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STATUTORY INSTRUMENTS

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**2001 No. 3649**

**The Financial Services and Markets Act 2000  
(Consequential Amendments and Repeals) Order 2001**

**PART 9**

**AMENDMENTS TO SECONDARY LEGISLATION**

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

**Interpretation of the 1995 Regulations**

**501.**—(1) Regulation 2 of the Public Offers of Securities Regulations 1995 (interpretation) is amended as follows.

(2) In paragraph (1) of that regulation—

- (a) in the definition of “the Act” for “Financial Services Act 1986” substitute “Financial Services and Markets Act 2000”;
- (b) in the definition of “body corporate” for “section 207(1)” substitute “section 417(1)”;
- (c) in the definition of “convertible securities” for sub-paragraphs (i) and (ii) substitute—
  - “(i) instruments creating or acknowledging indebtedness of a kind which can be converted into or exchanged for, or which confer rights to acquire, securities;
  - (ii) instruments giving entitlements to securities; or
  - (iii) certificates representing securities;”;
- (d) for the definition of “credit institution” substitute—

““credit institution” means a credit institution as defined in Article 1 of Directive [2000/12/EC](#) of the European Parliament and of the Council;”;
- (e) in the definition of “director” for “section 207(1)” substitute “section 417(1)”;
- (f) the definition of “ecu”(1) is revoked;
- (g) the definition of “European institution” is revoked;
- (h) for the definition of “financial institution” substitute—

““financial institution” means a financial institution as defined in Article 1 of the Directive [2000/12/EC](#) of the European Parliament and of the Council;”;
- (i) for the definition of “group” substitute—

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(1) This definition of “Ecu” (which refers to a definition of the term in the Financial Services Act 1986) is redundant, by virtue of Article 2 of Council Regulation 947/98/EC which replaces the Ecu with the euro. Article 1 of Council Regulation 1103/97/EC has the effect that every reference in a legal instrument to the Ecu is replaced by a reference to the Euro, at the rate of one euro to one Ecu. Where “Ecu” is not defined in any such instrument, it is presumed to mean “Ecu” as defined in Regulation 3320/94/EC.

- ““group”, in relation to a body corporate (“A”) means A and any other body corporate which is—
- (i) a subsidiary of A,
  - (ii) a holding company of A, or
  - (iii) a subsidiary of such a holding company;”;
- (j) the definition of “home-regulated investment business” is revoked; and
- (k) in the definition of “recognised investment exchange” for “section 207(1)” substitute “section 285”.
- (3) After paragraph (1) of that regulation insert—
- “(1A) Paragraphs (i), (ii) and (iii) of the definition of “convertible securities” in paragraph (1) above, together with regulations 3(2) and (5), 7(2)(f),(n), 8(4) and (5), and 9(4) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.”.

### **Investments to which Part II of the 1995 Regulations applies**

**502.** For regulation 3 of the Public Offers of Securities Regulations 1995 (investments to which this Part applies) substitute—

#### **“Investments to which this Part applies**

- 3.—**(1) This Part of these Regulations applies to any investment which—
- (a) is not admitted to official listing, nor is the subject of an application for listing, in accordance with Part VI of the Act; and
  - (b) is of a kind specified in paragraph (2).
- (2) Subject to paragraphs (3) to (5) below, the kinds of investments specified for the purposes of paragraph (1)(b) are—
- (a) shares, including for those purposes deferred shares of a building society, within the meaning of section 119 of the Building Societies Act 1986;
  - (b) instruments creating or acknowledging indebtedness;
  - (c) instruments giving entitlements to securities, including warrants and other instruments entitling the holder to acquire any share or instrument creating or acknowledging indebtedness; and
  - (d) certificates representing securities.
- (3) For the purposes of paragraph (1)(b), investments of the kind specified in paragraph (2)(a) (shares) do not include transferable shares in a body incorporated under the law relating to industrial and provident societies.
- (4) For the purposes of paragraph (1)(b), investments of the kind specified in paragraph (2)(b) (instruments creating or acknowledging indebtedness) do not include—
- (a) debentures having a maturity of less than one year from their date of issue, and
  - (b) bills of exchange accepted by a banker.
- (5) For the purposes of paragraph (1)(b)—

- (a) investments of the kind specified in sub-paragraph (c) of paragraph (2) do not include instruments giving entitlements in connection with government and public securities; and
- (b) investments of the kind specified in sub-paragraph (d) of paragraph (2) do not include investments and certificates representing government or public securities.”

