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STATUTORY INSTRUMENTS

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**1992 No. 274**

**The Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1992**

**Citation and commencement**

1.—(1) This Order may be cited as the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1992.

(2) Article 7(b) of this Order shall come into force on 1st June 1992 and all other articles of this Order shall come into force on 16th March 1992.

**Interpretation**

2.—(1) In this Order—

“the Act” means the Financial Services Act 1986;

“approved EC market” means a market in a member State which is established under the rules of an investment exchange specified in Part I of Schedule 1 to this Order or which meets the criteria specified in Part II of that Schedule;

“approved securities market” means any market which is established under the rules of an investment exchange specified in Schedule 2 to this Order;

“relevant bearer security” means a relevant security title to which is capable of being transferred without notice of that fact being given to the body corporate issuing the security or any person acting on its behalf;

“relevant security” means shares and also means an investment falling within paragraph 2 of Schedule 1 to the Act and any investment falling within paragraph 4 or 5 of that Schedule which confers rights in respect of an investment falling within paragraph 1 or 2 of that Schedule; and “shares” means any investment falling within paragraph 1 of Schedule 1 to the Act.

(2) For the purposes of this Order, a relevant security falling within paragraph 4 or 5 of Schedule 1 to the Act shall be taken to have been issued by the person who issued the investment in respect of which the relevant security confers rights if it is issued by a body corporate in the same group as that person or by some other person acting on behalf of, or pursuant to arrangements made with, that person.

**Investment advertisements relating to relevant securities**

3.—(1) Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by a body corporate other than an open-ended investment company if the advertisement fulfils the conditions specified in paragraph (2) of this article and either—

- (a) relevant securities issued by the body corporate, or, in a case in which the body corporate is a wholly-owned subsidiary within the meaning of section 736 of the Companies Act 1985(1), by its holding company, are permitted to be traded or dealt in on an approved EC market or an approved securities market; or

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(1) 1985 c. 6. Section 736 of the Companies Act 1985 was inserted by section 144 of the Companies Act 1989 (c. 40).

- (b) the advertisement consists of or is accompanied by the whole or any part of the body corporate's annual accounts or by the directors' report prepared and approved under sections 234 and 234A of the Companies Act 1985(2) or the corresponding Northern Ireland enactment or consists of or is accompanied by any report prepared and approved under the law of another member State corresponding to the said sections 234 and 234A.
- (2) The conditions specified in this paragraph are that the advertisement—
- (a) does not contain any invitation or offer to persons to underwrite, subscribe for, otherwise acquire, or dispose of any investments or advise persons so to do;
  - (b) does not contain any invitation or offer to persons to effect any transaction with, or to make use of any services provided by, the body corporate or any person named in the advertisement in the course of any activity falling within any of paragraphs 12 to 16 of Schedule 1 to the Act in which the body corporate or the relevant person engages;
  - (c) does not contain any information calculated to lead directly or indirectly to persons doing any of the things mentioned in section 57(2) of the Act in relation to any investment which is not a relevant security issued by the body corporate or another body corporate in the same group; and
  - (d) in a case in which the advertisement contains information about the price at which relevant securities issued by the body corporate have been bought or sold in the past or, except where the information is restricted to a statement as to earnings per share, dividend or nominal rate of interest payable, about the yield on such securities, it states prominently a warning that past performance cannot be relied upon as a guide to future performance.
- (3) For the purposes of paragraph (1)(b) of this article, “annual accounts” means any of the following, that is to say—
- (a) accounts produced by virtue of Part VII of the Companies Act 1985(3) or the corresponding Northern Ireland enactment including accounts produced by virtue of Part VII or the corresponding Northern Ireland enactment as applied by virtue of any enactment;
  - (b) a summary financial statement prepared under section 251 of the Companies Act 1985(4);
  - (c) accounts delivered to the registrar under Chapter II of Part XXIII of the Companies Act 1985(5); and
  - (d) accounts produced or published by virtue of the law of a member State other than the United Kingdom which correspond to accounts falling within sub-paragraph (a), (b) or (c) of this paragraph.

#### **Investment advertisements relating to relevant bearer securities issued by body corporate**

4.—(1) Section 57 of the Act shall not apply to an investment advertisement which is issued or caused to be issued by a body corporate other than an open-ended investment company if the advertisement—

- (a) is addressed to persons entitled to relevant bearer securities issued by the body corporate or by a related body corporate;
- (b) contains no invitation to persons to enter into an investment agreement other than an invitation relating to relevant securities of a class which consists of or includes the relevant bearer securities or investments in respect of which the relevant bearer securities confer

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(2) Sections 234 and 234A were inserted by section 8(1) of the Companies Act 1989.

(3) Part VII of the Companies Act 1985 has been amended by Part I of the Companies Act 1989 (c. 40).

(4) Section 251 of the Companies Act 1985 was inserted by section 15 of the Companies Act 1989.

(5) Chapter II of Part XXIII of the Companies Act 1985 was inserted by section 23 of the Companies Act 1989.

rights and which is capable of being accepted only by persons who are entitled to relevant securities issued by the body corporate or a related body corporate; and

- (c) contains no information relating to any investment which is not a relevant security issued by the body corporate or by a related body corporate.

(2) Section 57 of the Act shall not apply to an investment advertisement which is issued or caused to be issued by a body corporate other than an open-ended investment company if the circumstances are that the advertisement is addressed to persons entitled to relevant bearer securities issued by the body corporate or by a related body corporate and would not otherwise be regarded as an investment advertisement but for the inclusion of information which the authorities of an approved EC market or an approved securities market on which relevant securities of a class which consists of or includes the relevant bearer securities are traded or dealt in require or permit be made known to the holders of securities in that class.

