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## SCHEDULES

### SCHEDULE 1

Sections 1 and 2.

#### INVESTMENTS AND INVESTMENT BUSINESS

##### Modifications etc. (not altering text)

- C1 Sch. 1 amended by S.I. 1988/496, art. 4
- C2 Sch. 1 amended by S.I. 1988/803, art. 5

#### PART I

##### INVESTMENTS

###### *Shares etc.*

- 1 Shares and stock in the share capital of a company.

*Note.* In this paragraph “company” includes any body corporate and also any unincorporated body constituted under the law of a country or territory outside the United Kingdom [<sup>F1</sup>but does not, except in relation to any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986, include a building society incorporated under the law of, or of any part of, the United Kingdom, nor does it include an open-ended investment company or any body incorporated under the law of, or of any part of, the United Kingdom relating to industrial and provident societies or credit unions.].

##### Textual Amendments

- F1 Words in Sch. 1 para. 1 Note substituted by S.I. 1991/1104, art. 2

##### Modifications etc. (not altering text)

- C3 Sch. 1 para. 1 applied (6.4.1997) by 1995 c. 26, s. 40(2); S.I. 1997/664, art. 2(3), Sch. Pt. II  
Sch. 1 para. 1 applied (with modifications) (19.6.1995) by S.I. 1995/1537, reg. 3(1)(b)(2)(a)-(d)  
Sch. 1 para. 1 modified (1.1.1996) by S.I. 1995/3271, art. 3

###### *Debentures*

- 2 Debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, not being instruments falling within paragraph 3 below.

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*Note.* This paragraph shall not be construed as applying—

- (a) to any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
- (b) to a cheque or other bill of exchange, a banker's draft or a letter of credit; or
- (c) to a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy.

**Modifications etc. (not altering text)**

- C4 Sch. 1 para. 2 applied (with modifications) (19.6.1995) by S.I. 1995/1537, **reg. 3(1)(b)(2)(a)-(d)**  
 Sch. 1 para. 2 applied (6.4.1997) by 1995 c. 26, s. 40(2); S.I. 1997/664, art. 2(3), **Sch. Pt. II**
- C5 Sch. 1 para. 2 modified (1.1.1996) by S.I. 1995/3271, **art. 4**

*Government and public securities*

- 3 Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority.

*Notes*

- (1) In this paragraph “government, local authority or public authority” means—
  - (a) the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom;
  - (b) a local authority in the United Kingdom or elsewhere;
  - (c) any international organisation the members of which include the United Kingdom or another member State.
- (2) The Note to paragraph 2 above shall, so far as applicable, apply also to this paragraph.
- [<sup>F2</sup>(3) This paragraph does not apply to any instrument creating or acknowledging indebtedness in respect of money received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or in respect of money raised under the National Loans Act 1968 under the auspices of the Director of Savings or in respect of money treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972.]

**Textual Amendments**

- F2 Note added by S.I. 1990/349, **art. 2**

**Modifications etc. (not altering text)**

- C6 Sch. 1 para. 3: definitions in Note (1) of 'government, local authority or public authority' applied by S.I. 1991/489, **art. 2(2)**

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### *Instruments entitling to shares or securities*

- 4 Warrants or other instruments entitling the holder to subscribe for investments falling within paragraph 1, 2 or 3 above.

#### *Notes*

- (1) It is immaterial whether the investments are for the time being in existence or identifiable.
- (2) An investment falling within this paragraph shall not be regarded as falling within paragraph 7, 8 or 9 below.

#### **Modifications etc. (not altering text)**

- C7 Sch. 1 para. 4 applied (with modifications) (19.6.1995) by S.I. 1995/1537, reg. 3(1)(b)(2)(a)-(d)  
Sch. 1 para. 4 applied (6.4.1997) by 1995 c. 26, s. 40(2); S.I. 1997/664, art. 2(3), Sch. Pt. II

### *Certificates representing securities*

- 5 Certificates or other instruments which confer—
- (a) property rights in respect of any investment falling within paragraph 1, 2, 3 or 4 above;
  - (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or
  - (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription.

*Note.* This paragraph does not apply to any instrument which confers rights in respect of two or more investments issued by different persons or in respect of two or more different investments falling within paragraph 3 above and issued by the same person.

#### **Modifications etc. (not altering text)**

- C8 Sch. 1 para. 5 applied (with modifications) (19.6.1995) by S.I. 1995/1537, reg. 3(1)(b)(2)(a)-(d)  
Sch. 1 para. 5 applied (6.4.1997) by 1995 c. 26, s. 40(2); S.I. 1997/664, art. 2(3), Sch. Pt. II

### *Units in collective investment scheme*

- 6 Units in a collective investment scheme, including shares in or securities of an open-ended investment company.

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### *Options*

- 7 Options to acquire or dispose of—
- (a) an investment falling within any other paragraph of this Part of this Schedule;
  - (b) currency of the United Kingdom or of any other country or territory;
  - (c) gold [<sup>F3</sup>, palladium, platinum] or silver; or
  - (d) an option to acquire or dispose of an investment falling within this paragraph by virtue of (a), (b) or (c) above.

#### **Textual Amendments**

**F3** Words inserted by [S.I. 1988/496, art. 2](#)

### *Futures*

- 8 Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

#### *Notes*

- (1) This paragraph does not apply if the contract is made for commercial and not investment purposes.
- (2) A contract shall be regarded as made for investment purposes if it is made or traded on a recognised investment exchange or made otherwise than on a recognised investment exchange but expressed to be as traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange.
- (3) A contract not falling within Note (2) above shall be regarded as made for commercial purposes if under the terms of the contract delivery is to be made within seven days.
- (4) The following are indications that any other contract is made for a commercial purpose and the absence of any of them is an indication that it is made for investment purposes—
  - (a) either or each of the parties is a producer of the commodity or other property or uses it in his business;
  - (b) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it.
- (5) It is an indication that a contract is made for commercial purposes that the price, the lot, the delivery date or the other terms are determined by the parties for the purposes of the particular contract and not by reference to regularly published prices, to standard lots or delivery dates or to standard terms.
- (6) The following are also indications that a contract is made for investment purposes—
  - (a) it is expressed to be as traded on a market or on an exchange;

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- (b) performance of the contract is ensured by an investment exchange or a clearing house;
  - (c) there are arrangements for the payment or provision of margin.
- (7) A price shall be taken to have been agreed upon when a contract is made—
- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
  - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

*Contracts for differences etc.*

- 9 Rights under a contract for differences or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

*[<sup>F4</sup>Notes]* .

[<sup>F5</sup>(1)] This paragraph does not apply where the parties intend that the profit is to be obtained or the loss avoided by taking delivery of any property to which the contract relates.

[<sup>F6</sup>(2)] This paragraph does not apply to rights under any contract under which money is received by the Director of Savings as deposits or otherwise in connection with the business of the National Savings Bank or raised under the National Loans Act 1968 under the auspices of the Director of Savings or under which money raised is treated as having been so raised by virtue of section 11(3) of the National Debt Act 1972.]