### **Listing rules**

**503.** In paragraph (3) of regulation 4 of the Public Offers of Securities Regulations 1995, for “section 156A” substitute “section 87”.

### **Exemptions**

**504.**—(1) Regulation 7 of the Public Offers of Securities Regulations 1995 (exemptions) is amended as follows.

(2) For sub-paragraph (f)(iii) of paragraph (2) substitute—

“(iii) persons holding instruments creating or acknowledging indebtedness issued by the company;”.

(3) In sub-paragraph (g) of that paragraph the words “as defined in paragraph 3 of Schedule 1 to the Act” are revoked.

(4) In sub-paragraph (n) of that paragraph for “the securities are shares, or investments falling within paragraph 4 or 5 of Schedule 1 to the Act relating to shares,” substitute “the securities are—

- (i) shares,
- (ii) instruments giving entitlements to subscribe for shares, or
- (iii) certificates representing shares;”.

(5) In sub-paragraph (o)(i)(2) of regulation 7(2), for “a body corporate connected with the issuer” substitute “a member of the same group as the issuer”.

(6) In sub-paragraphs (p) and (t) of regulation 7(2) for “Part IV” substitute “Part VI”.

(7) In sub-paragraph (s)(3) of regulation 7(2)—

(a) for “issued in the United Kingdom (within the meaning of the Act), or is caused to be so issued,” substitute “issued in, or directed at persons in, the United Kingdom (or is caused to be so issued or so directed),”, and

(b) for paragraphs (i) and (ii) substitute—

“(i) a advertisement which is an exempt communication falling within article 19 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001(4) (Investment professionals); or

(ii) an advertisement which would be an exempt communication falling within article 19 of that Order if the meaning of “investment professionals” in paragraph (5) of that article included 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;”.

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(2) Paragraph (i) of sub-paragraph (2)(o) was amended by [S.I. 1999/734](#), regulation 2(d).

(3) Sub-paragraph (s) was substituted by [S.I. 1999/1146](#), regulation 2.

(4) [S.I. 2001/1335](#).

(8) In paragraph (5) of regulation 7, for “means investments falling within paragraph 1 of Schedule 1 to the Act” substitute—

“must be read with—

- (a) section 22 to the Financial Services and Markets Act 2000,
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.”.

(9) After paragraph (8) of regulation 7 insert—

“(8A) for the purposes of paragraph (2)(g), a government, local authority or public authority means—

- (a) the government of the United Kingdom;
- (b) the Scottish Administration;
- (c) the Executive Committee of the Northern Ireland Assembly;
- (d) the National Assembly for Wales;
- (e) the government of any country or territory outside the United Kingdom;
- (f) a local authority in the United Kingdom or elsewhere; or
- (g) a body the members of which comprise—
  - (i) states including the United Kingdom or another EEA State, or
  - (ii) bodies whose members comprise states including the United Kingdom or another EEA State.”.

(10) In paragraph 12 of that regulation for “within the meaning of Schedule 1 to the Act” substitute “within the meaning of section 421 of the Act”.

(11) For paragraph (13) of that regulation substitute—

“(13) In paragraph (2)(o)—

“group” has the same meaning as in section 421 of the Act, and

“a relevant trustee” has the same meaning as in article 71(6)(b) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(5) (Activities carried on in connection with employee share schemes).”.

### **Specified kinds of investments**

**505.**—(1) In paragraphs (4) and (5) of regulation 8 of the Public Offers of Securities Regulations 1995 (form and content of prospectus)—

- (a) for “securities falling within paragraph 1 of Schedule 1 to the Act” substitute “shares”, and
- (b) for “securities”, in both places, substitute “shares”.

(2) In paragraph (4) of regulation 9 to those Regulations (general duty of disclosure in prospectus) for “a certificate or other instrument falling within paragraph 5 of Schedule 1 to the Act” substitute “a certificate or other instrument representing securities”.

### **Exceptions**

**506.** In regulation 11 of the Public Offers of Securities Regulations 1995—

- (a) in paragraph (3) for “Part IV” substitute “Part VI”; and
- (b) in paragraph (6) for “Section 156” substitute “Section 101”.

