



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART VI

OFFICIAL LISTING

[^{F1}Transferable securities: public offers and admission to trading]

[^{F1}86 Exempt offers to the public

- (1) A person does not contravene section 85(1) if—
- (a) the offer is made to or directed at qualified investors only;
 - (b) the offer is made to or directed at fewer than [^{F2} 150 persons], other than qualified investors, per EEA State;
 - (c) the minimum consideration which may be paid by any person for transferable securities acquired by him pursuant to the offer is at least [^{F3}100,000 euros] (or an equivalent amount);
 - (d) the transferable securities being offered are denominated in amounts of at least [^{F3} 100,000 euros] (or equivalent amounts); ^{F4} ...
 - (e) the total consideration for the transferable securities being offered [^{F5} in the EEA States] cannot exceed 100,000 euros (or an equivalent amount). [^{F6} ; or]
 - [^{F6}(f) the offer falls within subsection (1A).]
- [^{F7}(1A) An offer (“the current offer”) falls within this subsection if the transferable securities are being sold or placed through a financial intermediary where—
- (a) the transferable securities have previously been the subject of one or more offers to the public;
 - (b) in respect of one or more of those previous offers any of paragraphs (a) to (e) of subsection (1) applied;
 - (c) a prospectus is available for the securities which has been approved by the competent authority no earlier than 12 months before the date the current offer is made; and

Status: Point in time view as at 01/07/2012. This version of this provision has been superseded.

Changes to legislation: Financial Services and Markets Act 2000, Section 86 is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (d) the issuer or other person who was responsible for drawing up the prospectus has given written consent to the use of the prospectus for the purpose of the current offer.]
- (2) Where—
- (a) a person who is not a qualified investor (“the client”) has engaged a qualified investor falling within [F8 point (1) of Section I of Annex II to the markets in financial instruments directive] to act as his agent, and
- (b) the terms on which the qualified investor is engaged enable him to make decisions concerning the acceptance of offers of transferable securities on the client's behalf without reference to the client,
- an offer made to or directed at the qualified investor is not to be regarded for the purposes of subsection (1) as also having been made to or directed at the client.
- (3) For the purposes of subsection (1)(b), the making of an offer of transferable securities to—
- (a) trustees of a trust,
- (b) members of a partnership in their capacity as such, or
- (c) two or more persons jointly,
- is to be treated as the making of an offer to a single person.
- (4) In determining whether subsection (1)(e) is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of transferable securities of the same class made by the same person which—
- (a) was open at any time within the period of 12 months ending with the date on which offer A is first made; and
- (b) had previously satisfied subsection (1)(e).
- (5) For the purposes of this section, an amount (in relation to an amount denominated in euros) is an “equivalent amount” if it is an amount of equal value denominated wholly or partly in another currency or unit of account.
- (6) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.
- [F9(7) “Qualified investor”, in relation to an offer of transferable securities, means—
- (a) a person described in points (1) to (4) of Section I of Annex II to the markets in financial instruments directive, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;
- (b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to that directive and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive;
- (c) a person who is an eligible counterparty in accordance with Article 24 of that directive and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to that directive; or

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(d) a person whom any relevant firm is authorised to continue to treat as a professional client in accordance with Article 71(6) of that directive.]

[^{F10}(8) In subsection (7) “relevant firm” means an investment firm or credit institution acting in connection with the offer.

(9) Investment firms and credit institutions which are authorised persons must communicate their classification of their clients as being or not being qualified investors on request to an issuer subject to complying with the Data Protection Act 1998 or any directly applicable EU legislation relating to data protection.

(10) In subsections (8) and (9), “credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive; or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have one, its head office) in an EEA State.]]

Textual Amendments

- F1** Ss. 84-87R and cross-headings substituted for ss. 84-87 (1.7.2005) by [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), [reg. 2\(1\)](#), [Sch. 1 para. 5](#)
- F2** Words in s. 86(1)(b) substituted (31.7.2011) by [The Prospectus Regulations 2011 \(S.I. 2011/1668\)](#), [reg. 1\(2\)](#)
- F3** Words in s. 86(1)(c)(d) substituted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [2\(1\)\(a\)](#)
- F4** Word in s. 86(1) omitted (1.7.2012) by virtue of [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [2\(1\)\(b\)](#)
- F5** Words in s. 86(1)(e) inserted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [2\(1\)\(c\)](#)
- F6** S. 86(1)(f) and preceding word inserted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [2\(1\)\(d\)](#)
- F7** S. 86(1A) inserted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [2\(2\)](#)
- F8** Words in s. 86(2)(a) substituted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [3\(2\)\(a\)](#)
- F9** S. 86(7) substituted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [3\(2\)\(b\)](#)
- F10** S. 86(8)-(10) inserted (1.7.2012) by [The Prospectus Regulations 2012 \(S.I. 2012/1538\)](#), [regs. 1\(1\)](#), [3\(2\)\(c\)](#)

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