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**Textual Amendments**

- F4** Word substituted by S.I. 1990/349, art. 2(2)
- F5** Note numbered (1) by S.I. 1990/349, art. 2(2)
- F6** Note added by S.I. 1990/349, art. 2(2)

*Long term insurance contracts*

- 10 Rights under a contract the effecting and carrying out of which constitutes long term business within the meaning of the <sup>M1</sup>Insurance Companies Act 1982.

*Notes*

- (1) This paragraph does not apply to rights under a contract of insurance if—
- (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
  - (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding seventy years;

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- (c) the contract has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and
  - (d) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with paragraphs (a), (b) and (c) above.
- (2) Where the provisions of a contract of insurance are such that the effecting and carrying out of the contract—
- (a) constitutes both long term business within the meaning of the <sup>M2</sup>Insurance Companies Act 1982 and general business within the meaning of that Act; or
  - (b) by virtue of section 1(3) of that Act constitutes long term business notwithstanding the inclusion of subsidiary general business provisions,
- references in this paragraph to rights and benefits under the contract are references only to such rights and benefits as are attributable to the provisions of the contract relating to long term business.
- (3) This paragraph does not apply to rights under a reinsurance contract.
- (4) Rights falling within this paragraph shall not be regarded as falling within paragraph 9 above.

#### **Marginal Citations**

- M1** 1982 c. 50.  
**M2** 1982 c. 50.

### *Rights and interests in investments*

- 11 Rights to and interests in anything which is an investment falling within any other paragraph of this Part of this Schedule.

#### *Notes*

- (1) This paragraph does not apply to interests under the trusts of an occupational pension scheme.
- (2) This paragraph does not apply to rights or interests which are investments by virtue of any other paragraph of this Part of this Schedule.

## **PART II**

### ACTIVITIES CONSTITUTING INVESTMENT BUSINESS

#### **Modifications etc. (not altering text)**

- C9** Sch. 1 Pt. II modified (I.1.1996) by S.I. 1995/3271, art. 5

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### *Dealing in investments*

- 12 Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as principal or as an agent.

#### *[<sup>F7</sup>Notes*

- (1) This paragraph does not apply to a person by reason of his accepting, or offering or agreeing to accept, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.
- (2) The references in (1) above to a person accepting, or offering or agreeing to accept, an instrument include references to a person becoming, or offering or agreeing to become, a party to an instrument otherwise than as a debtor or a surety.]

#### **Textual Amendments**

**F7** Notes inserted by [S.I. 1988/803, art. 2](#)

### *Arranging deals in investments*

- 13 Making, or offering or agreeing to make—
- (a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment; or
  - (b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

#### *Notes*

- (1) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a transaction to which he will himself be a party as principal or which will be entered into by him as agent for one of the parties.
- (2) The arrangements in (a) above are arrangements which bring about or would bring about the transaction in question.
- [<sup>F8</sup>(3) This paragraph does not apply to a person (“the relevant person”) who is either a money-lending company within the meaning of section 338 of the Companies Act 1985 or a body corporate incorporated under the law of, or of any part of, the United Kingdom relating to building societies or a person whose ordinary business includes the making of loans or the giving of guarantees in connection with loans by reason of the relevant person making, or offering or agreeing to make, arrangements with a view to a person (“the authorised person”) who is either authorised under section 22 or 23 of this Act or who is authorised under section 31 of this Act and carries on insurance business which is investment business selling an investment which falls within paragraph 10 above or, so far as relevant to that paragraph, paragraph 11 above if the arrangements are either—



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- (a) that the authorised person or a person on his behalf will introduce persons to whom the authorised person has sold or proposes to sell an investment of the kind described above, or will advise such persons to approach, the relevant person with a view to the relevant person lending money on the security of that investment; or
  - (b) that the authorised person gives an assurance to the relevant person as to the amount which will or may be received by the relevant person, should that person lend money to a person to whom the authorised person has sold or proposes to sell an investment of the kind described above, on the surrender or maturity of that investment if it is taken as security for the loan.]
- [<sup>F9</sup>(4) This paragraph does not apply to a person by reason of his making, or offering or agreeing to make, arrangements with a view to a person accepting, whether as principal or as agent, an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he or his principal has made, granted or provided or which he or his principal has offered or agreed to make, grant or provide.
- (5) Arrangements do not fall within (b) above by reason of their having as their purpose the provision of finance to enable a person to buy, sell, subscribe for or underwrite investments.
- (6) This paragraph does not apply to arrangements for the introduction of persons to another person if—
- (a) the person to whom the introduction is made is an authorised or exempted person or is a person whose ordinary business involves him in engaging in activities which fall within this Part of this Schedule or would do apart from the provisions of Part III or Part IV and who is not unlawfully carrying on investment business in the United Kingdom; and
  - (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion either—
    - (i) in relation to investments generally; or
    - (ii) in relation to any class of investments if the transaction or advice is or is to be with respect to an investment within that class.
- (7) The references in (4) above to a person accepting an instrument include references to a person becoming a party to an instrument otherwise than as a debtor or a surety.]

#### Textual Amendments

- F8** Note added by [S.I. 1988/318, art. 2](#)  
**F9** Notes added by [S.I. 1988/803, art. 3](#)

VALID FROM 01/06/1997

#### *[Custody of Investments]*

- [<sup>F10</sup>13A(1) Safeguarding and administering or arranging for the safeguarding and administration of assets belonging to another where—
- (a) those assets consist of or include investments; or



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- (b) the arrangements for their safeguarding and administration are such that those assets may consist of or include investments and the arrangements have at any time been held out as being arrangements under which investments would be safeguarded and administered.
- (2) Offering or agreeing to safeguard and administer, or to arrange for the safeguarding and administration of, assets belonging to another where the circumstances fall within sub-paragraph (1)(a) or (b) above.

*Notes*

- (1) This paragraph does not apply to a person by reason of his safeguarding and administering assets, or offering or agreeing to do so, under arrangements—
- (a) under which another person (“the primary custodian”), who is permitted to provide a service falling within this paragraph, undertakes to the person to whom the assets belong a responsibility in respect of the assets which is no less onerous than the responsibility which the primary custodian would undertake to that person if the primary custodian were safeguarding and administering the assets himself, and
  - (b) which are operated by the primary custodian in the course of carrying on in the United Kingdom investment business falling within this paragraph.
- (2) None of the following activities constitutes the administration of assets—
- (a) providing information as to the number of units or the value of any assets safeguarded;
  - (b) converting currency; and
  - (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs.
- (3) For the purposes of this paragraph it is immaterial that the assets safeguarded and administered—
- (a) constitute units of a security, title to which is recorded on the relevant register of securities as being held in uncertificated form; or
  - (b) may be transferred to another person, subject to a commitment by the person safeguarding and administering them, or arranging for their safeguarding and administration, that they will be replaced by equivalent assets at some future date or when so requested by the person to whom they belong.
- (4) This paragraph does not apply to arrangements for the introduction of persons to another person if—
- (a) the person to whom the introduction is made is permitted to provide a service falling within this paragraph; and
  - (b) the introduction is made with a view to the provision in the United Kingdom of a service falling within this paragraph or the making of arrangements operated in the United Kingdom for the provision of a service falling within this paragraph by a person who is not connected with the person by whom the introduction is made.

