

2003 No. 1294

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000
(Communications by Actuaries) Regulations 2003**

Made - - - - - 12th May 2003

Laid before Parliament 13th May 2003

Coming into force - - 1st September 2003

The Treasury, in exercise of the powers conferred on them by sections 342(5), 343(5) and 428(3) of the Financial Services and Markets Act 2000(a), hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Communications by Actuaries) Regulations 2003 and come into force on 1st September 2003.

(2) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000;

“contract of long-term insurance” has the same meaning as in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b);

“relevant requirement” means—

- (a) a requirement which is imposed by or under any provision of the Act other than Part VI (official listing); or
- (b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence which the Authority has power to prosecute under the Act(c).

Circumstances in which an actuary is to communicate

2.—(1) This regulation applies to any person who is, or has been, an actuary acting for an authorised person (“A”) and who is or was—

- (a) appointed under or as a result of rules made by the Authority under section 340 of the Act; or
- (b) appointed under or as a result of any other statutory provision and subject to duties imposed by such rules.

(2) An actuary to whom this regulation applies must communicate to the Authority information on, or his opinion on, matters mentioned in section 342(3)(a) of the Act (matters of which he has, or had, become aware in his capacity as actuary acting for an authorised person) in the circumstances specified in paragraph (4).

(3) An actuary—

- (a) to whom this regulation applies, and

(a) 2000 c. 8.

(b) S.I. 2001/544; amended by S.I. 2001/3544, S.I. 2002/682, S.I. 2002/1310 and S.I. 2002/1776.

(c) See in particular section 402 of the Act (power of the Authority to institute proceedings for offences under other enactments).

(b) who is or has been an actuary acting for a person who has close links with A (within the meaning of section 343(8) of the Act),
must communicate to the Authority information on, or his opinion on, matters mentioned in section 343(3)(a) of the Act (information on a matter concerning A of which he has, or had, become aware in his capacity as actuary acting for the person who has close links with A) in the circumstances specified in paragraph (4).

(4) The circumstances are that the actuary reasonably believes that—

- (a) as regards A—
 - (i) there is or has been, or may be or may have been, a contravention of any relevant requirement that applies to A; and
 - (ii) that contravention may be of material significance to the Authority in determining whether to exercise, in relation to A, any functions conferred on the Authority by or under any provision of the Act other than Part VI;
- (b) the information on, or his opinion on, those matters may be of material significance to the Authority in determining whether A satisfies and will continue to satisfy the threshold conditions;
- (c) where applicable, there is a significant risk that assets representing a fund or funds maintained by A in respect of contracts of long-term insurance effected or carried out by him are or may be, or may become, insufficient to meet his liabilities attributable to such contracts; or
- (d) where applicable, there is a significant risk that A—
 - (i) did not,
 - (ii) does not or is unable to, or
 - (iii) will not, may not or may become unable to,

take into account in a reasonable and proportionate manner the interests of the policyholders of contracts of long-term insurance effected or carried out by him.

(5) In determining whether there is a significant risk of the kind specified by paragraph (4)(d), the actuary may take into account—

- (a) the manner in which A exercises his discretion in relation to the operation of the fund or funds maintained by A in respect of contracts of long-term insurance effected or carried out by him, including the distribution and use of surplus assets;
- (b) the methodology used to determine bonuses;
- (c) the manner in which A takes into account the interests of different classes of policyholder;
- (d) the application of fixed or discretionary charges or benefits payable under such contracts;
- (e) representations made by A to policyholders or potential policyholders; and
- (f) any obligation (however phrased) imposed on A under the Act to treat policyholders fairly.

Nick Ainger
John Heppell

12th May 2003

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to an actuary who is, or has been, acting for an authorised person (within the meaning of the Financial Services and Markets Act 2000) and either has been appointed under or as a result of rules made by the Authority under that Act or appointed under or as a result of another statutory provision but who is subject to such rules. Such an actuary is obliged to communicate matters of which he became aware in his capacity as an actuary acting for the authorised person (or his opinion on such matters) to the Financial Services Authority in the circumstances set out in regulation 2. The obligation also applies to matters of which such an actuary has become aware in his capacity as actuary acting for a person who has “close links” with an authorised person.

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