

**1999 No. 734**

**FINANCIAL SERVICES**

**The Public Offers of Securities (Amendment) Regulations  
1999**

<i>Made - - - -</i>	<i>9th March 1999</i>
<i>Laid before Parliament</i>	<i>10th March 1999</i>
<i>Coming into force</i>	<i>10th May 1999</i>

Whereas the Treasury are a government department designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> 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;

Now, therefore, the Treasury, in exercise of the powers conferred on them by that section, hereby make the following Regulations:

**Citation and commencement**

**1.** These Regulations may be cited as the Public Offers of Securities (Amendment) Regulations 1999 and shall come into force on 10th May 1999.

**Amendments of the 1995 Regulations**

**2.** The Public Offers of Securities Regulations 1995<sup>(c)</sup> are amended as follows:

(a) in regulation 2(1), for the definition of “Euro-securities” there is substituted—

“ “Euro-securities” means securities which—

- (a) are to be underwritten (by whatever means, including acquisition or subscription, with a view to resale) and distributed by a syndicate at least two of the members of which have their registered offices in different countries or territories;
- (b) are to be offered on a significant scale in one or more countries or territories other than the country or territory in which the issuer has its registered office; and
- (c) may be acquired pursuant to the offer only through a credit institution or other financial institution;”;

(b) after regulation 7(2)(f) there is inserted—

“(ff) the securities are the securities of a private company and are offered to holders of other securities in that company (whether or not of the same class) in pursuance of a requirement imposed by a provision in its articles of association or in an agreement between all the holders of securities, or all the holders of one or more classes of security, of that company;”;

(c) in regulation 7(2)(i), for “paid for securities acquired” there is substituted “paid by any person for securities acquired by him”;

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(a) S.I. 1992/1315.  
(b) 1972 c. 68.  
(c) S.I. 1995/1537.

(d) in regulation 7(2)(o), at the end of paragraph (i) there is inserted “, by a body corporate connected with the issuer or by a relevant trustee”;

(e) in regulation 7(2), for sub-paragraph (s) there is substituted–

“(s) the securities offered are Euro-securities, and no advertisement relating to the offer is issued in the United Kingdom (within the meaning of the Act), or is caused to be so issued, by the issuer of the Euro-securities or by any credit institution or other financial institution through which the Euro-securities may be acquired pursuant to the offer, or by any body corporate which is a member of the same group as that issuer or any of those institutions, other than–

(i) an advertisement falling within article 8 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) (No 2) Order 1995(a);  
or

(ii) an advertisement which falls within article 11 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1996(b), or would do so if there were added to the list of persons in paragraph (3) of that article 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;”;

(f) in regulation 7(4), for “sub-paragraphs (a) to (g), (k) to (n), (p), (q) and (t)” there is substituted “sub-paragraphs (a) to (f), (g), (k) to (q) and (t)”;

(g) in regulation 7, after paragraph (6) there is inserted–

“(6A) For the purposes of paragraph (2)(b), the making of an offer of securities to trustees of a trust or members of a partnership in their capacity as such, or the making of such an offer to any other two or more persons jointly, shall be treated as the making of an offer to a single person.”;

(h) in regulation 7, for paragraph (10) there is substituted–

“(10) For the purposes of paragraph (2)(k), “takeover offer” means–

(a) an offer to acquire shares in a body corporate incorporated in the United Kingdom which is a takeover offer within the meaning of Part XIII A of the Companies Act 1985(c) (or would be such an offer if that Part of that Act applied in relation to any body corporate);

(b) an offer to acquire all or substantially all the shares, or the shares of a particular class, in a body corporate incorporated outside the United Kingdom; or

(c) an offer made to all the holders of shares, or of shares of a particular class, in a body corporate to acquire a specified proportion of those shares;

but in determining whether an offer falls within sub-paragraph (b) there shall be disregarded any shares which the offeror or any associate of his holds or has contracted to acquire; and in determining whether an offer falls within sub-paragraph (c) the offeror, any associate of his and any person whose shares the offeror or any such associate has contracted to acquire shall not be regarded as holders of the shares.

(10A) In paragraph (10)–

“associate” has the same meaning as in section 430E of the Companies Act 1985;  
and

“share” has the same meaning as in section 428(1) of that Act.”;

(i) in regulation 7(11), for “28 days” there is substituted “60 days”;

(j) in regulation 7(12), after the word “group” there is inserted “(within the meaning of Schedule 1 to the Act)”;

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(a) S.I. 1995/1536.

(b) S.I. 1996/1586. Article 11 was amended by article 4 of S.I. 1997/963.

(c) 1985 c. 6. Part XIII A was substituted by Schedule 12 to the Financial Services Act 1986 (c. 60).