For the purposes of this Note, the person making the introduction shall be regarded as connected with the other person if he is either a body corporate in the same group as that other person or remunerated by that other person.

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(5) For the purposes of Notes (1) and (4) above, a person is permitted to provide a service falling within this paragraph if—

- (a) he is an authorised person who may provide that service—
  - (i) without contravening any rules that apply to him under section 48 of this Act; or
  - (ii) by virtue of his membership of a recognised self-regulating organisation or his certification by a recognised professional body; or
- (b) he is an exempted person as respects any investment business which consists of or includes that service; or
- (c) he is entitled to carry on investment business in the United Kingdom which consists of or includes that service pursuant either to regulation 5 of the Banking Coordination (Second Council Directive) Regulations 1992<sup>F11</sup> or to regulation 5 of the Investment Services Regulations 1995<sup>F12</sup>.]

#### Textual Amendments

- F10** Sch. 1 para. 13A inserted (1.6.1997) by S.I. 1996/2958, art. 3  
**F11** S.I. 1992/3218.  
**F12** S.I. 1995/3275.

### *Managing investments*

- 14 Managing, or offering or agreeing to manage, assets belonging to another person if—
- (a) those assets consist of or include investments; or
  - (b) the arrangements for their management are such that those assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them and either they have at any time since the date of the coming into force of section 3 of this Act done so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which they would do so.

### *Investment advice*

- 15 Giving, or offering or agreeing to give, to persons in their capacity as investors or potential investors advice on the merits of their purchasing, selling, subscribing for or underwriting an investment, or exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

### *Establishing etc. collective investment schemes*

- 16 Establishing, operating or winding up a collective investment scheme, including acting as trustee of an authorised unit trust scheme.

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### *[<sup>F13</sup>Sending dematerialised instructions etc]*

#### **Textual Amendments**

**F13** Sch. 1 para. 16A and the preceding cross-heading added (15.7.1996) by S.I. 1996/1322, art. 2(1)

<sup>F14</sup>16A Sending on behalf of another person dematerialised instructions relating to an investment by means of a relevant system in respect of which an Operator is approved under the Uncertificated Securities Regulations 1995 <sup>F15</sup>, or offering or agreeing to do so, or causing on behalf of another person such instructions to be sent by such means or offering or agreeing to do so.

#### *Notes*

- (1) This paragraph does not apply to a person by reason of his sending, or causing the sending of, instructions on behalf of—
  - (a) a participating issuer or settlement bank acting in its capacity as such; or
  - (b) an offeror making a takeover offer,or by reason of his offering or agreeing to do so.

- (2) For the purposes of this paragraph a person shall be taken to cause, or to offer or agree to cause, the sending of a dematerialised instruction only if he is a system-participant.

- (3) In this paragraph—

“dematerialised instruction”, “participating issuer”, “relevant system”, “settlement bank”, “system-participant” and “Operator” have the meanings given by regulation 3 of the Uncertificated Securities Regulations 1995; and

“offeror” and “takeover offer” have the meanings given by section 428 of the Companies Act 1985 <sup>F16</sup>.

#### **Textual Amendments**

**F14** Sch. 1 para. 16A and the preceding cross-heading added (15.7.1996) by S.I. 1996/1322, art. 2(1)

**F15** S.I. 1995/3272.

**F16** 1985 c.6.

## **PART III**

### **EXCLUDED ACTIVITIES**

#### **Modifications etc. (not altering text)**

**C10** Sch. 1 Pt. III modified (1.1.1996) by S.,I. 1995/3271, arts. 5

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### *Dealings as principal*

- 17 (1) Paragraph 12 above applies to a transaction which is or is to be entered into by a person as principal only if—
- (a) he holds himself out as willing to enter into transactions of that kind at prices determined by him generally and continuously rather than in respect of each particular transaction; or
  - (b) he holds himself out as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
  - (c) he regularly solicits members of the public for the purpose of inducing them to enter as principals or agents into transactions to which that paragraph applies and the transaction is or is to be entered into as a result of his having solicited members of the public in that manner.
- (2) In sub-paragraph (1) above “buying” and “selling” means buying and selling by transactions to which paragraph 12 above applies and “members of the public”, in relation to the person soliciting them (“the relevant person”), means any other persons except—
- (a) authorised persons, exempted persons, or persons holding a permission under paragraph 23 below;
  - (b) members of the same group as the relevant person;
  - (c) persons who are, or propose to become, participators with the relevant person in a joint enterprise;
  - (d) any person who is solicited by the relevant person with a view to—
    - (i) the acquisition by the relevant person of 20 per cent. or more of the voting shares in a body corporate (that is to say, shares carrying not less than that percentage of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body); or
    - (ii) if the relevant person (either alone or with other members of the same group as himself) holds 20 per cent. or more of the voting shares in a body corporate, the acquisition by him of further shares in the body or the disposal by him of shares in that body to the person solicited or to a member of the same group as that person; or
    - (iii) if the person solicited (either alone or with other members of the same group as himself) holds 20 per cent. or more of the voting shares in a body corporate, the disposal by the relevant person of further shares in that body to the person solicited or to a member of the same group as that person;
  - (e) any person whose head office is outside the United Kingdom, who is solicited by an approach made or directed to him at a place outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.
- [<sup>F17</sup>(3) Sub-paragraph (1) above applies only—
- (a) if the investment to which the transaction relates or will relate falls within any of paragraphs 1 to 6 above or, so far as relevant to any of those paragraphs, paragraph 11 above; or

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- (b) if the transaction is the assignment (or, in Scotland, the assignation) of an investment falling within paragraph 10 above or is the assignment (or, in Scotland, the assignation) of an investment falling within paragraph 11 above which confers rights to or interests in an investment falling within paragraph 10 above.]
- (4) Paragraph 12 above does not apply to [<sup>F18</sup>any transaction . . . <sup>F19</sup>which relates or is to relate to an investment which falls within paragraph 10 above or, so far as relevant to that paragraph, paragraph 11 above nor does it apply to a transaction which relates or is to relate to an investment which falls within any of paragraphs 7 to 9 above or, so far as relevant to any of those paragraphs, paragraph 11 above being a transaction which, in either case,] is or is to be entered into by a person as principal if he is not an authorised person and the transaction is or is to be entered into by him—
- (a) with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or
- (b) through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business is such as is mentioned in sub-paragraph (2)(e) above.

