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STATUTORY INSTRUMENTS

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**1992 No. 274**

**FINANCIAL SERVICES**

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

<i>Made</i>	- - - -	<i>17th February 1992</i>
<i>Laid before Parliament</i>		<i>17th February 1992</i>
<i>Coming into force</i>		
<i>Article 7(b)</i>		<i>1st June 1992</i>
<i>Remainder</i>		<i>16th March 1992</i>

The Secretary of State, in exercise of the powers conferred on him by section 58(3)(a) to (c) and (4) and section 205A of the Financial Services Act 1986(1) hereby makes the following Order:

**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;

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(1) 1986 c. 60. Section 205A was inserted by paragraph 18 of Schedule 23 to the Companies Act 1989 (c. 40).

“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(2), by its holding company, are permitted to be traded or dealt in on an approved EC market or an approved securities market; or
- (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(3) 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(4) 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;

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(2) 1985 c. 6. Section 736 of the Companies Act 1985 was inserted by section 144 of the Companies Act 1989 (c. 40).

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

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

- (b) a summary financial statement prepared under section 251 of the Companies Act 1985<sup>(5)</sup>;
- (c) accounts delivered to the registrar under Chapter II of Part XXIII of the Companies Act 1985<sup>(6)</sup>; 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 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>(7)</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>(8)</sup> shall be deleted and the following substituted—

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

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

(7) 1985 c. 6. Section 736 of the Companies Act 1985 was inserted by section 144 of the Companies Act 1989 (c. 40).

(8) S.I.1988/316.

**“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 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(9) 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>(10)</sup>.

### **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<sup>(11)</sup> 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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<sup>(10)</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).

<sup>(11)</sup> Paragraph 1 of Schedule 1 to the Financial Services Act 1986 has been amended by S.I. 1991/1104.

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## SCHEDULE 1

Article 2

### APPROVED EC MARKETS

#### PART I

##### exchanges operating approved ec markets

Asociacion de Intermediarios de Activos Financieros.  
Amsterdam Financial Futures Market.  
Amsterdam Stock Exchange.  
Antwerp Stock Exchange.  
Athens Stock Exchange.  
Barcelona Stock Exchange.  
Berlin Stock Exchange.  
Bilbao Stock Exchange.  
Bologna Stock Exchange.  
Bordeaux Stock Exchange.  
Bremen Stock Exchange.  
Brussels Stock Exchange.  
Copenhagen Stock Exchange.  
Deutsche Terminboerse.  
Dusseldorf Stock Exchange.  
European Options Exchange.  
Florence Stock Exchange.  
Frankfurt Stock Exchange.  
Genoa Stock Exchange.  
Hamburg Stock Exchange.  
Hanover Stock Exchange.  
The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited.  
Irish Futures and Options Exchange.  
Lille Stock Exchange.  
Lisbon Stock Exchange.  
Luxembourg Stock Exchange.  
Lyon Stock Exchange.  
Madrid Stock Exchange.  
Marseilles Stock Exchange.  
Marche a Terme d'Instruments Financiers.  
Mercado de Futures Financieros.  
Milan Stock Exchange.  
Marche des Options Negotiable de Paris.

Munich Stock Exchange.  
Nancy Stock Exchange.  
Nantes Stock Exchange.  
Naples Stock Exchange.  
OM Iberica.  
Oporto Stock Exchange.  
Palermo Stock Exchange.  
Paris Stock Exchange.  
Rome Stock Exchange.  
Stuttgart Stock Exchange.  
Trieste Stock Exchange.  
Turin Stock Exchange.  
Valencia Stock Exchange.  
Venice Stock Exchange.

## PART II

### criteria relevant to definition of “approved ec market”

The criteria relevant for the purposes of the definition of “approved EC market” in article 2 of this Order are the following—

- (a) the head office of the market must be situated in a member State; and
- (b) the market must be subject to requirements in the member State in which its head office is situated as to—
  - (i) the manner in which it operates;
  - (ii) the means by which access may be had to the facilities it provides;
  - (iii) the conditions to be satisfied before an investment may be traded or dealt in by means of its facilities; and
  - (iv) the reporting and publication of transactions effected by means of its facilities.

