2001 No. 2958

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Offers of Securities) Order 2001

Made - - - - -	*22nd August 2001*
Laid before Parliament	*24th August 2001*
Coming into force - -	*in accordance with article 1*

The Treasury, in exercise of the powers conferred upon them by section 87(4) of and paragraphs 8(2), 15, 17, 21, 22, 23 and 25 of Schedule 11 to the Financial Services and Markets Act 2000(**a**), hereby make the following Order:

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Offers of Securities) Order 2001 and comes into force on the day on which section 74(1) comes into force.

Interpretation

2.—(1) In this Order—

"the Act" means the Financial Services and Markets Act 2000;

"the Public Offers of Securities Regulations" means the Public Offers of Securities Regulations 1995(**b**); and

"the Regulated Activities Order" means the Financial Services and Markets Act 2001 (Regulated Activities) Order 2001(**c**).

(2) Any reference in this Order to a section or Schedule is, unless otherwise stated or unless the context otherwise requires, a reference to that section of or Schedule to the Act.

Listing rules about non-listing prospectuses

3. For the purposes of section 87(4) there are specified, as provisions to which the power of the competent authority to make listing rules about the timing and manner of publication of a non-listing prospectus is subject, the provisions of the Public Offers of Securities Regulations.

Public authorities

4. For the purposes of paragraphs 8(2)(e) and 23(2)(e) of Schedule 11 (bodies which are included within the category of "public authority") there are specified the following bodies—

(a) the National Assembly for Wales;

(b) a Northern Ireland department; and

(c) the Scottish Administration.

(**a**) 2000 c. 8. Schedule 11 is amended by S.I. 2001/2955.
(**b**) S.I. 1995/1537, amended by S.I. 1995/3275, 1999/734 and 1999/1146.
(**c**) S.I. 2001/544.

Exchange of shares

5. For the purposes of paragraph 15 of Schedule 11 (exchange of shares) there are specified the following kinds of investments relating to shares—

(a) any investment of the kind specified by article 79 of the Regulated Activities Order (instruments giving entitlements to investments) insofar as relating to investments of the kind specified by article 76 of that Order (shares); and

(b) any investment of the kind specified by article 80 of the Regulated Activities Order (certificates representing securities) insofar as relating to investments of the kind specified by article 76 of that Order (shares).

Convertible securities

6.—(1) For the purposes of paragraph 17(1) of Schedule 11 (convertible securities) there are specified the provisions of—

(a) Part III of the Companies Act 1985(**a**); and

(b) the Public Offers of Securities Regulations.

(2) For the purposes of paragraph 17(2) of Schedule 11 (convertible securities) there is specified any security which is—

(a) an investment of the kind specified by article 77 of the Regulated Activities Order (instruments creating or acknowledging indebtedness);

(b) an investment of the kind specified by article 79 of the Regulated Activities Order (instruments giving entitlements to investments) insofar as relating to investments of the kind specified by article 76 of that Order (shares); or

(c) an investment of the kind specified by article 80 of the Regulated Activities Order (certificates representing securities) insofar as relating to investments of the kind specified by article 76 of that Order (shares).

(3) For the purposes of paragraph 2(b) and (c) above, paragraph (3) of article 76 of the Regulated Activities Order (exclusion relating to building societies, industrial and provident societies, credit unions, and equivalent bodies in other EEA States) is to be disregarded.

Same class securities

7. For the purposes of paragraph 21 of Schedule 11 (same class securities) there are specified the provisions of the Public Offers of Securities Regulations.

Short date securities

8. For the purposes of paragraph 22 of Schedule 11 (short date securities) there are specified investments of the kind specified by article 77 of the Regulated Activities Order (instruments creating or acknowledging indebtedness).

Government securities

9. For the purposes of paragraph 23(1) of Schedule 11 (Government and public securities) there are specified the following kinds of investments, namely loan stock, bonds and other instruments.

Shares

10. For the purposes of paragraph 25 of Schedule 11 (definition of shares) "shares" means any investment of the kind specified by article 76 of the Regulated Activities Order (shares).

Tony McNulty
John Heppell
Two of the Lords Commissioners of
Her Majesty's Treasury

22nd August 2001

(**a**) 1985 c. 6. Part III was repealed by the Financial Services Act 1986 (c. 60) Schedule 17 and S.I. 1995/1538 (C. 33) for all but limited purposes.

EXPLANATORY NOTE

(This note is not part of the Order)

Under section 87 of the Financial Services and Markets Act 2000 (c. 8) ("the Act"), the competent authority for the purposes of Part VI of that Act may make listing rules providing for a prospectus to be submitted to the authority for approval where securities, offered for sale for the first time in the United Kingdom, are not the subject of an application for admission to the official list. Subsection (4) of section 87 provides that this power is subject to such provision made by or under any other enactment as the Treasury may by order specify. Article 3 of this Order specifies for this purpose the provisions of the Public Offers of Securities Regulations 1995 (S.I. 1995/1537) ("the 1995 Regulations"). The effect is to replicate section 156A(2)(b) of the Financial Services Act 1986 (c. 60) ("the 1986 Act"), which was inserted by the 1995 Regulations.

Schedule 11 to the Act broadly reproduces the effect of Schedule 11A to the 1986 Act (which was also inserted by the 1995 Regulations). It sets out situations where an offer of securities is not to be treated as being made to the public in the United Kingdom, and where accordingly no prospectus is required under section 84. Articles 4 to 10 of this Order specify a number of separate matters for the purposes of Schedule 11. Article 4 provides for the devolved administrations in Scotland, Northern Ireland and Wales to be within the definition of "public authority" in paragraphs 8 and 23 of Schedule 11. The remaining provisions in articles 5 to 10 have the effect of reproducing the effect of provisions currently contained in the 1986 Act.

Like their predecessors in the 1986 Act, both section 87 of and Schedule 11 to the Act partly implement Council Directive No. 89/298/EEC on the publication of a prospectus when transferable securities are offered to the public (OJ No. L124, 5.5.1989, p.8).

Further provision is made in connection with Part VI of the Act (including Schedule 11) in the Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001 (S.I. 2001/2956). Transitional provisions in relation to Part VI of the Act are contained in the Financial Services and Markets Act 2000 (Official Listing of Securities) (Transitional Provisions) Order 2001 (S.I. 2001/2957).

STATUTORY INSTRUMENTS

2001 No. 2958

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Offers of Securities) Order 2001

ISBN 0-11-029987-6

9 780110 299877

£1.75

© Crown copyright 2001

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1523 10/2001 651387 19585