#### Textual Amendments

**F17** Sch. 1 para. 17(3) substituted by S.I. 1988/318, art. 3(1)

**F18** Words substituted by S.I. 1988/318, art. 3(2)

**F19** Words repealed by S.I. 1990/349, art. 3

#### Modifications etc. (not altering text)

**C11** Sch. 1 para. 17 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para. 44(1).

Sch. 1 para. 17 extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 42(1)

Sch. 1 paras. 17-19 restricted (1.1.1996) by S.I. 1995/3271, art. 6(1)

Sch. 1 para. 17-19 restricted (1.1.1997) by S.I. 1997/2996, art. 2(1)

#### *Groups and joint enterprises*

- 18 (1) Paragraph 12 above does not apply to any transaction which is or is to be entered into by a person as principal with another person if—
- (a) they are bodies corporate in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the transaction is or is to be entered into for the purposes of, or in connection with, that enterprise.
- (2) Paragraph 12 above does not apply to any transaction which is or is to be entered into by any person as agent for another person in the circumstances mentioned in sub-paragraph (1)(a) or (b) above if—
- (a) where the investment falls within any of paragraphs 2 to 6 above or, so far as relevant to any of those paragraphs, paragraph 11 above, the agent does not—
- (i) hold himself out (otherwise than to other bodies corporate in the same group or persons who are or propose to become participators with him in a joint enterprise) as engaging in the business of buying

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- investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
- (ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 12 above applies;
- and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;
- (b) where the investment is not as mentioned in paragraph (a) above—
- (i) the agent enters into the transaction with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or
- (ii) the transaction is effected through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is situated outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.
- (3) Paragraph 13 above does not apply to arrangements which a person makes or offers or agrees to make if—
- (a) that person is a body corporate and the arrangements are with a view to another body corporate in the same group entering into a transaction of the kind mentioned in that paragraph; or
- (b) that person is or proposes to become a participator in a joint enterprise and the arrangements are with a view to another person who is or proposes to become a participator in the enterprise entering into such a transaction for the purposes of or in connection with that enterprise.
- (4) Paragraph 14 above does not apply to a person by reason of his managing or offering or agreeing to manage the investments of another person if—
- (a) they are bodies corporate in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the investments are or are to be managed for the purposes of, or in connection with, that enterprise.
- (5) Paragraph 15 above does not apply to advice given by a person to another person if—
- (a) they are bodies corporate in the same group; or
- (b) they are, or propose to become, participators in a joint enterprise and the advice is given for the purposes of, or in connection with, that enterprise.
- [<sup>F20</sup>(5A) Paragraph 16A does not apply to a body corporate by reason of its sending, or causing the sending of, dematerialised instructions relating to an investment or offering or agreeing to do so if—
- (a) the person on whose behalf the instructions are, or are to be, sent or caused to be sent is a body corporate in the same group; and
- (b) the investment to which the instructions relate, or will relate, is one in respect of which a body corporate in the same group is registered as the holder on the appropriate register of securities, or will be so registered as a result of the instructions.
- (5B) In sub-paragraph (5A) “register of securities” has the meaning given by regulation 3 of the Uncertificated Securities Regulations 1995.]

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- (6) The definitions in paragraph 17(2) above shall apply also for the purposes of sub-paragraph (2)(a) above except that the relevant person referred to in paragraph 17(2)(d) shall be the person for whom the agent is acting.

#### Textual Amendments

**F20** Sch. 1 para. 18(5A)(5B) inserted (15.7.1996) by S.I. 1996/1322, art. 2(2)

#### Modifications etc. (not altering text)

**C12** Sch. 1 para. 18 amended (1.1.1993) by S.I. 1992/3218, reg. 55, Sch. 9 para. 44(2).  
Sch. 1 paras. 17-19 restricted (1.1.1996) by S.I. 1995/3271, art. 6(1)  
Sch. 1 paras. 17-19 restricted (1.1.1997) by S.I. 1996/2996, art. 2(1)  
Sch. 1 para. 18 extended (1.1.1996) by S.I. 1995/3275, reg. 32, Sch. 7 para. 42(2)

### *Sale of goods and supply of services*

- 19 (1) [<sup>F21</sup>Subject to sub-paragraph (9) below] this paragraph has effect where a person (“the supplier”) sells or offers or agrees to sell goods to another person (“the customer”) or supplies or offers or agrees to supply him with services and the supplier’s main business is to supply goods or services and not to engage in activities falling within Part II of this Schedule.
- (2) Paragraph 12 above does not apply to any transaction which is or is to be entered into by the supplier as principal if it is or is to be entered into by him with the customer for the purposes of or in connection with the sale or supply or a related sale or supply (that is to say, a sale or supply to the customer otherwise than by the supplier but for or in connection with the same purpose as the first-mentioned sale or supply).
- (3) Paragraph 12 above does not apply to any transaction which is or is to be entered into by the supplier as agent for the customer if it is or is to be entered into for the purposes of or in connection with the sale or supply or a related sale or supply and—
- (a) where the investment falls within any of paragraphs 1 to [<sup>F225</sup>] above or, so far as relevant to any of those paragraphs, paragraph 11 above, the supplier does not—
- (i) hold himself out (otherwise than to the customer) as engaging in the business of buying investments with a view to selling them and those investments are or include investments of the kind to which the transaction relates; or
- (ii) regularly solicit members of the public for the purpose of inducing them to enter as principals or agents into transactions to which paragraph 12 above applies;
- and the transaction is not or is not to be entered into as a result of his having solicited members of the public in that manner;
- (b) where the investment is not as mentioned in paragraph (a) above, the supplier enters into the transaction—
- (i) with or through an authorised person, an exempted person or a person holding a permission under paragraph 23 below; or
- (ii) through an office outside the United Kingdom, maintained by a party to the transaction, and with or through a person whose head office is



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situated outside the United Kingdom and whose ordinary business involves him in engaging in activities which fall within Part II of this Schedule or would do so apart from this Part or Part IV.

- (4) Paragraph 13 above does not apply to arrangements which the supplier makes or offers or agrees to make with a view to the customer entering into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.
- (5) Paragraph 14 above does not apply to the supplier by reason of his managing or offering or agreeing to manage the investments of the customer if they are or are to be managed for the purposes of or in connection with the sale or supply or a related sale or supply.
- (6) Paragraph 15 above does not apply to advice given by the supplier to the customer for the purposes of or in connection with the sale or supply or a related sale or supply or to a person with whom the customer proposes to enter into a transaction for the purposes of or in connection with the sale or supply or a related sale or supply.
- (7) Where the supplier is a body corporate and a member of a group sub-paragraphs (2) to (6) above shall apply to any other member of the group as they apply to the supplier; and where the customer is a body corporate and a member of a group references in those sub-paragraphs to the customer include references to any other member of the group.
- (8) The definitions in paragraph 17(2) above shall apply also for the purposes of sub-paragraph (3)(a) above.
- [<sup>F23</sup>(9) This paragraph does not have effect where either—
- (a) the customer is an individual; or
  - (b) the transaction in question is the purchase or sale of an investment which falls within paragraph 6 or 10 above or, so far as relevant to either of those paragraphs, paragraph 11 above; or
  - (c) the investments which the supplier manages or offers or agrees to manage consist of investments falling within paragraph 6 or 10 above or, so far as relevant to either of those paragraphs, paragraph 11 above;
- or
- (d) the advice which the supplier gives is advice on an investment falling within the paragraph 6 or 10 above or, so far as relevant to either of those paragraphs, paragraph 11 above.]