### **Contraventions by an authorised person**

**507.** In regulation 16 of the Public Offers of Securities Regulations 1995 (contraventions)—

(a) for paragraph (1) substitute—

“(1) An authorised person who contravenes regulation 4(1) or, where it applies, regulation 4(2), or who contravenes regulation 12, or who assists another person to contravene any of those provisions, shall be treated as having contravened rules under Part X of the Act.”;

(b) for paragraph (5) substitute—

“(5) In this regulation—

“authorised person” means a person who is authorised for the purposes of the Act;  
and

“exempt regulated activity” has the same meaning as in section 325(2) of the Act.”;  
and

(c) paragraph (6) is revoked.

### **Maximum penalties**

**508.** In regulation 18 (penalties) of the Public Offers of Securities Regulations 1995, for “Part IV” substitute “Part VI”.

### **Miscellaneous and Supplementary**

**509.** In regulation 23 of the Public Offers of Securities Regulations 1995—

(a) for the sub-title to that regulation (“Application of Part X of the Act”) substitute “Miscellaneous and Supplementary”;

(b) in paragraph (1)—

(i) for “section 187(4) of the Act” substitute “paragraph 19(1) of Schedule 1 to the Act”,  
and

(ii) for “Part IV” substitute “Part VI”;

(c) in paragraph (2) for “section 188” substitute “section 415”;

(d) in paragraph (3) for “section 192” substitute “section 410”;

(e) for paragraph (4) substitute—

“(4) Section 176 of the Act shall have effect, in relation to these Regulations, as if for the purposes of subsection (4) of section 176 the offences mentioned in section 168 of the Act included an offence under these Regulations.”;

(f) for paragraph (5) substitute—

“(5) Subsections (1) and (3) of section 398 of the Act shall apply in relation to information given to the competent authority—

(a) for the purposes of or in connection with an application under these Regulations,  
or

(b) in purported compliance with requirements imposed by or under these Regulations,

as they apply in relation to information given in purported compliance with any requirement imposed by or under the Act.”; and

(g) in paragraph (6) for “Sections 201(1), 202 and 203” substitute “Sections 400, 401 and 403”.

### **Interpretation of Schedule 1**

**510.** In Schedule 1 to the Public Offers of Securities Regulations 1995 (Form and content of the Prospectus)—

- (a) in paragraph 1 in the definition of “debentures” for “securities falling within paragraph 2 of Schedule 1 to the Act” substitute “instruments creating or acknowledging indebtedness”;
- (b) after paragraph 1 insert—
  - “**1A** The definition of “debentures” in paragraph 1 must be read with—
    - (a) section 22 of the Financial Services and Markets Act 2000;
    - (b) any relevant order under that section; and
    - (c) Schedule 2 to that Act.”; and
- (c) in Part II in paragraph 8 for “authorised under the Financial Services Act 1986” substitute “authorised for the purposes of the Financial Services and Markets Act 2000”.

### **Application of Part VI of the Financial Services and Markets Act 2000 to a recognised European document**

**511.** In Schedule 4 to the Public Offers of Securities Regulations 1995 (Recognition for the purposes of Part IV of the Financial Services Act 1986 of Prospectuses and Listing Particulars approved in Other Member States)—

- (a) in the heading to Part I for “Part IV of the Financial Services Act 1986” substitute “Part VI of the Financial Services and Markets Act 2000”;
- (b) in paragraph 2 for “section 143” substitute “section 75”;
- (c) in paragraph 3—
  - (i) for “Part IV” substitute “Part VI”;
  - (ii) in sub-paragraph (a) for “section 144(2)” substitute “section 79(2)”;
  - (iii) in sub-paragraph (b) for “to which section 144 of the Act applies” substitute “required by listing rules made under section 84 of the Act”;
- (d) in paragraph 4—
  - (i) for “Part IV” substitute “Part VI” in each place where it occurs;
  - (ii) in sub-paragraph (b) for “sections 146, 147(1)(a) and 150(2)” substitute “sections 80, 81(1)(a) and 90(3)”;
  - (iii) in sub-paragraph (c) for “section 147” substitute “section 81”;
- (e) in paragraph 5 for “Part IV” substitute “Part VI”.

### **Revocation of spent provision**

**512.** The following provisions of the Public Offers of Securities Regulations 1995 are revoked—

- (a) regulation 17 and Schedule 2 (amendments to the Financial Services Act 1986 and minor consequential amendments and repeals);
- (b) regulation 24 and Schedule 5 (amendments to regulations made under the Banking Act 1987);
- (c) Schedule 3 (offers of securities to the public in the United Kingdom).