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STATUTORY INSTRUMENTS

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**1997 No. 817**

**BANKS AND BANKING**

**The Banking Act 1987 (Exempt Transactions) Regulations 1997**

<i>Made</i>	- - - -	<i>13th March 1997</i>
<i>Laid before Parliament</i>		<i>17th March 1997</i>
<i>Coming into force</i>	- -	<i>3rd April 1997</i>

The Treasury, in exercise of the powers conferred upon them by section 4(4), (5) and (6) of the Banking Act 1987<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Banking Act 1987 (Exempt Transactions) Regulations 1997, and shall come into force on 3rd April 1997.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the Banking Act 1987;

“Approved Organisation” means an exchange or association not in an EEA State which meets criteria agreed between the Securities and Investments Board and the Stock Exchange and is included in a list maintained by the Stock Exchange for the purposes of the Rules of the Stock Exchange<sup>(2)</sup>;

“authorised institution” means an institution authorised under the Act;

“certified translation” means a translation certified to be a correct translation in the manner prescribed in regulation 6 of the Companies (Forms) Regulations 1985<sup>(3)</sup> or in regulation 6 of the Companies (Forms) (Northern Ireland) Regulations 1986<sup>(4)</sup>;

“commercial paper” means a debt security which must be redeemed before the first anniversary of the date of issue;

“company” means a body corporate, including a body corporate constituted under the law of a country or territory outside the United Kingdom;

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(1) 1987 c. 22.

(2) The list and the rules may be obtained from the Listing Department, Capital Markets Division, the London Stock Exchange Limited, London EC2N 1HP.

(3) S.I.1985/854.

(4) S.R. 1986 No. 287.

“competent authority” in relation to another EEA State, means an authority appointed by that State pursuant to Article 18 of Council Directive No. [80/390/EEC](#)(5) to approve listing particulars or a body competent pursuant to Articles 7, 8 and 12 of Council Directive No. [89/298/EEC](#)(6) to approve prospectuses;

“debt security” includes bonds, notes, debentures and debenture stock;

“deposit”, except in the expressions “pre-contract deposit” and “deposit fund”, shall be construed in accordance with section 5 of the Act(7);

“EEA Exchange” means an exchange in an EEA State other than the United Kingdom on which securities may be officially listed in accordance with Council Directive No. [80/390/EEC](#);

“EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(8) as adjusted by the Protocol signed at Brussels on 17th March 1993(9);

“European authorised institution” and “European institution” have the meaning given by regulation 3 of the Banking Coordination (Second Council Directive) Regulations 1992(10);

“European investment firm” has the meaning given by regulation 3 of the Investment Services Regulations 1995(11);

“exempt transaction” shall be construed in accordance with regulation 2 below;

“home-regulated investment business”, in relation to a European institution, has the meaning given by regulation 2 of the Banking Coordination (Second Council Directive) Regulations 1992 and in relation to a European investment firm, has the meaning given by regulation 2 of the Investment Services Regulations 1995;

“industrial and provident society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965(12) or under the Industrial and Provident Societies Act (Northern Ireland) 1969(13) but does not include a credit union within the meaning of the Credit Unions Act 1979(14) or the Credit Unions (Northern Ireland) Order 1985(15);

“the listing rules” means any rules made pursuant to section 142(6) of the Financial Services Act 1986(16);

“longer term debt security” means a debt security which may not be redeemed in whole or in part until the third anniversary of the date of issue;

“net assets” has the meaning ascribed to it by section 264(2) of the Companies Act 1985(17);

“the Official List” means the Official List of the Stock Exchange;

“recognised European document” has the meaning given by paragraph 2 of Schedule 4 to the Public Offers of Securities Regulations 1995(18);

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(5) OJ No. L100, 17.4.80, p. 1.

(6) OJ No. L124, 5.5.89, p. 8.

(7) Section 5 was amended by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. [1992/3218](#)) and by the Credit Institutions (Protection of Depositors) Regulations 1995 (S.I. [1995/1442](#)).

(8) Cm 2073.

(9) Cm 2183.

(10) S.I. [1992/3218](#); amended by S.I. [1993/3225](#).

(11) S.I. [1995/3275](#).

(12) 1965 c. 12.

(13) 1969 c. 24.

(14) 1979 c. 34.

(15) S.I. [1985/1205](#) (N.I. 12).

(16) 1986 c. 60.

(17) 1985 c. 6.

(18) S.I. [1995/1537](#), to which there are amendments not relevant to these Regulations.

“redemption value”, in relation to any debt security, means the amount of principal which is payable upon redemption of that security;

“relevant debt security” means a debt security which is commercial paper, a shorter term debt security or a longer term debt security;

“relevant information” means—

- (a) for debt securities falling within regulation 13(4)(b) below which are not issued as part of a programme—
  - (i) either of the following documents—
    - (aa) the listing particulars and any supplement to it approved by a competent authority in accordance with Council Directive No. [80/390/EEC](#); or
    - (bb) the public offer prospectus and any supplement to it approved by a competent authority in accordance with Council Directive No. [89/298/EEC](#) and recognised as listing particulars in the EEA State where the application for admission to official listing of the debt securities was made; and
  - (ii) any other document required to be published as a condition of or by virtue of the admission to official listing of such debt securities under the rules of the EEA Exchange or by the relevant regulatory body in the EEA State where the official listing is sought or obtained; and
  - (iii) such of the following additional information as is not included in the listing particulars or the public offer prospectus for such debt securities—
    - (aa) a summary of the tax treatment relevant to United Kingdom resident holders of the debt securities;
    - (bb) the names and addresses of the paying agents for the debt securities in the United Kingdom (if any); and
    - (cc) a statement of how notice of meetings and other notices from the issuer of the debt securities will be given to United Kingdom resident holders of the debt securities; or
- (b) for debt securities falling with regulation 13(4)(b) below which are issued as part of a programme—
  - (i) either of the documents referred to in sub-paragraph (i) of paragraph (a) above in relation to the programme, to any previous issues made under it listed on the same EEA Exchange and to the current issue approved in any event not more than one year before the date when the acceptance of the deposit intended to be an exempt transaction under regulation 13(3) below is proposed;
  - (ii) any other document required to be published as a condition of or by virtue of the admission to official listing of the programme, of any previous issues made under it listed on the same EEA Exchange or of the current issue under the rules of the EEA Exchange or by the relevant regulatory body in the EEA State where the listing is sought or obtained and published in any event not more than one year before the date when acceptance of the deposit intended to be an exempt transaction under regulation 13(3) below is proposed; and
  - (iii) any information referred to in sub-paragraph (iii) of paragraph (a) above which is not included in the listing particulars, public offer prospectus or any pricing supplement for the current issue; or
- (c) for debt securities and shares falling within regulation 13(2)(b) or (4)(d) below and for debt securities and shares issued by a company described in regulation 13(2)(d)(ii) below—