#### Textual Amendments

- F21** Words inserted by S.I. 1988/496, **art. 3(a)**
- F22** Figure substituted by S.I. 1990/1493, **art. 3**
- F23** Sch. 1 para. 19(9) inserted by S.I. 1988/496, **art. 3(b)**

#### Modifications etc. (not altering text)

- C13** Sch. 1 paras. 17-19 restricted (1.1.1996) by S.I. 1995/3271, **art. 6(1)**  
Sch. 1 paras. 17-19 restricted (1.1.1997) by S.I. 1996/2996, **art. 2(1)**

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### *Employees' share schemes*

- 20 (1) Paragraphs 12 and 13 above do not apply to anything done by a body corporate, a body corporate connected with it or a relevant trustee for the purpose of enabling or facilitating transactions in shares in or debentures of the first-mentioned body between or for the benefit of any of the persons mentioned in sub-paragraph (2) below or the holding of such shares or debentures by or for the benefit of any such persons.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) the bona fide employees or former employees of the body corporate or of another body corporate in the same group; or
  - (b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.
- (3) In this paragraph “a relevant trustee” means a person holding shares in or debentures of a body corporate as trustee in pursuance of arrangements made for the purpose mentioned in sub-paragraph (1) above by, or by a body corporate connected with, that body corporate.
- (4) In this paragraph “shares” and “debentures” include any investment falling within paragraph 1 or 2 above and also include any investment falling within paragraph 4 or 5 above so far as relating to those paragraphs or any investment falling within paragraph 11 above so far as relating to paragraph 1, 2, 4 or 5.
- (5) For the purposes of this paragraph a body corporate is connected with another body corporate if—
- (a) they are in the same group; or
  - (b) one is entitled, either alone or with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or of its holding company.

*[<sup>F24</sup>Sale of body corporate]*

#### **Textual Amendments**

**F24** Heading substituted by S.I. 1988/318, art. 4(a)

- 21 (1) Paragraphs 12 and 13 above do not apply to the acquisition or disposal of, or to anything done for the purposes of the acquisition or disposal of, shares in a body corporate other than an open-ended investment company, and paragraph 15 above does not apply to advice given in connection with the acquisition or disposal of such shares, if—
- (a) the shares consist of or include shares carrying 75 per cent. or more of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the body corporate; or
  - (b) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and

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- (c) in either case, the acquisition and disposal is, or is to be, between parties each of whom is a body corporate, a partnership, a single individual or a group of connected individuals.
- (2) For the purposes of subsection (1)(c) above “a group of connected individuals”, in relation to the party disposing of the shares, means persons each of whom is, or is a close relative of, a director or manager of the body corporate and, in relation to the party acquiring the shares, means persons each of whom is, or is a close relative of, a person who is to be a director or manager of the body corporate.
- (3) In this paragraph . . . “close relative” means a person’s spouse, his children and step-children, his parents and step-parents, his brothers and sisters and his step-brothers and step-sisters.

*Trustees and personal representatives*

- 22 (1) Paragraph 12 above does not apply to a person by reason of his buying, selling or subscribing for an investment or offering or agreeing to do so if—
- (a) the investment is or, as the case may be, is to be held by him as bare trustee or, in Scotland, as nominee for another person;
  - (b) he is acting on that person’s instructions; and
  - (c) he does not hold himself out as providing a service of buying and selling investments.
- (2) Paragraph 13 above does not apply to anything done by a person as trustee or personal representative with a view to—
- (a) a fellow trustee or personal representative and himself engaging in their capacity as such in an activity falling within paragraph 12 above; or
  - (b) a beneficiary under the trust, will or intestacy engaging in any such activity, unless that person is remunerated for what he does in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- (3) Paragraph 14 above does not apply to anything done by a person as trustee or personal representative unless he holds himself out as offering investment management services or is remunerated for providing such services in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- (4) Paragraph 15 above does not apply to advice given by a person as trustee or personal representative to—
- (a) a fellow trustee or personal representative for the purposes of the trust or estate; or
  - (b) a beneficiary under the trust, will or intestacy concerning his interest in the trust fund or estate,
- unless that person is remunerated for doing so in addition to any remuneration he receives for discharging his duties as trustee or personal representative.
- [<sup>F28</sup>(4A) Paragraph 16A does not apply to a person by reason of his sending, or causing the sending of, dematerialised instructions relating to an investment held by him as trustee or as personal representative, or by reason of his offering or agreeing to do so.]

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- (5) Sub-paragraph (1) above has effect to the exclusion of paragraph 17 above as respects any transaction in respect of which the conditions in sub-paragraph (1)(a) and (b) are satisfied.

#### Textual Amendments

**F28** Sch. 1 para. 22(4A) added (15.7.1996) by S.I. 1996/1322, art. 2(3)

#### *Dealings in course of non-investment business*

- 23 (1) Paragraph 12 above does not apply to anything done by a person—
- (a) as principal;
  - (b) if that person is a body corporate in a group, as agent for another member of the group; or
  - (c) as agent for a person who is or proposes to become a participator with him in a joint enterprise and for the purposes of or in connection with that enterprise, if it is done in accordance with the terms and conditions of a permission granted to him by the Secretary of State under this paragraph.
- (2) Any application for permission under this paragraph shall be accompanied or supported by such information as the Secretary of State may require and shall not be regarded as duly made unless accompanied by the prescribed fee.
- (3) The Secretary of State may grant a permission under this paragraph if it appears to him—
- (a) that the applicant's main business, or if he is a member of a group the main business of the group, does not consist of activities for which a person is required to be authorised under this Act;
  - (b) that the applicant's business is likely to involve such activities which fall within paragraph 12 above; and
  - (c) that, having regard to the nature of the applicant's main business and, if he is a member of a group, the main business of the group taken as a whole, the manner in which, the persons with whom and the purposes for which the applicant proposes to engage in activities that would require him to be an authorised person and to any other relevant matters, it is inappropriate to require him to be subject to regulation as an authorised person.
- (4) Any permission under this paragraph shall be granted by a notice in writing; and the Secretary of State may by a further notice in writing withdraw any such permission if for any reason it appears to him that it is not appropriate for it to continue in force.
- (5) The Secretary of State may make regulations requiring persons holding permissions under this paragraph to furnish him with information for the purpose of enabling him to determine whether those permissions should continue in force; and such regulations may, in particular, require such persons—
- (a) to give him notice forthwith of the occurrence of such events as are specified in the regulations and such information in respect of those events as is so specified;
  - (b) to furnish him at such times or in respect of such periods as are specified in the regulations with such information as is so specified.