- (k) in regulation 7, after paragraph (12) there is inserted—
- “(13) The references in paragraph (2)(o) to “a body corporate connected with the issuer” and to “a relevant trustee” shall be construed in accordance with paragraph 20 of Schedule 1 to the Act.”;
- (l) in regulation 8(2), for “its legal form” there is substituted “the legal form of the issuer or the offeror”;
- (m) after regulation 8(4) there is inserted—
- “(4A) In determining for the purposes of paragraph (4) whether information is equivalent to that specified in paragraph 45 of Schedule 1, there shall be disregarded—
- (a) the requirements of sub-paragraphs (1)(a)(i), (1)(a)(iv), (1)(b)(iii), (2)(a)(ii), (2)(a)(iv) and (8)(b) of that paragraph; and
- (b) any requirement of sub-paragraph (10)(a), (10)(b) or (11)(c) to include a statement by the person responsible for the interim accounts or report.”;
- (n) in regulation 13, after paragraph (2) there is inserted—
- “(2A) A person is not responsible under paragraph (1)(e) as the offeror of the securities if—
- (a) the issuer is responsible for the prospectus or supplementary prospectus in accordance with this regulation;
- (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; and
- (c) the offeror is making the offer in association with the issuer.”;
- (o) in paragraph 10 of Schedule 1, for sub-paragraph (1) there is substituted—
- “(1) A declaration by the directors of the issuer (where it is responsible for the prospectus) or (in any other case) by the directors of the offeror, that to the best of their knowledge the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect the import of such information.”;
- (p) in paragraph 45 of Schedule 1—
- (i) at the end of sub-paragraph (9) there is inserted “, and for this purpose any reference in sub-paragraphs (3) to (8) to the issuer shall have effect as a reference to the subsidiary undertaking.”;
- (ii) after sub-paragraph (9) there is inserted—
- “(9A) Neither sub-paragraph (2) nor sub-paragraph (9) requires the inclusion in the prospectus of the accounts of a subsidiary undertaking, a report dealing with those accounts, or any other information relating to a subsidiary undertaking, if the accounts are not, or the report or the information is not, reasonably necessary for the purpose of making an informed assessment of the issuer’s assets and liabilities, financial position, profits and losses and prospects, or of the securities being offered.”;
- (iii) in sub-paragraph (10)(a), for the words “and ending on the latest practicable date before (but not in any event more than three months before) the date on which the offer is first made” there are substituted the words “and ending not less than six months after the end of that financial year”;
- (q) in paragraph 8(1) of Schedule 4, paragraphs (a) and (c)(i) are revoked;
- (r) paragraph 11 of Schedule 4 is revoked;
- (s) in paragraph 1 of Schedule 5, sub-paragraph (3) is revoked.

### Amendments of the 1986 Act

3.—(1) Part IV of the Financial Services Act 1986(a) is amended as follows.

(2) Section 154A(b) is renumbered as subsection (1) of that section and at the end there is inserted—

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(a) 1986 c. 60.

(b) Section 154A was inserted by paragraph 2(3) of Schedule 2 to S.I. 1995/1537.

“(2) A person shall not be responsible under section 152(1)(a) above as applied by subsection (1) above 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.”.

(3) After section 156A(3)(a) there is inserted–

“(3A) A person offering or proposing to offer securities shall not be responsible under section 152(1)(a) above as applied by subsection (3) above 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.”.

4. In Schedule 11A to the Financial Services Act 1986(b)–

(a) in paragraph 3(1)(h), for “paid for securities acquired” there is substituted “paid by any person for securities acquired by him”;

(b) in paragraph 3(1)(n), at the end of sub-paragraph (i) there is inserted “, by a body corporate connected with the issuer or by a relevant trustee”;

(c) in paragraph 3(1), for paragraph (r) there is substituted–

“(r) the securities offered are Euro-securities, and no advertisement relating to the offer is issued in the United Kingdom, or is caused to be so issued, by the issuer of the Euro-securities or by any credit institution or other financial institution through which the Euro-securities may be acquired pursuant to the offer, or by any body corporate which is a member of the same group as that issuer or any of those institutions, other than–

(i) an advertisement falling within article 8 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) (No 2) Order 1995(c); or

(ii) an advertisement which falls within article 11 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1996(d), or would do so if there were added to the list of persons in paragraph (3) of that article 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;”;

(d) in paragraph 3(2), in paragraph (a) of the definition of “Euro-securities”, after “underwritten” there is inserted “(by whatever means, including acquisition or subscription, with a view to resale)”;

(e) in paragraph 3, after sub-paragraph (3) there is inserted–

“(3A) For the purposes of paragraph (b) of sub-paragraph (1) above, the making of an offer of securities to trustees of a trust or members of a partnership in their capacity as such, or the making of such an offer to any other two or more persons jointly, shall be treated as the making of an offer to a single person.”;

(f) in paragraph 3, for sub-paragraph (6) there is substituted–

“(6) For the purposes of paragraph (j) of sub-paragraph (1) above, “takeover offer” means–

- (a) an offer to acquire shares in a body corporate incorporated in the United Kingdom which is a takeover offer within the meaning of Part XIII A of the Companies Act 1985(e) (or would be such an offer if that Part of that Act applied in relation to any body corporate);

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(a) Section 156A was inserted by paragraph 2(4) of Schedule 2 to S.I. 1995/1537.