- (i) either of the following documents—
  - (aa) the listing particulars and any supplement to it approved by a competent authority in accordance with Council Directive No. [80/390/EEC](#); or
  - (bb) the public offer prospectus and any supplement to it approved by a competent authority in accordance with Council Directive No. [89/298/EEC](#) and recognised as listing particulars in the EEA State in which the application for admission to official listing of the debt securities or shares was made; and
- (ii) any other document required to be published as a condition of or by virtue of the admission to official listing of such debt securities or shares under the rules of the EEA Exchange or by the relevant regulatory body in the EEA State where the official listing is obtained and published in any event not more than two years before the date when the acceptance of the deposit intended to be an exempt transaction under regulation 13(1) or (3) below is proposed; and
- (d) for debt securities and shares falling within regulation 13(2)(b) or (4)(d) below, for debt securities and shares issued by a company described in regulation 13(2)(d)(ii) below and for debt securities falling within regulation 13(4)(b) below—
  - (i) a description of any partial exemption or partial derogation granted pursuant to Council Directive No. [80/390/EEC](#) or to Council Directive No. [89/298/EEC](#) by the competent authority responsible for approving the listing particulars or, as the case may be, the public offer prospectus; and
  - (ii) a certified translation of any document referred to in paragraph (a), (b) or (c) above or in sub-paragraph (i) of this paragraph which is not in English;

“relevant regulatory body” means the body in another EEA State which regulates an EEA Exchange in that State or which regulates offers or issues of shares or debt securities to be traded on such an exchange;

“selling document” means any prospectus or listing particulars or supplements thereto, any information memorandum, offering circular and pricing supplement and any other similar document produced in connection with the issue of relevant debt securities;

“shorter term debt security” means a debt security which may not be redeemed in whole or in part until the first anniversary of the date of issue and which must be redeemed before the third anniversary of the date of issue;

“the Stock Exchange” means the London Stock Exchange Limited;

“subsidiary” and “wholly-owned subsidiary” shall be construed in accordance with section 736 of the Companies Act 1985(19); and

“successor” in relation to a body, means any company in which property, rights and liabilities of the body shall have become vested by virtue of an Act.

### Exempt transactions

2. The transactions referred to in the following regulations are prescribed for the purposes of section 4(4) of the Act as transactions to which the prohibition in section 3 of the Act on the acceptance of a deposit does not apply. Such transactions are referred to in these Regulations as “exempt transactions”.

### Charities

3.—(1) The acceptance by a charity of a deposit is an exempt transaction if—

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(19) 1985 c. 6; section 736 was substituted by section 144 of the Companies Act 1989 (c. 40).

- (a) the deposit is made by another charity, or
- (b) there is payable in respect of the deposit neither interest nor a premium.

(2) In this regulation “charity” means any institution, trust or undertaking, whether corporate or not, which is established solely for charitable purposes, and in the application of this regulation to Scotland “charitable” shall be construed in the same way as in the Income Tax Acts.

### **Church deposit funds**

4.—(1) The acceptance by the Central Board of Finance of the Church of England of a deposit in the course of administering a deposit fund within the meaning of paragraph 1 of the scheme contained in the Schedule to the Church Funds Investment Measure 1958<sup>(20)</sup> is an exempt transaction.

(2) The acceptance by the Central Finance Board of the Methodist Church of a deposit in the course of administering a deposit fund within the meaning of paragraph 1 of the scheme contained in the First Schedule to the Methodist Church Funds Act 1960<sup>(21)</sup> is an exempt transaction.

### **Industrial and provident societies**

5. The acceptance by an industrial and provident society of a deposit in the form of withdrawable share capital is an exempt transaction.

### **Agricultural, forestry and fisheries associations**

6.—(1) Without prejudice to regulation 5, the acceptance by an association to which section 33 of the Restrictive Trade Practices Act 1976<sup>(22)</sup> applies of a deposit by a member of that association is an exempt transaction.

(2) The reference in paragraph (1) above to a member of an association to which section 33 of the Restrictive Trade Practices Act 1976 applies includes a reference to—

- (a) a member of any such association which is a member of that association; and
- (b) a prospective member, provided that the deposit is made in order to qualify him for membership of the association.

### **Retail and other co-operative societies**

7.—(1) Without prejudice to regulation 5, the acceptance by a co-operative society of a deposit is an exempt transaction if the society fulfils the requirements of paragraph (2) below and the deposit is not taken in breach of the society’s obligations under the Scheme.

(2) The requirements of this paragraph are—

- (a) that the society is an industrial and provident society;
- (b) that either—
  - (i) the principal business of the society is the sale by retail of goods for the domestic or personal use of individuals dealing with the society, or the provision of services for such individuals; or

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<sup>(20)</sup> 1958 No. 1.

<sup>(21)</sup> 1960 c.xxiii.

<sup>(22)</sup> 1976 c. 34; section 33 was amended by Schedule 2 to the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9) and by Part II of Schedule 1 to the Companies Consolidation (Consequential Provisions) Act 1985 and by Part II of Schedule 1 to the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I.9)) and by virtue of article 2 of and Schedule 1 to the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272) certain functions of the Minister of Agriculture, Fisheries and Food under section 33 were transferred to the Secretary of State.

- (ii) at least seventy-five per cent. of the votes which may be cast to determine the conduct of the society's affairs and at least ninety per cent. of its shares by reference to their nominal value are held by qualifying shareholders; or
  - (iii) the principal business of the society is the sale of goods or the provision of services to societies fulfilling the requirements of paragraph (i) above; and
  - (c) the society participates in the Scheme and accordingly is a Participating Society within the meaning of clause 2(4) thereof.
- (3) In this regulation—
- (a) references to the Scheme are to the Scheme constituted by deed dated the 29th February 1980 between the Co-operative Union Limited of the one part and the Co-operative Bank Limited of the other part (as amended by qualifying resolutions of Participating Societies (as therein defined) dated 29th May 1989 and 15th January 1997) the provisions of which are set out in Schedule 1 to these Regulations, and such references do not include references to the Scheme as subsequently amended or varied;
  - (b) the reference to qualifying shareholders is to industrial and provident societies which have the principal business described in paragraph (2)(b)(i) of this regulation and societies which are registered within the meaning of the Friendly Societies Act 1974(23) or are registered and incorporated within the meaning of the Friendly Societies Act 1992(24).