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- (6) Section 61 of this Act shall have effect in relation to a contravention of any condition imposed by a permission under this paragraph as it has effect in relation to any such contravention as is mentioned in subsection (1)(a) of that section.
- (7) Section 104 of this Act shall apply to a person holding a permission under this paragraph as if he were authorised to carry on investment business as there mentioned; and sections 105 and 106 of this Act shall have effect as if anything done by him in accordance with such permission constituted the carrying on of investment business.

**Modifications etc. (not altering text)**

**C15** Sch. 1 para. 23 modified (1.1.1996) by [S.I. 1995/3271](#), [art. 6\(2\)](#)

*Advice given [<sup>F29</sup>or arrangements made] in course of profession or non-investment business*

**Textual Amendments**

**F29** Words inserted by [S.I. 1988/803](#), [art. 4\(1\)](#)

- 24 (1) Paragraph 15 above does not apply to advice—
- (a) which is given in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and
  - (b) the giving of which is a necessary part of other advice or services given in the course of carrying on that profession or business.
- <sup>F30</sup>(2) Paragraph 13 above does not apply to arrangements—
- (a) which are made in the course of the carrying on of any profession or of a business not otherwise constituting investment business; and
  - (b) the making of which is a necessary part of other services provided in the course of carrying on that profession or business.
- (3) Advice shall not be regarded as falling within sub-paragraph (1)(b) above and the making of arrangements shall not be regarded as falling within sub-paragraph (2)(b) above if the giving of the advice or the making of the arrangements is remunerated separately from the other advice or services.]

**Textual Amendments**

**F30** Sch. 1 para. 24(2)(3) substituted for paragraph 24(2) by [S.I. 1988/803](#), [art. 4\(2\)](#)

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VALID FROM 01/06/1997

*[ Custody of group pension funds by certain insurance companies ]*

<sup>F31</sup>24A(1) Paragraph 13A above does not apply to anything done by a relevant insurance company in relation to the investments of any pension fund which is established solely for the benefit of the officers or employees and their dependants of that company or of any other body corporate in the same group as that company.

(2) In sub-paragraph (1) above “relevant insurance company” means an insurance company to which Part II of the Insurance Companies Act 1982 <sup>F32</sup> applies but to which section 22 of this Act does not apply.

**Textual Amendments**

**F31** Sch. 1 para. 24A inserted (1.6.1997) by S.I. 1996/2958, art. 9

**F32** 1982 c.50.

*Newspapers*

25 (1) Paragraph 15 above does not apply to advice given in a newspaper, journal, magazine or other periodical publication if the principal purpose of the publication, taken as a whole and including any advertisements contained in it, is not to lead persons to invest in any particular investment.

(2) The Secretary of State may, on the application of the proprietor of any periodical publication, certify that it is of the nature described in sub-paragraph (1) above and revoke any such certificate if he considers that it is no longer justified.

(3) A certificate given under sub-paragraph (2) above and not revoked shall be conclusive evidence of the matters certified.

*[<sup>F33</sup> Advice given in sound, television or cable programmes]*

**Textual Amendments**

**F33** Sch. 1 para. 25A added by S.I. 1988/318, art. 5 (which art. 5 was repealed by S.I. 1990/349, art. 8(a)) and substituted by S.I. 1990/349, art. 5

*Advice given in television, sound or teletext services*

<sup>F34</sup>25A(1) Paragraph 15 above does not apply to any advice given in any programme included, or made for inclusion, in—

(a) any television broadcasting service or other television programme service (within the meaning of Part I of the Broadcasting Act 1990) <sup>F35</sup>; or

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- (b) any sound broadcasting service or licensable sound programme service (within the meaning of Part III of that Act); or
  - (c) any teletext service.
- (2) For the purposes of this paragraph, “programme”, in relation to a service mentioned in sub-paragraph (1) above, includes an advertisement and any other item included in the service.]

#### **Textual Amendments**

**F34** Sch. 1 para. 25A substituted (1.6.1992) by 1992/273, art. 2(1).

**F35** 1990 c.42.

#### *International Securities Self-regulating organisations*

[<sup>F36</sup>25B] (1) An activity within paragraph 13 above engaged in for the purposes of carrying out the functions of a body or association which is approved under this paragraph as an international securities self-regulating organisation, whether by the organisation or by any person acting on its behalf, shall not constitute the carrying on of investment business in the United Kingdom for the purposes of Chapter II of Part I of this Act.

(2) In this paragraph—

“International securities business” means the business of buying, selling, subscribing for or underwriting investments (or offering or agreeing to do so, either as principal or agent) which fall within any of the paragraphs in Part I above other than paragraph 10 and, so far as relevant to paragraph 10, paragraph 11 and which, by their nature, and the manner in which the business is conducted, may be expected normally to be bought or dealt in by persons sufficiently expert to understand any risks involved, where either the transaction is international or each of the parties may be expected to be indifferent to the location of the other, and, for the purposes of this definition, the fact that the investments may ultimately be bought otherwise than in the course of international securities business by persons not so expert shall be disregarded; and

“international securities self-regulating organisation” means a body corporate or unincorporated association which

- (a) does not have its head office in the United Kingdom;
  - (b) is not eligible for recognition under section 37 or section 39 of this Act on the ground that (whether or not it has applied, and whether or not it would be eligible on other grounds) it is unable to satisfy the requirements of section 40(2)(a) or (c) of this Act;
  - (c) has a membership composed of persons falling within any of the following categories, that is to say, authorised persons, exempted persons, persons holding a permission under paragraph 23 above and persons whose head offices are outside the United Kingdom and whose ordinary business is such as is mentioned in paragraph 17(2)(e) above; and
  - (d) which facilitates and regulates the activity of its members in the conduct of international securities business.
- (3) The Secretary of State may approve as an international securities self-regulating organisation any body or association appearing to him to fall within sub-paragraph (2) above if, having regard to such matters affecting international trade, overseas earnings and the balance of payments or otherwise as he considers relevant,



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it appears to him that to do so would be desirable and not result in any undue risk to investors.

- (4) Any approval under this paragraph shall be given by notice in writing; and the Secretary of State may by a further notice in writing withdraw any such approval if for any reason it appears to him that it is not appropriate for it to continue in force.]

#### Textual Amendments

**F36** Sch. 1 para. 25B inserted by S.I. 1988/318, art. 6.

## PART IV

### ADDITIONAL EXCLUSIONS FOR PERSONS WITHOUT PERMANENT PLACE OF BUSINESS IN UNITED KINGDOM

#### *Transactions with or through authorised or exempted persons*

- 26 (1) Paragraph 12 above does not apply to any transaction by a person not falling within section 1(3)(a) of this Act ("an overseas person") with or through—
- (a) an authorised person; or
  - (b) an exempted person acting in the course of business in respect of which he is exempt.
- (2) Paragraph 13 above does not apply if—
- (a) the arrangements are made by an overseas person with, or the offer or agreement to make them is made by him to or with, an authorised person or an exempted person and, in the case of an exempted person, the arrangements are with a view to his entering into a transaction in respect of which he is exempt; or
  - (b) the transactions with a view to which the arrangements are made are, as respects transactions in the United Kingdom, confined to transactions by authorised persons and transactions by exempted persons in respect of which they are exempt.

