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## SCHEDULES

### SCHEDULE 1

#### INVESTMENTS AND INVESTMENT BUSINESS

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

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

### PART II

#### ACTIVITIES CONSTITUTING INVESTMENT BUSINESS

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

- C1 Sch. 1 Pt. II modified (1.1.1996) by S.I. 1995/3271, art. 5

#### *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>F1</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

- F1 Notes inserted by S.I. 1988/803, art. 2

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### *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>F2</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—
  - (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>F3</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—

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- (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

- F2** Note added by [S.I. 1988/318, art. 2](#)
- F3** Notes added by [S.I. 1988/803, art. 3](#)

#### *[Custody of Investments]*

- [<sup>F4</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
  - (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

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- (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.

- (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>F5</sup> or to regulation 5 of the Investment Services Regulations 1995<sup>F6</sup>.]

#### Textual Amendments

**F4** Sch. 1 para. 13A inserted (1.6.1997) by S.I. 1996/2958, art. 3

**F5** S.I. 1992/3218.

**F6** S.I. 1995/3275.

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### *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 [<sup>F7</sup>or as depositary or sole director of an investment company with variable capital.].

#### **Textual Amendments**

**F7** Words in [Sch. 1 para. 16](#) inserted (6.1.1997) by [S.I. 1996/2958, art. 2](#)

### *[<sup>F8</sup>Sending dematerialised instructions etc]*

#### **Textual Amendments**

**F8** [Sch. 1 para. 16A](#) (not including the notes to para. 16A) and the preceding cross-heading substituted (10.11.1997) by [S.I. 1997/2543, art. 2\(2\)](#)

- <sup>F9</sup>16A Sending on behalf of another person dematerialised instructions relating to an investment by means of—
- (a) a relevant system in respect of which an Operator is approved under the Uncertificated Securities Regulations 1995 <sup>F10</sup>; or
  - (b) a computer-based system, established by the Bank of England and the London Stock Exchange, through the medium of which specified securities may be transferred or allotted without the need for an instrument in writing,

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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 [<sup>F11</sup>by means of a system falling within (a) above] 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.
- [<sup>F12</sup>(1A) This paragraph does not apply to a person—
- (a) by reason of his sending, or causing the sending of, instructions by means of a system falling within (b) above on behalf of a settlement bank acting in its capacity as such, or by reason of his offering or agreeing to do so; or
  - (b) by reason of any activity in which he engages, or in which he offers or agrees to engage, at a time when he is accredited by the Bank of England as a provider of a network for the purposes of a system falling within (b) above and which is a necessary part of the provision of such a network.]
- [<sup>F13</sup>(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—
- (a) in the case of a system falling within (a) above, he is a system-participant; and
  - (b) in the case of a system falling within (b) above, he is a person who, under an agreement with the Bank of England, is responsible for the operation of, and the maintenance of security over, a gateway.
- (3) In this paragraph—
- “dematerialised instruction”—
- (a) in relation to a system falling within (a) above, has the meaning given by regulation 3 of the Uncertificated Securities Regulations 1995, and
  - (b) in relation to a system falling within (b) above, means an instruction sent by means of a gateway;
- “gateway”, in relation to a system falling within (b) above, means computer hardware and software by means of which instructions are authenticated and encrypted for processing by the system;
- “offeror” has the meaning given by section 428 of the Companies Act 1985 <sup>F14</sup>;
- “Operator”, “participating issuer” and “relevant system” have the meaning given by regulation 3 of the Uncertificated Securities Regulations 1995;
- “settlement bank”—
- (a) in relation to a system falling within (a) above, has the meaning given by regulation 3 of the Uncertificated Securities Regulations 1995, and
  - (b) in relation to a system falling within (b) above, means a person who has agreed to make payments in connection with the discharge of debts or liabilities arising from the transfer or allotment of specified securities made through the medium of that system;

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“specified securities” has the meaning given by the Stock Transfer Act 1982 <sup>F15</sup>;

“system-participant” has the meaning given by regulation 3 of the Uncertificated Securities Regulations 1995;

“takeover offer” has the meaning given by section 428 of the Companies Act 1985.]

#### Textual Amendments

- F9** Sch. 1 para. 16A (not including the notes to para. 16A) substituted (10.11.1997) by S.I. 1997/2543, art. 2(2)
- F10** S.I. 1995/3272.
- F11** Words in Sch. 1 para. 16A note (1) inserted (10.11.1997) by S.I. 1997/2543, art. 2(3)
- F12** Sch. 1 para. 16A note (1A) inserted (10.11.1997) by S.I. 1997/2543, art. 2(4)
- F13** Sch. 1 para. 16A notes (2)(3) substituted (10.11.1997) by S.I. 1997/2543, art. 2(5)
- F14** 1985 c. 6; section 428 was substituted by section 172 of, and Schedule 12 to, the Financial Services Act 1986.
- F15** 1982 c. 41.

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