of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

38.—(1) Article 70 (promotions included in listing particulars etc) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(b) is amended as follows—

- (a) in paragraph (1)(c)(ii)(c) for “section 87H of the Act” substitute “Article 25 of the prospectus regulation”; and
- (b) in paragraph (1)(d) for “the prospectus directive” substitute “the prospectus regulation”.
- (c) in paragraph (1A)(d) sub-paragraph (b), for “Articles 5(4), 8(1) and 14(2) of the prospectus directive” substitute “Articles 8(1), 8(4), 8(5), 8(10), 25(4), 17 and 21(2) of the prospectus regulation.”.
- (d) in paragraph (2) for “the prospectus directive” substitute “the prospectus regulation”(e).

Amendments of the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

39.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(f) is amended as follows.

(2) In article 1(2) (citation, commencement and interpretation) after the definition of “the EU Benchmarks Regulation 2016”(g), insert—

““the EU Prospectus Regulation” means Regulation (EU) No 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.”.

(3) In article 2 (qualifying EU provisions: general), after paragraph (13)(h) insert—

“(14) The EU Prospectus Regulation and any directly applicable measure made under that Regulation is a specified qualifying EU provision for the purpose of section 1A(6)(d) of the Act.”.

(4) In article 5(i) (qualifying EU provisions: injunctions and restitution)—

(a) after paragraph (2)(q) insert—

“(r) the EU Prospectus Regulation and any directly applicable measure made under that Regulation.”.

(b) after paragraph (5)(i) insert—

(a) 2018 c. 12.
(b) S.I. 2005/1529.
(c) Sub-paragraph (c) was substituted by S.I. 2007/2615.
(d) Paragraph 1A was inserted by S.I. 2007/2615.
(e) This definition is substituted in section 103(1) of FSMA by regulation 32(a) of these Regulations.
(f) S.I. 2013/419.
(g) The definition of “the EU Benchmarks Regulation 2016” was inserted by S.I. 2018/135.
(h) Paragraph (13) was inserted by S.I. 2018/135.
(i) Article 5 was amended by S.I. 2013/1773, 2014/2879, 2014/3348, 2015/1882, 2016/680, 2016/715, 2016/936 and 2017/1127.

“(q) in relation to a contravention of a requirement imposed by the EU Prospectus Regulation or any directly applicable measure made under that Regulation, the FCA.”.

(5) In article 6(a) (qualifying EU provisions: fees)—

(a) after paragraph (2)(s) insert—

“(t) the EU Prospectus Regulation and any directly applicable measure made under that Regulation.”.

PART 5

Transitional provisions

40.—(1) This regulation applies to a prospectus (“relevant prospectus”) which is approved by the FCA, in accordance with Part 6 of FSMA, before 21st July 2019.

(2) This regulation ceases to apply to a relevant prospectus on 21st July 2020 or, if earlier, the date on which, in accordance with prospectus rules, the period of validity of the prospectus expires.

(3) In relation to a relevant prospectus—

(a) FSMA continues to have effect without the amendments made by Part 2 of these Regulations;

(b) the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 continue to have effect without the amendments made by Part 4 of these Regulations; and

(c) prospectus rules continue to have effect without any amendments made in consequence of, or otherwise in connection with, Part 2 of these Regulations.

(4) In this regulation—

“prospectus” includes a supplementary prospectus (within the meaning given in section 87G of FSMA without the amendments made by Part 2 of these Regulations); and

(5) “prospectus rules” has the meaning given in section 73A of FSMA.

PART 6

Review

Review

41.—(1) The Treasury must from time to time—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) The first report under this regulation must be published on or before 21st July 2024.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(b) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the EU Prospectus Regulation is implemented in other countries which are subject to its obligations.

(a) Article 5 was amended by S.I. 2013/1773, 2014/2879, 2014/3348, 2015/1882, 2016/680, 2016/715, 2016/936, 2017/7001, 2017/1127, 2018/698 and 2018/1288.

(b) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12).

(5) Section 30(4) of that Act requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way that imposes less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Rebecca Harris
Mike Freer

24th June 2019

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Regulation (EU) No 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/E (OJ L168 30.06.2017, p.12) (the “EU Prospectus Regulation”).

Part 1 of these Regulations designates the Financial Conduct Authority (the “FCA”) as the competent authority in the United Kingdom responsible for carrying on the duties of the competent authority under the EU Prospectus Regulation.

Part 2 of these Regulations makes amendments to the Financial Services and Markets Act 2000 (c. 8) (“FSMA”) to give effect to the EU Prospectus Regulation. Amendments are made to Part VI (Official Listing), section 391 (publication of notices) of, and Schedule 11A to, FSMA.

Part 3 of these Regulations makes amendments to the Financial Services Act 2012 (c. 21) and the Data Protection Act 2018 (c. 12).

Part 4 of these Regulations makes amendments to secondary legislation made under FSMA. Amendments made to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529) and the Financial Services and Markets Act 2000 (Qualifying EU Provisions) 2013 (S.I. 2013/419) as a consequence of the amendments made by Part 2 of these Regulations.

Part 5 of these Regulations makes transitional provisions in respect of prospectuses.

Part 6 of these Regulations (review) provides that these Regulations must be reviewed by the Treasury within 5 years of these Regulations coming into force.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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