(3) In this article—

- (a) the expressions “holding company” and “subsidiary” have the same meanings as in section 736 of the Companies Act 1985<sup>(6)</sup>;
- (b) in relation to a body corporate, the expression “related body corporate” means a body corporate which is not an open-ended investment company but which is either the holding company of or a subsidiary of the first body corporate; and
- (c) relevant bearer securities may be regarded as being in the same class as relevant securities which are not relevant bearer securities.

#### **Investment advertisements issued by body corporate to existing members or creditors**

5. Article 3 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1988<sup>(7)</sup> shall be deleted and the following substituted—

##### **“Investment advertisements issued by body corporate to members or creditors**

3.—(1) Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by a body corporate other than an open-ended investment company if the only persons to whom the advertisement is issued, other than persons to whom it may otherwise lawfully be issued, are reasonably believed by the person who issued the advertisement or who caused it to be issued to be persons who fall within any one or more of the following categories—

- (a) creditors or members of, or persons who are entitled to investments falling within paragraph 1, 2 or 4 of Schedule 1 to the Act issued by, the body corporate;
- (b) creditors or members of, or persons who are entitled to investments falling within paragraph 1, 2 or 4 of Schedule 1 to the Act issued by, another body corporate which is not an open-ended investment company but which is in the same group as the first body corporate; and
- (c) persons who are entitled, whether conditionally or unconditionally, to become members of the body corporate or to have title to an investment of a kind mentioned in sub-paragraph (a) or (b) above issued by the body corporate transferred to them but who have not yet become a member of the body corporate or, as the case may be, acquired title to the investment

(2) Section 57 of the Act shall not apply to an investment advertisement issued or caused to be issued by an open-ended investment company if the circumstances are that the only

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<sup>(6)</sup> 1985 c. 6. Section 736 of the Companies Act 1985 was inserted by section 144 of the Companies Act 1989 (c. 40).

<sup>(7)</sup> S.I.1988/316.

persons to whom the advertisement is issued, other than persons to whom it may otherwise lawfully be issued, are reasonably believed by the person who issued the advertisement or who caused it to be issued to be persons who fall within any one or more of the following categories—

- (a) creditors or members of, or persons who are entitled to investments falling within paragraph 2, 4 or 6 of Schedule 1 to the Act issued by, the open-ended investment company; and
- (b) persons who are entitled, whether conditionally or unconditionally, to become members of the open-ended investment company or to have title to an investment of a kind mentioned in sub-paragraph (a) above issued by the company transferred to them but who have not yet become a member of the company or, as the case may be, acquired title to the investment, and the advertisement contains no invitation or information which would make it an investment advertisement other than an invitation or information relating to an investment of a kind described in this paragraph issued or to be issued by the open-ended investment company.”.

#### **Advertisements issued to persons sufficiently expert to understand the risks involved**

6. Article 9 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1988<sup>(8)</sup> shall be amended by—

- (a) the substitution in paragraph (2)(a) of the following for the words “in the United Kingdom”—
  - “, other than persons to whom the advertisement may otherwise lawfully be issued.”;
- (b) the deletion of the words “in the United Kingdom” in paragraph (2)(b) and the insertion, in that paragraph, of the following words after the words “except to persons”—
  - “to whom the advertisement may otherwise lawfully be issued or who are”; and
- (c) by the addition at the end of article 9(3)(g) of the following—
  - “; or
- (h) any trustee of a trust where the aggregate value of the cash and investments which form part of the trust’s assets (before deducting the amount of its liabilities) is £10 million or more or has been £10 million or more at any time during the previous two years.”.

#### **Publications and programmes containing investment advice**

7. Section 57 of the Act shall not apply to an investment advertisement if the only reason why section 57 would otherwise apply to the advertisement is that it contains an invitation or information of the kind described in section 57(2) of the Act relating—

- (a) to a newspaper, journal, magazine or other periodical publication which contains advice to which paragraph 15 of Schedule 1 to the Act does not apply by virtue of the provisions of paragraph 25 of that Schedule; or
- (b) to a programme which contains advice to which paragraph 15 of Schedule 1 to the Act does not apply by virtue of the provisions of paragraph 25A of that Schedule<sup>(9)</sup>.

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<sup>(8)</sup> S.I. 1988/316.

<sup>(9)</sup> Paragraph 25A was inserted by S.I. 1990/349 and has been amended by paragraph 45(2) of Schedule 20 to the Broadcasting Act 1990 (c. 42).

### **Advertisements by certain markets**

**8.**—(1) Section 57 of the Act shall not apply to an investment advertisement which is issued or caused to be issued by a market which is an approved EC market or is established under the rules of an investment exchange specified in Schedule 2 or 3 to this Order, if the only reason why section 57 would otherwise apply to the advertisement is that it contains information relating to the facilities provided by the relevant market.

(2) For the purposes of paragraph (1) of this article, information which identifies a particular investment as one which may be traded or dealt in on a market or which identifies particular persons as persons through whom transactions on a market may be effected shall not be regarded as information relating to the facilities provided by the relevant market.

### **Management companies**

**9.** Section 57 of the Act shall not apply to an investment advertisement if the only reason why that section would otherwise apply to the advertisement is that it contains an invitation or information relating to an investment falling within paragraph 1 of Schedule 1 to the Act **(10)** issued or to be issued by a private company established for the purpose of managing the common parts or the fabric of property used for residential purposes or of supplying services to such property being an investment which is to be acquired in connection with the acquisition of an interest in the property in question.

17th February 1992

*John Redwood*  
Minister of State,  
Department of Trade and Industry

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**(10)** Paragraph 1 of Schedule 1 to the Financial Services Act 1986 has been amended by S.I. 1991/1104.