## SCHEDULE 2

Articles 2 and 8

### EXCHANGES RELEVANT TO DEFINITION OF APPROVED SECURITIES MARKET AND FOR THE PURPOSES OF ARTICLE 8

Alberta Stock Exchange.  
American Stock Exchange.  
Australian Stock Exchange Limited.  
Basler Effektenbourse.  
Boston Stock Exchange.  
Bourse de Geneve.  
Chicago Board Options Exchange.

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Cincinnati Stock Exchange.  
Effektenborsenverein Zurich.  
Fukuoka Stock Exchange.  
Helsinki Stock Exchange.  
Hiroshima Stock Exchange.  
Johannesburg Stock Exchange.  
Korean Stock Exchange.  
Kuala Lumpur Stock Exchange.  
Kyoto Stock Exchange.  
Midwest Stock Exchange.  
Montreal Stock Exchange.  
Nagoya Stock Exchange.  
NASDAQ.  
New York Stock Exchange.  
New Zealand Stock Exchange.  
Niigata Stock Exchange.  
Osaka Stock Exchange.  
Oslo Stock Exchange.  
Pacific Stock Exchange.  
Philadelphia Stock Exchange.  
Sapporo Stock Exchange.  
Securities Exchange of Thailand.  
Singapore Stock Exchange.  
Stock Exchange of Hong Kong Limited.  
Stockholm Stock Exchange.  
Tokyo Stock Exchange.  
Toronto Stock Exchange.  
Vancouver Stock Exchange.  
Wiener Bourse.  
Winnipeg Stock Exchange.

### SCHEDULE 3

Article 8

#### OTHER MARKETS RELEVANT FOR THE PURPOSES OF ARTICLE 8

American Commodity Exchange.  
Amex Commodity Corporation.  
Australian Financial Futures Market.  
Chicago Board of Trade.  
Chicago Mercantile Exchange.



Chicago Rice and Cotton Exchange.  
Coffee, Sugar and Cocoa Exchange, Inc.  
Commodity Exchange, Inc.  
International Securities Market Association.  
Kansas City Board of Trade.  
Mid-America Commodity Exchange.  
Minneapolis Grain Exchange.  
New York Cotton Exchange (including the Citrus Associates of the New York Stock Exchange).  
New York Futures Exchange.  
New York Mercantile Exchange.  
New Zealand Futures Exchange.  
Pacific Commodity Exchange.  
Pacific Futures Exchange.  
Philadelphia Board of Trade Singapore International Monetary Exchange.  
Stockholm Options Market.  
Sydney Futures Exchange.  
Toronto Futures Exchange.  
Twin Cities Board of Trade

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## EXPLANATORY NOTE

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

The Order provides various exemptions from the restrictions on investment advertising imposed by section 57 of the Financial Services Act 1986.

Article 3 of the Order concerns advertisements which are issued or caused to be issued by a body corporate other than an open-ended investment company where particular investments issued by the body corporate or its holding company are traded or dealt in on a market of the kind referred to in the article or where the advertisement consists of or is accompanied by documents of a kind described in the article. The article specifies certain conditions with which the advertisement must comply if it is to benefit from the exemption.

Article 4 of the Order concerns advertisements relating to bearer securities which are issued or caused to be issued by a body corporate other than an open-ended investment company. The article specifies certain conditions with which the advertisement must comply if it is to benefit from the exemption.

Article 5 of the Order replaces article 3 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order 1988. It concerns advertisements issued by a body corporate to its members or creditors.

Article 6 of the Order amends article 9 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) Order in various respects. Article 9 of the 1988 Order concerns

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advertisements issued only to certain persons who may be regarded as sufficiently expert to understand the risks involved.

Article 7 of the Order concerns advertisements relating to publications or programmes which contain advice which does not fall within paragraph 15 of Schedule 1 to the Financial Services Act 1986 by virtue of the provisions of paragraph 25 or 25A of that Schedule.

Article 8 of the Order concerns advertisements relating to the facilities offered by a market referred to in the article.

Article 9 of the Order concerns advertisements relating to shares in a private company established to manage the fabric or common parts of residential property or to supply services to such property.