### Solicitors

8.—(1) The acceptance by a practising solicitor in the course of his profession of a deposit is an exempt transaction.

(2) In this regulation “practising solicitor” means a solicitor who is qualified to act as such under section 1 of the Solicitors Act 1974(25), article 4 of the Solicitors (Northern Ireland) Order 1976(26) or section 4 of the Solicitors (Scotland) Act 1980(27), and in Scotland includes a firm of practising solicitors.

### Deposits accepted in the course of estate agency work

9.—(1) The acceptance in the course of estate agency work of a deposit which is a pre-contract deposit is an exempt transaction.

(2) In this regulation “estate agency work” has the meaning assigned to it by section 1(1) of the Estate Agents Act 1979(28), and “pre-contract deposit” has the meaning assigned to it by section 12(3) of that Act.

### Certain public undertakings

10.—(1) Subject to paragraph (2) below, the acceptance by a body listed in Schedule 2 to these Regulations of a deposit made by another such body is an exempt transaction.

(2) Paragraph (1) above shall apply to a successor only so long as each of its issued shares is held by, or by a nominee of, the Treasury or the Secretary of State.

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(23) 1974 c. 46; section 7 (Societies which may be registered) was amended by Part I of Schedule 9 to the Finance (No. 2) Act 1975 (c. 45), section 57(2) of the Finance Act 1980 (c. 48), section 41(4) of and Part V of Schedule 27 to the Finance Act 1985 (c. 54) and section 95 of and Schedule 16 to the Friendly Societies Act 1992 (c. 40).

(24) 1992 c. 40.

(25) 1974 c. 47.

(26) S.I. 1976/582 (N.I. 12).

(27) 1980 c. 46.

(28) 1979 c. 38.

### **Student Loans Company Limited**

**11.**—(1) The acceptance by Student Loans Company Limited of a deposit made by a government department is an exempt transaction if the deposit is accepted in furtherance of arrangements made by the Secretary of State under the Education (Student Loans) Act 1990<sup>(29)</sup>, or by the Department of Education for Northern Ireland under the Education (Student Loans) (Northern Ireland) Order 1990<sup>(30)</sup>, for enabling eligible students to receive loans towards their maintenance.

(2) In this regulation “eligible students” has the meaning ascribed to it by sections 1(2) of the Education (Student Loans) Act 1990 or, as the case may be, Article 3(2) of the Education (Student Loans) (Northern Ireland) Order 1990.

### **The National Children’s Charities Fund**

**12.** The acceptance by The National Children’s Charities Fund of a deposit is an exempt transaction if the deposit is accepted on terms that no interest or premium shall be payable in respect thereof unless the total amount of deposits by that person with The National Children’s Charities Fund exceeds £10,000.

### **Relevant debt securities**

**13.**—(1) The acceptance of a deposit by a person (not being a body to which regulation 10(1) above applies) on terms involving the issue of commercial paper is an exempt transaction if the requirements in paragraph (2) below and in paragraphs (1), (2) and (5) of regulation 14 below are met.

(2) The requirements to be met under this paragraph are—

- (a) shares or debt securities issued by the person accepting the deposit, being a company with adequate net assets, have been admitted to the Official List; or
- (b) shares or debt securities issued by the person accepting the deposit, being a company with adequate net assets, have been admitted to official listing on an EEA Exchange and relevant information in connection with such shares or debt securities has been lodged by the issuing company with the Stock Exchange; or
- (c) debt securities issued by the person accepting the deposit, being the government of any country or territory, or a public authority, outside the United Kingdom, have been admitted to trading on the Stock Exchange, to the Official List, to trading or official listing on an EEA Exchange or to trading or listing on an Approved Organisation; or
- (d) the commercial paper issued in relation to the acceptance of the deposit is the subject of a guarantee to the holder of the repayment of the principal and the payment of any interest or premium in connection therewith from—
  - (i) a company with adequate net assets the shares or debt securities of which have been admitted to the Official List; or
  - (ii) a company with adequate net assets the shares or debt securities of which have been admitted to official listing on an EEA Exchange and which has lodged the relevant information in connection with those shares or debt securities with the Stock Exchange; or
  - (iii) the government of any country or territory outside the United Kingdom the debt securities of which have been admitted to trading on the Stock Exchange, to the Official List, to trading or official listing on an EEA Exchange or to trading or listing on an Approved Organisation; or

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<sup>(29)</sup> 1990 c. 6.

<sup>(30)</sup> S.I. 1990/1506 (N.I. 11).

- (iv) an authorised institution; or
- (v) a European authorised institution.

(3) The acceptance of a deposit by a person (not being a body to which regulation 10(1) above applies) on terms involving the issue of shorter term or longer term debt securities is an exempt transaction if the requirements in paragraph (4) below and the applicable requirements in regulation 14 below are met.

(4) The requirements to be met under this paragraph are—

- (a) the debt securities issued in relation to the acceptance of the deposit have been the subject of an application for admission to the Official List in respect of which listing particulars or a prospectus have been published as required under section 144(2A) or (2) of the Financial Services Act 1986<sup>(31)</sup>, or have been admitted to the Official List, and the person accepting the deposit is a person of any description; or
- (b) the debt securities issued in relation to the acceptance of the deposit have been the subject of an application for official listing on an EEA Exchange in respect of which listing particulars or a public offer prospectus have been published in accordance with Council Directive No. [80/390/EEC](#) or Council Directive No. [89/298/EEC](#), or have been admitted to official listing on such an exchange, and the person accepting the deposit is a person of any description who has lodged with the Stock Exchange the relevant information in connection with those debt securities; or
- (c) debt securities issued otherwise than in relation to the acceptance of the deposit, or shares, have been issued by the person accepting the deposit, being a company with adequate net assets, and admitted to the Official List; or
- (d) debt securities issued otherwise than in relation to the acceptance of the deposit, or shares, have been issued by the person accepting the deposit, being a company with adequate net assets, and admitted to official listing on an EEA Exchange, and that person has lodged with the Stock Exchange the relevant information in connection with those shares or debt securities; or
- (e) the debt securities issued in relation to the acceptance of the deposit—
  - (i) have been the subject of an application for admission to trading on the Stock Exchange in respect of which an offering document equivalent to listing particulars or a prospectus has been published as required by the rules of the Stock Exchange governing admission to trading or have been the subject of an application for admission to the Official List in respect of which listing particulars, a prospectus or an equivalent offering document have been published as required under section 144(2A) or (2) of the Financial Services Act 1986; or
  - (ii) have been admitted to trading on the Stock Exchange or to the Official List; or
  - (iii) have been the subject of an application for admission to trading on an EEA Exchange in respect of which an offering document equivalent to listing particulars or a public offer prospectus has been published in accordance with the relevant rules or have been the subject of an application for official listing on an EEA Exchange in respect of which listing particulars or a public offer prospectus have been published in accordance with Council Directive No. [80/390/EEC](#) or Council Directive No. [89/298/EEC](#) or in respect of which an equivalent offering document has been published in accordance with the relevant rules; or
  - (iv) have been admitted to trading or official listing on an EEA Exchange or to trading or listing on an Approved Organisation; and