#### Modifications etc. (not altering text)

**C16** Sch. 1 para. 26 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para. 44(3)**.  
Sch. 1 para. 26 (1.1.1996) by S.I. 1995/3275, reg. 32, **Sch. 7 para. 42(3)**

#### *Unsolicited or legitimately solicited transactions etc. with or for other persons*

- 27 (1) Paragraph 12 above does not apply to any transaction entered into by an overseas person as principal with, or as agent for, a person in the United Kingdom, paragraphs 13,14 and 15 above do not apply to any offer made by an overseas person to or agreement made by him with a person in the United Kingdom and paragraph 15

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above does not apply to any advice given by an overseas person to a person in the United Kingdom if the transaction, offer, agreement or advice is the result of—

- (a) an approach made to the overseas person by or on behalf of the person in the United Kingdom which either has not been in any way solicited by the overseas person or has been solicited by him in a way which has not contravened section 56 or 57 of this Act; or
- (b) an approach made by the overseas person which has not contravened either of those sections.

(2) Where the transaction is entered into by the overseas person as agent for a person in the United Kingdom, sub-paragraph (1) above applies only if—

- (a) the other party is outside the United Kingdom; or
- (b) the other party is in the United Kingdom and the transaction is the result of such an approach by the other party as is mentioned in sub-paragraph (1)(a) above or of such an approach as is mentioned in sub-paragraph (1)(b) above.

[<sup>F37</sup>(3) Paragraph 16A does not apply to any offer made by an overseas person to or agreement made by him with a person in the United Kingdom if the offer or agreement is the result of—

- (a) an approach made to the overseas person by or on behalf of the person in the United Kingdom which either has not been in any way solicited by the overseas person, or has been solicited by him in a way which has not contravened section 56 or 57 of this Act; or
- (b) an approach made by the overseas person which has not contravened either of those sections.]

#### Textual Amendments

**F37** Sch. 1 para. 27(3) added (15.7.1996) by S.I. 1996/1322, art. 2(4)

## PART V

### INTERPRETATION

28 (1) In this Schedule—

- (a) “property” includes currency of the United Kingdom or any other country or territory;
- (b) references to an instrument include references to any record whether or not in the form of a document;
- (c) references to an offer include references to an invitation to treat;
- (d) references to buying and selling include references to any acquisition or disposal for valuable consideration.

(2) In sub-paragraph (1)(d) above “disposal” includes—

- (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangements;
- (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;

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- (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights.
- (3) A company shall not by reason of issuing its own shares or share warrants, and a person shall not by reason of issuing his own debentures or debenture warrants, be regarded for the purposes of this Schedule as disposing of them or, by reason of anything done for the purpose of issuing them, be regarded as making arrangements with a view to a person subscribing for or otherwise acquiring them or underwriting them.
- (4) In sub-paragraph (3) above “company” has the same meaning as in paragraph 1 above, “shares” and “debentures” include any investments falling within paragraph 1 or 2 above and “share warrants” and “debenture warrants” means any investment which falls within paragraph 4 above and relates to shares in the company concerned or, as the case may be, to debentures issued by the person concerned.
- 29 For the purposes of this Schedule a transaction is entered into through a person if he enters into it as agent or arranges for it to be entered into by another person as principal or agent.
- [<sup>F38</sup>30 (1) For the purposes of this Schedule a group shall be treated as including any body corporate in which a member of the group holds a qualifying capital interest.
- (2) A qualifying capital interest means an interest in relevant shares of the body corporate which the member holds on a long-term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.
- (3) Relevant shares means shares comprised in the equity share capital of the body corporate of a class carrying rights to vote in all circumstances at general meetings of the body.
- (4) A holding of 20 per cent or more of the nominal value of the relevant shares of a body corporate shall be presumed to be a qualifying capital interest unless the contrary is shown.
- (5) In this paragraph “equity share capital” has the same meaning as in the Companies Act 1985 and the Companies (Northern Ireland) Order 1986.]

#### Textual Amendments

**F38** Sch. 1 para. 30 substituted by Companies Act 1989 (c. 40, SIF 27), s. 23, Sch. 10 para. 36(3)

- 31 In this Schedule “a joint enterprise” means an enterprise into which two or more persons (“the participators”) enter for commercial reasons related to a business or businesses (other than investment business) carried on by them; and where a participator is a body corporate and a member of a group each other member of the group shall also be regarded as a participator in the enterprise.

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- 32 Where a person is an exempted person as respects only part of the investment business carried on by him anything done by him in carrying on that part shall be disregarded in determining whether any paragraph of Part III or IV of this Schedule applies to anything done by him in the course of business in respect of which he is not exempt.
- 33 In determining for the purposes of this Schedule whether anything constitutes an investment or the carrying on of investment business section 18 of the <sup>M3</sup>Gaming Act 1845, section 1 of the <sup>M4</sup>Gaming Act 1892, any corresponding provision in force in Northern Ireland and any rule of the law of Scotland whereby a contract by way of gaming or wagering is not legally enforceable shall be disregarded.

#### Marginal Citations

**M3** 1845 c. 109.

**M4** 1892 c. 9.

- [<sup>F39</sup>34 (1) For the purposes of this Schedule arrangements are not a collective investment scheme if—
- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of shares;
  - (b) they constitute a complying fund;
  - (c) each participant is the owner of a part of the property to which the arrangements relate and, to the extent that his part of that property—
    - (i) comprises relevant shares of a class which are admitted to the Official List of any member State or to dealings on a recognised investment exchange, he is entitled to withdraw it at any time after the end of the period of five years beginning with the date on which the shares in question were issued;
    - (ii) comprises relevant shares which do not fall within sub-paragraph (i) above, he is entitled to withdraw it at any time after the end of the period of two years beginning with the date upon which the period referred to in sub-paragraph (i) above expired;
    - (iii) comprises any other shares, he is entitled to withdraw it at any time after the end of the period of six months beginning with the date upon which the shares in question ceased to be relevant shares; and
    - (iv) comprises cash which the operator has not agreed (conditionally or unconditionally) to apply in subscribing for shares, he is entitled to withdraw it at any time; and
  - (d) the arrangements would meet the conditions described in section 75(5)(c) of this Act were it not for the fact that the operator is entitled to exercise all or any of the rights conferred by shares included in the property to which the arrangements relate.
- (2) For the purposes of this paragraph—
- (a) “shares” means investments falling within paragraph 1 of this Schedule;
  - (b) shares shall be regarded as being relevant shares if and so long as they are shares in respect of which neither—

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- (i) a claim for relief made in accordance with section 306 of the Income and Corporation Taxes Act 1988 has been disallowed; nor
  - (ii) an assessment has been made pursuant to section 307 of that Act withdrawing or refusing relief by reason of the body corporate in which the shares are held having ceased to be a body corporate which is a qualifying company for the purposes of section 293 of that Act; and
- (c) arrangements shall be regarded as constituting a complying fund if they provide that–
- (i) the operator will, so far as practicable, make investments each of which, subject to each participant’s individual circumstances, qualify for relief by virtue of Chapter III of Part VII of the Income and Corporation Taxes Act 1988; and
  - (ii) the minimum subscription to the arrangements made by each participant must be not less than £2,000.]