(b) Schedule 11A was inserted by Schedule 3 to S.I. 1995/1537.

(c) S.I. 1995/1536.

(d) S.I. 1996/1586. Article 11 was amended by article 4 of S.I. 1997/963.

(e) 1985 c. 6. Part XIII A was substituted by Schedule 12 to the Financial Services Act 1986 (c. 60).

- (b) an offer to acquire all or substantially all the shares, or the shares of a particular class, in a body corporate incorporated outside the United Kingdom; or
- (c) an offer made to all the holders of shares, or of shares of a particular class, in a body corporate to acquire a specified proportion of those shares;

but in determining whether an offer falls within paragraph (b) above there shall be disregarded any shares which the offeror or any associate of his holds or has contracted to acquire; and in determining whether an offer falls within paragraph (c) above the offeror, any associate of his and any person whose shares the offeror or any such associate has contracted to acquire shall not be regarded as holders of the shares.

(6A) In sub-paragraph (6) above—

“associate” has the same meaning as in section 430E of the Companies Act 1985;  
and

“share” has the same meaning as in section 428(1) of that Act.”;

(g) in paragraph 3(7), for “28 days” there is substituted “60 days”;

(h) in paragraph 3(8)—

(i) in paragraph (a), after the word “group” there is inserted “(within the meaning of Schedule 1 to this Act)”;

(ii) the word “and” at the end of paragraph (a) is omitted; and

(iii) after paragraph (b) there is inserted

“and

(c) the references to “a body corporate connected with the issuer” and to “a relevant trustee” shall be construed in accordance with paragraph 20 of Schedule 1 to this Act.”;

(i) in paragraph 4(2), for “paragraphs (a) to (f), (j) to (m), (o), (p) and (s)” there is substituted “paragraphs (a) to (f), (j) to (p) and (s)”.

#### **Amendment of the Banking Act 1987 (Advertisements) Regulations 1988**

**5.** Regulation 2(4)(b) of the Banking Act 1987 (Advertisements) Regulations 1988(a) is revoked.

9th March 1999

*David Jamieson*  
*Jim Dowd*  
Two of the Lords Commissioners  
of Her Majesty’s Treasury

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(a) S.I. 1988/645. Regulation 2(4)(b) was amended by paragraph 1(3) of Schedule 5 to S.I. 1995/1537 (revoked by regulation 2(s) of these Regulations).

## EXPLANATORY NOTE

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

These Regulations amend the Public Offers of Securities Regulations 1995 (“the 1995 Regulations”), which implement Council Directive 89/298/EEC, coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public (OJ L124, 5.5.89, p8).

In relation to offers of unlisted securities, regulation 2(a) to (k) make changes to regulation 7 of the 1995 Regulations, which provides for exemptions from the requirement to publish a prospectus by deeming certain sorts of offers not to be offers to the public.

Regulation 4 makes equivalent changes (so far as relevant) to the exemptions contained in Schedule 11A to the Financial Services Act 1986, relating to offers where an application for admission to the Official List has been made, and the securities in question are to be offered to the public before admission.

Regulation 2(l), (m), (o) and (p) amend regulation 8 of, and Schedule 1 to, the 1995 Regulations, which prescribe the information which is to be contained in a prospectus.

Regulations 2(n) and 3 provide that the offeror of securities is not to be treated as responsible for a prospectus in certain circumstances where he is making the offer in association with the issuer.

Regulation 2(q) removes the requirements for a prospectus approved in another Member State to be translated into English, and to contain a summary of the relevant tax treatment.

Regulation 2(r) revokes paragraph 11 of Schedule 4 to the 1995 Regulations, which applied certain provisions of the Companies Act 1985 to prospectuses approved in other Member States.

Regulations 2(s) and 5 revoke a redundant provision in the Banking Act 1987 (Advertisements) Regulations 1988, and make a consequential revocation in the 1995 Regulations.

A regulatory impact assessment covering these Regulations is available from the Public Enquiry Unit, Room 89/2, HM Treasury, Parliament Street, London SW1P 3AG.

**£2.00**

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