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<sup>(31)</sup> 1986 c. 60; subsection (2) of section 144 was substituted by and subsection (2A) of that section was inserted by regulation 17 of and paragraph 2(1) of Part I of Schedule 2 to the Public Offers of Securities Regulations 1995.



the person accepting the deposit is the government of any country or territory, or a public authority, outside the United Kingdom; or

- (f) debt securities issued otherwise than in relation to the acceptance of the deposit have been admitted to trading on the Stock Exchange or to the Official List, to trading or official listing on an EEA Exchange or to trading or listing on an Approved Organisation and the person accepting the deposit is the government of any country or territory, or a public authority, outside the United Kingdom; or
- (g) the debt securities issued in relation to the acceptance of the deposit are the subject of a guarantee to the holder of the repayment of the principal and the payment of any interest or premium in connection therewith from any of the persons described in sub-paragraph (d) of paragraph (2) above who meets the criteria set out there.

(5) The references in this regulation to debt securities which have been the subject of an application for admission to trading on the Stock Exchange, to the Official List or to trading or official listing on an EEA Exchange relate to debt securities in respect of which the application for admission to trading or official listing has not been rejected or withdrawn.

(6) The references in this regulation to shares or debt securities admitted to trading on the Stock Exchange or to the Official List, to trading or official listing on an EEA Exchange or to trading or listing on an Approved Organisation relate—

- (a) as to admission to trading, to debt securities which remain admitted to trading and are not the subject of a notice issued by the Stock Exchange, or, as the case may be, of official action taken in accordance with the rules of the EEA Exchange or the Approved Organisation cancelling or suspending the admission to trading or suspending dealings; or
- (b) as to admission to listing or official listing, to shares or debt securities which remain listed and are not the subject of a notice issued by the Stock Exchange, or, as the case may be, of official action taken in accordance with the rules of the EEA Exchange or the Approved Organisation cancelling or suspending the listing or suspending dealings.

(7) For the purposes of this regulation a company has adequate net assets if its net assets were shown in its last audited individual or group accounts (as the case may be) to be not less than £25 million (or an amount of equivalent value denominated wholly or partly otherwise than in sterling).

(8) Where different issues of shares or debt securities of a company have been admitted to listing on an EEA Exchange, the obligations in paragraphs (2)(b) and (d)(ii) and (4)(d) and (g) above to lodge relevant information shall only apply to the information in connection with the shares or debt securities most recently admitted to listing, and where both shares and debt securities have been admitted to listing, such obligations shall only apply to the information in connection with the type of instrument most recently admitted to listing.

(9) Where more than one of the sub-paragraphs in paragraph (2) or (4) above applies in relation to the acceptance of a deposit involving the issue of relevant debt securities, the person accepting the deposit may choose which such sub-paragraph the debt securities are to be treated as falling within for the purpose of complying with the obligations in this regulation and in regulation 14 below.

(10) Where a recognised European document has been submitted to the competent authority for the purposes of Part IV of the Financial Services Act 1986 pursuant to an application for listing under section 143 of that Act in relation to shares or debt securities falling within paragraph (2)(b) or (4)(b) or (d) above or in relation to shares or debt securities issued by a company described in paragraph (2)(d)(ii) above and such document has been published as required under section 144(2A) or (2) of that Act, the requirements in those paragraphs and in paragraph (4)(g) above concerning the lodging of relevant information shall be treated as having been complied with in connection with such shares or debt securities in so far as they relate to listing particulars, a public offer prospectus, any relevant supplement or any other document required to be published as a condition of admission to official listing.

(11) In paragraph (4)(e)(iii) above “the relevant rules” has the meaning given in regulation 14(9)(b) below.

### **Requirements applying to relevant debt securities**

**14.—(1)** Where a relevant debt security issued in relation to the acceptance of a deposit is intended to be an exempt transaction under regulation 13(1) or (3) above and in the latter case the requirements in regulation 13(4)(c), (d), (f) or (g) above apply, the relevant debt security shall meet the following requirements—

- (a) a single debt security shall be issued in consideration of the acceptance of the deposit, in the form of commercial paper or, as the case may be, a shorter term debt security or a longer term debt security; and
- (b) the redemption value of the relevant debt security shall be not less than £100,000 (or an amount of equivalent value denominated wholly or partly otherwise than in sterling); and
- (c) the whole or part of the relevant debt security may be transferred only if the redemption value of each such debt security or of the part of it being transferred is not less than £100,000 (or an amount of equivalent value denominated wholly or partly otherwise than in sterling).

(2) The person accepting a deposit on terms involving the issue of a relevant debt security intended to be an exempt transaction under regulation 13(1) or (3) above shall make arrangements with the Stock Exchange for it to make available to the public all the relevant information lodged with it under regulation 13(2) or (4) above by such person and such arrangements shall be in force when any such deposit is accepted.

(3) Where the acceptance of a deposit intended to be an exempt transaction under regulation 13(3) above will involve the issue as part of a programme of shorter term or longer term debt securities falling within regulation 13(4)(b) above, all the relevant information required to be lodged with the Stock Exchange as provided in regulation 13(4)(b) above by the person accepting the deposit other than the pricing supplement or any other relevant information of a supplementary nature which has not yet become available shall be lodged before any such debt securities are offered for sale and the pricing supplement shall be lodged before the deposit is accepted.

(4) If any relevant information of a supplementary nature as described in paragraph (3) above other than a pricing supplement becomes available after debt securities falling within regulation 13(4)(b) above have been offered for sale but before a deposit is accepted, the offer for sale shall not be proceeded with until that information has been lodged with the Stock Exchange.

