

## SCHEDULES

### SCHEDULE 1

#### INVESTMENTS AND INVESTMENT BUSINESS

#### PART III

##### EXCLUDED ACTIVITIES

##### *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

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- (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.
- (3) Sub-paragraph (1) above applies only 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.
- (4) Paragraph 12 above does not apply to a transaction which relates or is to relate to any other investment and which 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.

*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 1 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 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—

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- (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.
- (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.

*Sale of goods and supply of services*

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- (1) 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—

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- (a) where the investment falls within any of paragraphs 1 to 6 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 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.

*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—

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- (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 stepchildren 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 subparagraph (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.

#### *Sale of private company*

- 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 private 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 company ; 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
  - (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 company 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 company.
- (3) In this paragraph " private company " means a private company within the meaning of section 1(3) of the Companies Act 1985 or the corresponding Northern Ireland provision and " 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.

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*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.
- (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.

*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.

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- (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
- (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.

*Advice given in course of profession or non-investment business*

- 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.
- (2) Advice shall not be regarded as falling within sub-paragraph (1)(b) above if it is remunerated separately from the other advice or services.

*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

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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.