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STATUTORY INSTRUMENTS

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**1997 No. 2306**

**COMPANIES**

**The Companies (Membership of Holding Company) (Dealers in Securities) Regulations 1997**

<i>Made</i>	- - - -	<i>23rd September</i> <i>1997</i>
<i>Laid before Parliament</i>		<i>25th September 1997</i>
<i>Coming into force</i>	- -	<i>20th October 1997</i>

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the acquisition by a body corporate of shares in its holding company, in exercise of the powers conferred on her by section 2(2) of that Act and of all other powers enabling her in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Companies (Membership of Holding Company) (Dealers in Securities) Regulations 1997 and shall come into force on 20th October 1997.

**Amendment of section 23 of the Companies Act 1985**

2. In section 23 of the Companies Act 1985 (membership by subsidiary of holding company)<sup>(3)</sup>, for subsection (3) there shall be substituted the following—

“(3) The prohibition does not apply where shares in the holding company are held by the subsidiary in the ordinary course of its business as an intermediary.

For this purpose a person is an intermediary if that person—

- (a) carries on a bona fide business of dealing in securities;
- (b) is a member of an EEA exchange (and satisfies any requirements for recognition as a dealer in securities laid down by that exchange) or is otherwise approved or supervised as a dealer in securities under the laws of an EEA State; and
- (c) does not carry on an excluded business.

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(1) S.I.1997/1742.

(2) 1972 c. 68; as amended by the European Economic Area Act 1993 (c. 51).

(3) 1985 c. 6; section 23 was substituted by section 129(1) of the Companies Act 1989 (c. 40).

- (3A) The excluded businesses are the following—
- (a) any business which consists wholly or mainly in the making or managing of investments;
  - (b) any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected with the person carrying on the business;
  - (c) any business which consists in insurance business;
  - (d) any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
  - (e) any business which consists in operating or acting as trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme.
- (3B) For the purposes of subsections (3) and (3A)—
- (a) the question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988<sup>(4)</sup>;
  - (b) ‘collective investment scheme’ has the meaning given in section 75 of the Financial Services Act 1986<sup>(5)</sup>;
  - (c) ‘EEA exchange’ means a market which appears on the list drawn up by an EEA State pursuant to Article 16 of Council Directive 93/22/EEC on investment services in the securities field<sup>(6)</sup>;
  - (d) ‘insurance business’ means long term business or general business as defined in section 1 of the Insurance Companies Act 1982<sup>(7)</sup>;
  - (e) ‘securities’ include investments falling within paragraphs 7, 8 and 9 of Schedule 1 to the Financial Services Act 1986 and, so far as relevant to any of those paragraphs, paragraph 11 of that Schedule;
  - (f) ‘trustee’ and ‘the operator’ shall, in relation to a collective investment scheme, be construed in accordance with section 75(8) of the Financial Services Act 1986.
- (3C) Where—
- (a) a subsidiary which is a dealer in securities has purportedly acquired shares in its holding company in contravention of the prohibition in subsection (1); and
  - (b) a person acting in good faith has agreed, for value and without notice of that contravention, to acquire shares in the holding company from the subsidiary or from someone who has purportedly acquired the shares after their disposal by the subsidiary,
- any transfer to that person of the shares mentioned in paragraph (a) shall have the same effect as it would have had if their original acquisition by the subsidiary had not been in contravention of the prohibition.”

(4) 1988 c. 1; section 839 was amended by section 74 of, and paragraph 20 of Part II of Schedule 17 to, the Finance Act 1995 (c. 4), and modified by S.I. 1988/745.

(5) 1986 c. 60; section 75 was amended by article 6(a) and (b) of S.I. 1990/349 and modified by regulation 55 of, and paragraph 24 of Schedule 9 to, S.I. 1992/3218.

(6) O.J. L141, 11.6.93, p. 27.

(7) 1982 c. 50.

3. In subsections (4) and (5) of section 23 of the Companies Act 1985, the words “20th October 1997” shall be substituted for the words “1st November 1990”(8) where they appear in those subsections.

### **Consequential amendments**

4.—(1) The following definition shall be inserted at the appropriate place in section 744 of the Companies Act 1985 (expressions used generally in that Act)—

“‘EEA State’ means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(9) as adjusted by the Protocol signed at Brussels on 17th March 1993(10).”

(2) In section 262(1) of that Act (minor definitions for Part VII)(11), the definition of “EEA State” shall be omitted.

(3) The following entry shall be inserted at the appropriate place in the index of defined expressions set out in section 744A of that Act(12)—

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“EEA State	section 744”.
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(4) In the index of defined expressions set out in section 262A of that Act(13), the entry relating to “EEA State” shall be omitted.

23rd September 1997

*Ian McCartney,*  
Minister of State,  
Department of Trade and Industry

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(8) Those words were substituted by article 8 of S.I. 1990/1392, as amended by article 8 of S.I. 1990/1707.

(9) O.J. L1, 3.1.94, p. 3.

(10) O.J. L1, 3.1.94, p. 571.

(11) Section 262 was substituted by section 22 of the Companies Act 1989, and was amended by regulation 12(1) of S.I. 1996/189.

(12) Section 744A was inserted by section 145 of, and paragraph 20 of Schedule 19 to, the Companies Act 1989.

(13) Section 262A was inserted by section 22 of the Companies Act 1989, and was amended by regulation 12(2) of S.I. 1996/189.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further implement the provisions of Article 24a of Second Council Directive [77/91/EEC](#) (OJNo. L26, 31.1.77, p. 1), on the co-ordination of safeguards in respect of the formation of public limited liability companies and the maintenance and alteration of their capital. Article 24a was inserted by Council Directive [92/101/EEC](#) (OJ No. L347, 28.11.92, p. 64). Those Community provisions extend to the EEA by virtue of Annex XXII to the EEA Agreement and Decision No. 7/94 of the EEA Joint Committee.

The Regulations alter the scope of the exemption contained in section 23(3) of the Companies Act 1985, which excludes certain kinds of dealings in securities from the prohibition (laid down by section 23(1) of the Act) on the ownership by a body corporate of shares in its holding company. The exemption for the benefit of “market makers” is replaced by an exemption for the benefit of “intermediaries”, defined as a certain class of dealers in securities. Excluded from that definition are persons who carry on various categories of “excluded business”, which correspond to those contained in section 80A(5) and section 88A(5) of the Finance Act 1986. Provision is also made for the consequences of a breach of the prohibition where the shares are subsequently acquired by a purchaser without notice of the breach. The amendments provided for by these Regulations are made following changes in the system of trading on certain regulated securities markets.