(5) Any selling document prepared in connection with the issue of a relevant debt security in relation to the acceptance of a deposit intended to be an exempt transaction under regulation 13(1) or (3) above and any instrument in writing evidencing the issue of a relevant debt security including a temporary document of title shall meet the following requirements—

- (a) it shall bear a rubric describing the relevant debt security as “commercial paper issued in accordance with regulations made under section 4 of the Banking Act 1987”; “a shorter term debt security issued in accordance with regulations made under section 4 of the Banking Act 1987”; or “a longer term debt security issued in accordance with regulations made under section 4 of the Banking Act 1987”, as the case may be; and
- (b) it shall state the name of the issuer and that the issuer is not an authorised institution or a European authorised institution and shall either state that repayment of the principal and payment of any interest or premium in connection with the relevant debt security have not been guaranteed, or if they have been guaranteed, shall state that this is the case, the name of the guarantor and whether or not the guarantor is an authorised institution or a European authorised institution.

(6) Any selling document prepared in connection with the issue of shorter term or longer term debt securities not as part of a programme in relation to the acceptance of a deposit intended to be an exempt transaction under regulation 13(3) above where the debt securities will fall within regulation 13(4)(a) or (b) above shall include a statement made by the person accepting the deposit that he has complied with his obligations under the relevant rules in relation to the admission to listing of the debt securities or, where the debt securities have not yet been admitted to listing, will have complied with such obligations by the time when the debt securities are so admitted.

(7) Any selling document prepared in connection with the issue of shorter term or longer term debt securities as part of a programme in relation to the acceptance of a deposit intended to be an exempt transaction under regulation 13(3) above where the debt securities will fall within regulation 13(4)(a) or (b) above shall include a statement made by the person accepting the deposit that he—

- (a) has complied with his obligations under the relevant rules in relation to the admission to and continuing listing of the programme and of any previous issues made under it and listed on the same exchange; and
- (b) has complied with his obligations under the relevant rules in relation to the admission to listing of the debt securities falling within regulation 13(4)(a) or (b) above or, where the debt securities have not yet been admitted to listing, will have complied with such obligations by the time when the debt securities are so admitted; and
- (c) has not, since the last publication, if any, in compliance with the relevant rules of information about the programme, any previous issues made under it and listed on the same exchange, or the debt securities falling within regulation 13(4)(a) or (b) above, having made all reasonable enquiries, become aware of any change in circumstances which could reasonably be regarded as significantly and adversely affecting his ability to meet his obligations as issuer in respect of the debt securities falling within regulation 13(4)(a) or (b) above as they fall due.

(8) Any selling document prepared in connection with the issue of shorter term or longer term debt securities in relation to the acceptance of a deposit intended to be an exempt transaction under regulation 13(3) above and falling within regulation 13(4)(b) above shall include a statement made by the person accepting the deposit that he has complied and will continue to comply with his obligations under these Regulations to lodge all relevant information in relation to the debt securities with the Stock Exchange.

(9) In paragraphs (6) and (7) above “the relevant rules” means—

- (a) in the case of shorter term or longer term debt securities falling within regulation 13(4)(a) above, the listing rules, or
- (b) in the case of shorter term or longer term debt securities falling within regulation 13(4)(b) above, the terms and conditions of entry to and the rules of the relevant EEA Exchange and the requirements of the relevant regulatory body in the EEA State where the listing is obtained.

(10) As provided in article 15 of the Financial Services Act 1986 (Investment Advertisements) (Exemptions) (No. 2) Order 1995(32), the Stock Exchange is authorised by these Regulations to issue an investment advertisement when it makes available to the public as described in paragraph (2) above the relevant information lodged with it under regulation 13(2) or (4) above.

## Authorised and exempted persons under the Financial Services Act 1986 and European investment firms

15.—(1) Subject to paragraphs (2) and (3) below, the acceptance of a deposit by a person who is an authorised person under the Financial Services Act 1986(33), a European investment firm carrying on home-regulated investment business in the United Kingdom or an exempted person under the Financial Services Act 1986 (in this regulation called “an authorised person”, “a European investment firm” and “an exempted person” respectively) is an exempt transaction if the deposit is accepted in the course of or for the purpose of engaging in any dealing activity with or on behalf of the person by whom or on whose behalf the deposit is made or any service activity on behalf of that person.

(2) Paragraph (1) above applies to an authorised person only if the activity is one in which he may engage without contravening any rules (made by the appropriate authority or a recognised organisation) of the kind described in section 48(2)(a) and (b) of the Financial Services Act 1986 (rules as to the type of business carried on or the persons in relation to whom business is carried on) or any prohibition of the kind described in section 65(34) of that Act.

(3) Paragraph (1) above applies to a European investment firm only if the activity is one in which it may engage without contravening any prohibition of the kind described in section 65 of the Financial Services Act 1986 or in regulations 9 and 10 of the Investment Services Regulations 1995.

(4) Paragraph (1) above applies to an exempted person only if the activity is one in respect of which he is exempt under the Financial Services Act 1986.

(5) In this regulation—

- (a) “appropriate authority” means the Treasury(35) or a designated agency within the meaning of section 114(3) of the Financial Services Act 1986;
- (b) “dealing activity” means an activity falling within paragraph 12 of Schedule 1 to that Act, construed without reference to Parts III and IV of that Schedule;
- (c) “recognised organisation” means a body which is a recognised professional body or a recognised self-regulating organisation within the meaning of section 207(1) of that Act and references to rules made by a recognised organisation include rules (whether or not laid down by the organisation itself) which the organisation has power to enforce; and
- (d) “service activity” means an activity falling within paragraph 13, 14 or 16 of Schedule 1 to that Act, construed without reference to Parts III and IV of that Schedule.

## Revocation

16. The Banking Act 1987 (Exempt Transactions) Regulations 1988(36), the Banking Act (Exempt Transactions) (Amendment) Regulations 1989(37), the Banking Act 1987 (Exempt Transactions) (Amendment) Regulations 1990(38), the Banking Act 1987 (Exempt Transactions) (Amendment No. 2) Regulations 1990(39), the Banking Act 1987 (Exempt Transactions) (Amendment No. 3) Regulations 1990(40), the Banking Act 1987 (Exempt Transactions)

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(33) 1986 c. 60; section 48 was amended by sections 206 and 212 of, and Schedules 23 and 24 to, the Companies Act 1989 (c. 40), by regulation 55 of and paragraph 10 of Schedule 9 to the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218) and by regulation 32 of and paragraph 10 of Schedule 7 to the Investment Services Regulations 1995.