#### Textual Amendments

**F39** Sch. 1 paras. 34, 35 inserted by S.I. 1990/349, art. 7

- [<sup>F40</sup>35 For the purposes of this Schedule the following are not collective investment schemes–
- (a) arrangements where the entire contribution of each participant is a deposit within the meaning of section 5 of the Banking Act 1987 or a sum of a kind described in subsection (3) of that section;
  - (b) arrangements under which the rights or interests of the participants are represented by the following–
    - (i) investments falling within paragraph 2 of this Schedule which are issued by a single body corporate which is not an open-ended investment company or which are issued by a single issuer which is not a body corporate and are guaranteed by the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom; or
    - (ii) investments falling within sub-paragraph (i) above which are convertible into or exchangeable for investments falling within paragraph 1 of this Schedule provided that those latter investments are issued by the same person as issued the investments falling within sub-paragraph (i) above or are issued by a single other issuer; or
    - (iii) investments falling within paragraph 3 of this Schedule issued by the same government, local authority or public authority; or
    - (iv) investments falling within paragraph 4 of this Schedule which are issued otherwise than by an open-ended investment company and which confer rights in respect of investments, issued by the same issuer, falling within paragraph 1 of this Schedule or within sub-paragraph (i), (ii) or (iii) above;
  - (c) arrangements which would fall within paragraph (b) above were it not for the fact that the rights or interests of a participant (“the counterparty”) whose ordinary business involves him in engaging in activities which fall

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within Part II of this Schedule or would do so apart from Part III or IV are or include rights or interests under a swap arrangement, that is to say, an arrangement the purpose of which is to facilitate the making of payments to participants whether in a particular amount or currency or at a particular time or rate of interest or all or any combination of those things, being an arrangement under which—

- (i) the counterparty is entitled to receive amounts (whether representing principal or interest) payable in respect of any property subject to the scheme or sums determined by reference to such amounts; and
  - (ii) the counterparty makes payments (whether or not of the same amount and whether or not in the same currency as those referred to in sub-paragraph (i) above) which are calculated in accordance with an agreed formula by reference to the amounts or sums referred to in sub-paragraph (i) above;
- (d) arrangements under which the rights or interests of participants are rights to or interests in money held in a common account in circumstances in which the money so held is held on the understanding that an amount representing the contribution of each participant is to be applied either in making payments to him or in satisfaction of sums owed by him or in the acquisition of property or the provision of services for him;
- (e) arrangements under which the rights and interests of participants are rights and interests in a fund which is a trust fund within the meaning of section 42(1) of the Landlord and Tenant Act 1987.
- [ arrangements where—
- <sup>F41</sup>(f) (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, or child (including, in Northern Ireland, adopted child) or step-child under the age of eighteen of such an employee or former employee) of any of the following bodies corporate, that is to say, The National Grid Company plc, Electricity Association Services Limited or any other body corporate in the same group as either of them [<sup>F42</sup>being arrangements which are] operated by any of those bodies corporate; and
  - (ii) the property to which the arrangements relate consists of shares or debentures (as defined in paragraph 20(4) above) in or of a body corporate which is an electricity successor company for the purposes of Part II of the Electricity Act 1989 or a body corporate which would be regarded as connected with such an electricity successor company for the purposes of paragraph 20 above.

and for the purposes of this paragraph references to former employees shall have the same meaning as in the Financial Services Act 1986 (Electricity Industry Exemptions) Order 1990.]]

#### Textual Amendments

**F40** Sch. 1 paras. 34, 35 inserted by S.I. 1990/349, art. 7

**F41** Para. 35(f) added by S.I. 1990/1493, art. 2

**F42** Words in Sch. 1 para. 35(f)(i) substituted by S.I. 1991/1516, art. 2.



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VALID FROM 01/01/1997

- [<sup>F43</sup>36 (1) For the purposes of this Schedule, arrangements are not a collective investment scheme if they are operated by a body corporate, a body corporate connected with it or a relevant trustee, for the purpose of enabling or facilitating transactions in shares in or debentures of the first-mentioned body between or for the benefit of any of the persons mentioned in sub-paragraph (2) below or the holding of such shares or debentures by or for the benefit of any such persons.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) the bona fide employees or former employees of the body corporate or of another body corporate in the same group; or
  - (b) the wives, husbands, widows, widowers, or children or step-children under the age of eighteen of such employees or former employees.
- (3) In this paragraph, “a relevant trustee” means a person holding shares in or debentures of a body corporate as trustee in pursuance of arrangements mentioned in sub-paragraph (1) above which were made by, or by a body corporate connected with, that body corporate.
- (4) In this paragraph “shares” and “debentures” include any investment falling within paragraph 1 or 2 above and also include any investment falling within paragraph 4 or 5 above so far as relating to those paragraphs or any investment falling within paragraph 11 above so far as relating to paragraphs 1, 2, 4 or 5.
- (5) For the purposes of this paragraph a body corporate is connected with another body corporate if—
- (a) they are in the same group; or
  - (b) one is entitled, either alone or with any other body corporate in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital which are exercisable in all circumstances at any general meeting of the other body corporate or its holding company..]

#### Textual Amendments

**F43** Sch. 1 para. 36 inserted (1.1.1997) by S.I. 1996/2996, art. 3(2)

VALID FROM 06/02/1997

- [<sup>F44</sup>37 For the purposes of this Schedule, arrangements are not a collective investment scheme if—
- (a) the purpose of the arrangements is that participants should receive, by way of reward, payments or other benefits in respect of the introduction by any person of other persons who become participants;
  - (b) the arrangements are such that the payments or other benefits referred to in paragraph (a) above are to be wholly or mainly funded out of the contributions of other participants; and



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- (c) the only reason why the arrangements have either or both of the characteristics mentioned in section 75(3) of this Act is because, pending their being used to fund those payments or other benefits, contributions of participants are managed as a whole by or on behalf of the operator of the scheme.]

#### Textual Amendments

F44 Sch. 1 para. 37 inserted (6.2.1997) by S.I. 1997/32, art. 2(2)

VALID FROM 01/05/2001

[<sup>F45</sup>38 For the purpose of this Schedule, arrangements are not prevented from being a collective investment scheme merely because they constitute a limited liability partnership.]

#### Textual Amendments

F45 Sch. 1 para. 38 inserted (1.5.2001) by S.I. 2001/1421, art. 2(4)

**Status:**

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