

SCHEDULES

SCHEDULE 2

Compensation: exemptions

PART 3

Further exemption relating to forward-looking statement “Protected forward-looking statement”

10.—(1) For the purposes of this Part of this Schedule, a forward-looking statement in a prospectus is “a protected forward-looking statement” if it—

- (a) is of a kind specified by the FCA for the purposes of this paragraph in the appropriate rules, and
- (b) is accompanied by a statement, in such form as may be required by the appropriate rules, which identifies the statement as a protected forward-looking statement for the purposes of this Part of this Schedule.

(2) In paragraph (1)—

“the appropriate rules” means—

- (i) in relation to a regulated market, regulated market admission rules, and
- (ii) in relation to a primary MTF, rules made by virtue of regulation 15;

“forward-looking statement” includes—

- (i) a statement containing a projection, estimate, forecast or target,
- (ii) a statement giving guidance,
- (iii) a statement of opinion as to future events or circumstances, or
- (iv) a statement of intention.

Exemption from liability

11.—(1) Unless the condition in sub-paragraph (2) is met, a person responsible for a prospectus (R)—

- (a) does not incur any liability under regulation 30(1) or (5) in respect of any loss caused by a protected forward-looking statement, and
- (b) is not subject to any other liability in respect of any loss caused by such a statement.

(2) The condition is that, at any time in the relevant period, R—

- (a) knew the protected forward-looking statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
- (b) knew the omission from the protected forward-looking statement to be a dishonest concealment of a material fact.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) A person (P) who is not among those responsible for a prospectus but would apart from this sub-paragraph have any liability to a person other than the issuer in respect of loss caused by a protected forward-looking statement in the prospectus has no such liability unless at any time in the relevant period, P—

- (a) knew the protected forward-looking statement to be untrue or misleading or was reckless as to whether it was untrue or misleading, or
- (b) knew the omission from the protected forward-looking statement to be a dishonest concealment of a material fact.

(4) “The relevant period” is the period beginning with the time when the prospectus is published and ending with the later of—

- (a) the closure of the offer to which the prospectus relates, and
- (b) the commencement of dealings in the transferable securities following their admission to trading on the regulated market or primary MTF.

(5) For the purposes of sub-paragraph (2)(b) and (3)(b), a person’s conduct is regarded as dishonest if (and only if)—

- (a) it is regarded as dishonest by persons who regularly trade on the regulated market or primary MTF in question, and
- (b) the person was aware (or must be taken to have been aware) that it was so regarded.

(6) In sub-paragraphs (1) and (3) the reference to liability, in relation to a person, includes a reference to another person being entitled as against that person to be granted any civil remedy or to rescind or repudiate an agreement.

(7) This paragraph does not affect—

- (a) civil liability under rules made under section 954 of the Companies Act 2006 (compensation),
- (b) liability to a civil penalty,
- (c) criminal liability,
- (d) the powers conferred by section 382 and 384 of FSMA 2000 (powers of the court to make a restitution order and of the FCA to require restitution), or
- (e) any rights conferred as a result of rules made by virtue of regulation [32](#).

(8) This paragraph does not limit the application of Part 2 of this Schedule in relation to loss caused by a protected forward-looking statement.