(34) Section 65 was amended by regulation 55 of and paragraph 21 of Schedule 9 to the Banking Coordination (Second Council Directive) Regulations 1992, and by regulation 32 of and paragraph 10 of Schedule 7 to the Investment Services Regulations 1995.

(35) Certain functions of the Secretary of State under the Financial Services Act 1986, including the functions under section 48 of that Act, have been transferred to the Treasury by the Transfer of Functions (Financial Services) Order 1992 (S.I. 1992/1315).

(36) S.I. 1988/646.

(37) S.I. 1989/465.

(38) S.I. 1990/20.

(39) S.I. 1990/1018.

(40) S.I. 1990/1529.

(Amendment) Regulations 1991(41) and the Banking Act 1987 (Exempt Transactions) (Amendment No. 2) Regulations 1991(42), are hereby revoked.

13th March 1997

*Roger Knapman*  
*Patrick McLoughlin*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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(41) S.I. 1991/29.  
(42) S.I. 1991/2168.

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SCHEDULE 1

Regulation 7

DEED ESTABLISHING THE CO-OPERATIVE DEPOSIT PROTECTION SCHEME

(As amended by qualifying resolutions of Participating Societies dated 29th May 1989 which also continued the Scheme in force for a further period of ten years after the initial period and by qualifying resolutions of Participating Societies dated 15th January 1997)

**THIS DEED** is made the 29th day of February 1980 between **CO-OPERATIVE UNION LIMITED** of Holyoake House Hanover Street Manchester (hereinafter called “the Union”) of the one part and **CO-OPERATIVE BANK LIMITED** of New Century House Corporation Street Manchester (hereinafter called “the Bank”) of the other part

**WHEREAS:**

- (a) It is the purpose of this Deed to set up a scheme to grant certain protection on the terms and conditions and subject to the limitations hereinafter contained to persons who have deposited money with or who have withdrawable shares in a co-operative society in membership of the Union against the consequences of the insolvency of that society;
- (b) The Treasury is empowered by section 4(4) of the Banking Act 1987 to make regulations prescribing for the purpose of that Section certain transactions;
- (c) It is intended that a co-operative society so in membership which has elected to join the Scheme established by this Deed shall be able to have its taking of deposits so prescribed by the Treasury and that its withdrawable share capital shall be included within the definition of “Deposit” for the purposes of the Scheme.

**NOW THIS DEED WITNESSETH AND IT IS HEREBY DECLARED as follows:**

1. This Scheme hereby constituted shall be known as the “Co-operative Deposit Protection Scheme”.

2.—(1) Subject to sub-paragraphs (2) and (3) below, in this Deed “Deposit” shall mean withdrawable share capital and loan capital of a co-operative society and a sum of money paid on terms

- (i) under which it will be repaid in full, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (ii) which are not referable to the provision of property or services or the giving of security;

(2) “Deposit” shall not however include:

- (a) interest unless compounded and added to capital; or
- (b) deposits whether or not secured, having an original term to maturity of more than 5 years; or
- (c) any sum paid to a co-operative society so in membership by a person who at the time it is paid is a director, controller or manager of the society or the wife, husband, son or daughter of such a person;

(3) For the purpose of sub-paragraph 2(1)(ii) above money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if:

- (i) it is paid by way of advance or part payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or
- (ii) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the person by whom or on whose behalf the money is accepted; or

(iii) it is paid by way of security for the delivery up or return of any property whether in a particular state of repair or otherwise.

(4) In this Deed “a Participating Society” shall mean a co-operative society in membership of the Union which (a) has joined the Scheme by (i) resolution of its governing body adopting and agreeing to the Scheme established by this Deed (ii) paying a joining contribution in accordance with clause 5(2) hereof and (iii) executing and delivering to the Union a Deed of Participation in the Scheme to which Deed the Bank and the Union are parties in the form set out in the First Schedule to this Scheme; and (b) has not ceased in accordance with clause 10(1) hereof to be a Participating Society.

(5) In this Deed “Founding Date” shall mean 1st April 1980.

(6) In this Deed—

“director” shall mean any person who occupies the position of a director by whatever named called;

“controller” shall mean a managing director chief executive or a person in accordance with whose directions or instructions the directors of the co-operative society are accustomed to act; and

“manager” shall mean a person other than the chief executive, employed by a co-operative society who, under the immediate authority of a director or chief executive of the co-operative society, exercises managerial functions or is responsible for maintaining accounts or other records of the co-operative society.

“depositor” shall mean a person who has deposited money with or who is the holder of withdrawable share capital in a co-operative society.

**3.—**(1) The Union and the Bank hereby agree and declare that, subject as is by this Deed provided, they will hold manage and apply in accordance with the provisions of this Deed the Fund as hereinafter defined (hereinafter called “the Fund”);

(2) The Fund and any investments money or other assets for the time being comprised therein may in the absolute discretion of the Union and the Bank be held in the sole name of the Bank;

(3) Any real property for the time being forming part of the Fund shall be held upon trust for sale;

(4) The Union and the Bank delegate to the Union the duty of administering the Scheme in accordance with the provisions of this Deed; the Union may delegate the administration of the Scheme to a committee to be known as the Co-operative Deposit Protection Scheme Board (“the Board”) comprising the Chairman for the time being and four other members appointed by and from the Central Executive of the Union.

(5) The Union and the Bank delegate to the Bank the investment of the Fund;

(6) The banking administrative and management expenses of the Union and/or the Bank shall be defrayed out of the Fund.

(7) The Union shall convene an Annual General Meeting of Participating Societies to be held at such date time and place as it shall determine and of which it shall give at least 28 clear days notice in writing to the Bank and to all Participating Societies stating the business to be transacted.

(8) For the purpose of regulating the deposit taking business of Participating Societies the Union has issued a Code of Practice the text of which is set out in the Third Schedule hereto. The failure of a Participating Society to observe the provisions of the Code of Practice or to comply with the credit limits stipulated therein may result in the expulsion of that Society from the Scheme pursuant to clause 15 hereof and the Second Schedule hereto.

**4.—**(1) The Fund shall consist of:

(a) joining and supplementary contributions as hereafter mentioned;

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- (b) monies borrowed for the purposes of the Fund;
  - (c) interest and dividends from investments;
  - (d) dividends recovered in any liquidation;
  - (e) the investments, property and other assets representing from time to time the above or any of them.
- (2) There shall be chargeable to the Fund:
- (a) payments to meet the banking administrative and management expenses of the Union and/or the Bank in accordance with sub clause 3(6) above and clause 14 hereof;
  - (b) refunds to Participating Societies as hereinafter provided;
  - (c) moneys required for the repayment of borrowings and any interest thereon;
  - (d) payments to depositors in respect of protected deposits as hereinafter provided.

