EXPLANATORY MEMORANDUM TO THE

FINANCIAL SERVICES AND MARKETS ACT 2000 (DISCLOSURE OF INFORMATION BY PRESCRIBED PERSONS) (AMENDMENT) REGULATIONS 2005

2005 No. 272

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

These Regulations amend the Schedule to the Financial Services and Markets Act 2000 (Disclosure of Information by Prescribed Persons) Regulations 2001 ("**the principal Regulations**"). The amendments will permit the disclosure by independent actuaries who have been appointed to assist with the regulatory functions of the Financial Services Authority ("**FSA**") of certain kinds of information and opinions where disclosure would enable or assist the FSA or independent actuary to discharge their responsibilities. They will permit such disclosure to the FSA in certain prescribed circumstances.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative background

4.1 These Regulations form one of eight Statutory Instruments to be made following the Two Year Review of the Financial Services and Markets Act 2000 ("**FSMA**").

4.2 They are being made to enable the FSA to operate more effectively by amending the Schedule to the principal Regulations to include independent actuaries who conduct investigations under section 113(2) FSMA (regulation 2(a)) and section 376(10) FSMA (regulation 2(b)). The purpose of this amendment is to enable independent actuaries conducting such investigations to disclose certain kinds of information and opinions in accordance with regulation 3 of the principal Regulations.

5. Extent

These Regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 The Two Year Review of FSMA was carried out in light of the Government's commitment to review the impact of FSMA on competition in financial services markets in response to the March 2000 Cruickshank Report on Competition in UK Banking. The Government also took this opportunity to review certain components of the FSMA framework more generally, including the scope of FSMA in some places.

7.2 The policy objectives of FSMA 2000 are to create an efficient, effective and transparent framework for financial services regulation in the UK which promotes market confidence and protects consumers. These Regulations fulfil these objectives by enabling the FSA, the UK's single regulator of financial services, to operate more effectively by permitting independent actuaries who assist the FSA in its regulatory functions to disclose more information to the FSA in certain circumstances.

7.3 Currently, independent actuaries appointed to assist the FSA in its regulatory functions are restricted in what information they may disclose to the FSA. This impairs the FSA's ability to be kept informed of facts that are relevant to its functions. If the Regulations were not made there is a risk that the FSA's effectiveness would continue to be impaired at the margin. The revised disclosure provisions would apply the same provisions to independent actuaries as already apply to other independent persons appointed to assist the FSA in its regulatory functions. In particular, this would enable independent actuaries to pass certain kinds of information which they come across, and their opinions in relation to that information, to the FSA in certain prescribed circumstances, including certain kinds of information and related opinions not contained in the relevant actuary's report.

7.4 The original proposals for the Regulations were consulted on in February 2004. The proposals were largely supported by the five respondents who expressed views on them. One respondent suggested that the proposals should cover a wider range of circumstances. The Treasury is of the view that that wider disclosure provisions relating to such actuaries should be considered in the light of the Morris review i.e. the independent review of the actuarial profession being conducted by Sir Derek Morris as announced by the Financial Secretary to the Treasury on 8 March 2004.

7.5 The changes made by the Regulations are not of major political or legal importance.

8. Impact

A Regulatory Impact Assessment has been prepared and is available on the HM Treasury website. http://www.hm-treasury.gov.uk./media/510/35/fin_ser_mark_act_gov_resp_nov04.pdf

9. Contact

Marcello Casale at HM Treasury (telephone: 020 7270 5173 or email: marcello.casale@hm-treasury.x.gsi.gov.uk) can answer any queries regarding this instrument.

HM TREASURY

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