5.—(1) Societies which are or are seeking to be Participating Societies shall make 2 classes of contribution, namely

- (i) joining contributions, and
- (ii) supplementary contributions.

(2) At the Founding Date or on joining the Scheme Societies shall make a joining contribution of an amount prescribed by the Union being (a) 0.5 per cent of the deposit base of the Society at that time, such deposit base being the aggregate amount of the deposits recorded in the then most recent annual return of the Society made to the Union provided that such annual return shall not be in respect of a period ending earlier than 2 years before the Founding Date or joining the Scheme as the case may be, but if the amount under (a) above is not calculable or not readily calculable, (b) such amount as the Union shall determine, being an amount (so far as the Union can estimate) equal to or greater than such percentage joining contribution would have been.

(3) The Union shall maintain the net assets of the Fund at such an amount, not being less than £1,000,000 at any time, as the Union and the Bank shall in their absolute discretion consider to be not less than reasonable so as to afford protection to Deposits to the extent provided for in this Scheme and for this purpose the Union may at any time (including on the Founding Date and on joining the Scheme) require Participating Societies to make supplementary contributions of such an amount and on such occasions and in such manner as the Union may determine, it being the intention that the Union (whilst not being required or bound so to do) should exercise its power to require supplementary contributions by fixing the amount of such contributions in proportion to the deposit base (calculated in such manner as the Union shall in its discretion consider reasonable) for each of the Participating Societies.

(4) The failure of a Participating Society to make any supplementary contribution required by the Union pursuant to clause 5(3) above within such time as may be stipulated by the Union may result in the expulsion of that Society from the Scheme pursuant to clause 15 hereof.

6.—(1) A Participating Society shall for the purpose of this Deed and the Scheme hereby constituted become insolvent

- (i) on the making of a winding up order against it; or
- (ii) on the passing of a resolution for a creditors' voluntary winding up.

(2) Subject to the provisions of this Deed, if at any time a Participating Society becomes insolvent or is to be treated as insolvent by virtue of Clauses 10(1), 12(2) or 15(4) hereof the Union shall as soon as practicable pay out of the Fund to a depositor who has a protected Deposit with that Society an amount equal to ninety per centum of the protected Deposit, but so that such amount shall in no case exceed £18,000;



(3) Subject to the provisions of this Deed, a reference to a depositor's protected Deposit is a reference to the total liability of the Participating Society to him, but limited in any event to a maximum of £20,000, in respect of the principal amounts of Deposits made to the Participating Society

**PROVIDED THAT**

- (i) any such Deposit was not made after such society had ceased to be a Participating Society;
- (ii) the principal amounts of Deposits shall only include any interest or premium which has been credited to the Deposit in question if such interest or premium has been so credited at the time such Society becomes insolvent so as to constitute an accretion to the principal;
- (iii) in determining the total liability of such Society to a depositor for the purposes of this and the previous sub-clause, there shall be deducted the amount of any liability of the depositor to such Society—
  - (a) in respect of which a right of set-off or counter-claim against the Deposit (including in Scotland a right of retention or compensation) existed immediately before such Society became insolvent; or
  - (b) in respect of which such a right would then have existed if the Deposit in question had been repayable on demand and the liability in question had fallen due; and
- (iv) the Union may in its absolute discretion decline to make any payment under this Scheme in respect of a Deposit to a person who, in the opinion of the Union, had any responsibility for, or may have profited directly or indirectly from, the circumstances, or some of the circumstances, giving rise to the financial difficulties of the Participating Society which had become insolvent.

7.—(1) For the purposes of clauses 6 and 8 hereof where any persons are entitled to a Deposit as trustees, then, unless the Deposit is held on trust for a person absolutely entitled to it as against the trustees, the trustees shall be treated as a single and continuing body of persons distinct from the persons who may from time to time be the trustees, and if the same persons are entitled as trustees to different deposits under different trusts or, in Scotland, trust purposes, they shall be treated as a separate and distinct body with respect to each of those trusts or, in Scotland, trust purposes.

(2) For the purposes of this clause a Deposit is held on trust for a person absolutely entitled to it as against the trustees where the person has the exclusive right (subject only to satisfying any outstanding charge, lien or other right of the trustees to resort to the Deposit for payment of duty, taxes, costs or other outgoings) to direct how the Deposit shall be dealt with.

(3) Any reference in sub-clauses (1) and (2) above to a person absolutely entitled to a Deposit as against the trustees includes a reference to two or more persons who are so entitled jointly; and in the application of sub-clause (2) above to Scotland the words in parenthesis from “subject” to “outgoings” shall be omitted.

(4) For the purposes of Clause 6 above and the following provisions of this clause, where a Deposit is held on trust for any person absolutely entitled to it or, as the case may be, for two or more persons so entitled jointly, that person or, as the case may be, those persons jointly shall be treated as entitled to the Deposit without the intervention of any trust.

(5) For the purpose of Clause 6 above where two or more persons are jointly entitled to a Deposit and sub-clause 7(1) above does not apply, each of them shall be treated as having a separate Deposit of an amount produced by dividing the amount of the Deposit to which they are jointly entitled by the number of persons who are so entitled.

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(6) The Union may decline to make any payment under clause 6 above in respect of a Deposit until the person claiming to be entitled to it informs the Union of the capacity in which he is entitled to the Deposit; and if it appears to the Union

- (a) that the persons entitled to a Deposit are so entitled as trustees, or
- (b) that sub-clause 7(4) above applies to a Deposit, or
- (c) that two or more persons are jointly entitled to a Deposit otherwise than as trustees,

the Union may decline to make any payment in respect of the Deposit until the Union is satisfied that it has sufficient information to enable it to determine what payment (if any) should be made and to whom.

(7) In this clause “jointly entitled” means—

- (a) In England and Wales and Northern Ireland, beneficially entitled as joint tenants, tenants in common or as coparceners; and
- (b) in Scotland, beneficially entitled as joint owners or owners in common.

**8.—(1)** Where a Society has become insolvent or is by virtue of Clauses 10(1), 12(2) or 15(4) hereof to be treated as insolvent and any payment is or should be made under this Scheme in respect of a Deposit, the Bank (on behalf of itself and the Union) shall seek to recover all dividends compositions or payments made or to be made in respect of the Deposit (not limited to 90% thereof or otherwise howsoever) and as between the Bank and the depositor the Bank (without prejudice to additional rights arising by virtue by subrogation) shall be entitled to all dividends, compositions and payments up to the amount of the payment made or to be made by the Union under this Scheme and the depositor shall not be entitled to any of such dividends compositions or payments until the whole of the payment made or to be made by the Union under this Scheme shall first have been equalled.

(2) Where a Society has become insolvent or is by virtue of Clauses 10(1), 12(2) or 15(4) hereof to be treated as insolvent, then if and whenever requested by the Bank, the depositor shall by an assignment or in Scotland, an assignation, in writing assign to the Bank his rights and/or execute a declaration of trust in favour of the Bank in respect of his rights to all or any of such dividends compositions and payments and the Bank shall hold the rights so assigned or in respect of which a declaration of trust has been executed first in trust to pay to itself such dividends compositions and payments as it shall be entitled to under the previous sub-clause, and second in trust for the depositor or as he may direct, and the Bank may as attorney for and on behalf of the depositor execute any such assignment assignation or declaration of trust as aforesaid.

(3) Without prejudice to the generality of its rights hereunder the Union and/or the Bank may stipulate as a pre-condition of any payment in respect of a Deposit under the Scheme that an assignment or, in Scotland, an assignation, to it and/or a declaration of trust should be made as aforesaid.

(4) Where a Society has become insolvent or is by virtue of Clauses 10(1), 12(2) or 15(4) hereof to be treated as insolvent it shall be the duty of the Bank and also of the depositor to inform the Liquidator, or where it is treated as insolvent the Society, of the Bank’s rights hereunder as soon as possible with a view to the preservation for the Bank of all such dividends compositions and payments and the depositor shall authorise the Liquidator, or where it is treated as insolvent the Society, to provide on request all relevant information to the Bank.

(5) The Union and/or the Bank shall be entitled for the purposes of the Scheme to have access to and copy such of the books records files and other documents of, and to obtain such information from, any body corporate which is or has been a Participating Society as the Union and/or the Bank (as the case may be) shall in their or its discretion consider necessary or helpful in order to carry the provision of the Scheme into effect.

**9.** It is the duty of the Union to maintain the net assets of the Fund at such an amount, not being less than £1,000,000 at any time, as the Union and the Bank shall in their absolute discretion consider

to be not less than reasonable so as to afford protection to Deposits to the extent provided for in this Scheme, but subject as aforesaid the Union and the Bank may during the continuance of this Scheme make such refunds out of the Fund to Participating Societies as they shall consider proper, and such refunds shall be made to such Participating Societies and calculated in such manner as the Union shall in its absolute discretion determine.

**10.—(1)** Any Participating Society may apply to leave the Scheme by sending written notice to that effect to the Union, and shall, save under the protection of Part II of the Banking Act 1987 cease to accept new Deposits (with the exception of withdrawable share capital) and shall within the period of 9 months from the receipt by the Union of such written notice either (i) repay all Deposits (with the exception of the withdrawable share capital) held by it or (ii) secure protection for those Deposits (with the exception of withdrawable share capital) under Part II of the Banking Act 1987. At the expiration of the said period of 9 months and subject to the due performance of (i) or (ii) above within that period the Society shall cease to be a Participating Society, and upon such due performance as above within the said period of 9 months there shall be repaid to such Society out of the Fund such sum (if any) as the Union shall in its absolute discretion consider appropriate. Without prejudice to the application of Clause 6 hereof (and the provisions of Clauses 7 and 8) in the case of a Participating Society which becomes insolvent during the said period of 9 months, if such Society shall not have duly performed (i) or (ii) above within the said period of 9 months, Clause 6 hereof (and the provisions of Clauses 7 and 8 so far as applicable) shall apply to the depositors of such Society who have not had their Deposits (with the exception of withdrawable share capital) so repaid or secured as if that Society had become insolvent, but so that any payment thereunder shall be made within 6 months after the end of the said 9 months' period.

(2) Where a Participating Society applies to leave the Scheme and within a period of 9 months from the date of the Society's application to leave the Scheme either repays all deposits other than withdrawable share capital or secures protection for those deposits under Part II of the Banking Act 1987 nevertheless the Scheme shall thereafter continue to give protection in respect of withdrawable share capital for a period of nine months from the date of the Society's application to leave the Scheme **PROVIDED ALWAYS** that no deposits taken by the Society shall be protected deposits for the purposes of the Scheme for any period during which protection for those deposits (with the exception of withdrawable share capital) has been secured under Part II of the Banking Act 1987.

(3) A Participating Society which has applied to leave the Scheme shall thereafter continue to be fully liable for payment of all supplementary contributions required by the Union pursuant to Clause 5(3) above until such time as the Society has ceased to be a Participating Society pursuant to Clause 10(1) above.

(4) A Participating Society which has applied to leave the Scheme shall, save under the protection of Part II of the Banking Act 1987, cease to accept new deposits (with the exception of withdrawable share capital), and no new deposits taken by a Participating Society after it has applied to leave the Scheme shall be protected deposits for the purposes of the Scheme.

(5) Any Participating Society which applies to leave the Scheme shall forthwith take all such steps as may be necessary to bring its intended withdrawal and the consequences of such withdrawal to the notice of depositors and notice of such intended withdrawal with an explanation of the consequences thereof shall be advertised by the Society in the "Co-operative News" and in any other manner which appears to the Board to be necessary for informing depositors and other members of the public.

(6) New Members admitted to a Participating Society during the period of nine months from the date of a Participating Society's application to leave the Scheme shall be notified in writing by the Society that their deposits with the Society will not be protected deposits for the purposes of the Scheme.

(7) Without prejudice to the generality of the foregoing, the following shall rank among the circumstances to be considered by the Union in respect of any such repayment to a society under Clause 10(1) above—

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- (a) The amount of the Fund;
- (b) The income generated by the Fund since its inception;
- (c) The expenses borne by the Fund since its inception; and
- (d) Payments out of the Fund in respect of Deposits.

**11.—**(1) The Scheme shall continue in force, unless earlier terminated, for an initial period of 10 years. (NOTE: By a qualifying resolution of Participating Societies dated 29th May 1989 the Scheme is continued in force for a further period of ten years after the initial period.)

- (2) Subject to sub-clause (3) below, the Scheme may be
  - (a) terminated during such initial period, or
  - (b) continued in force after the initial period or
  - (c) altered at any time

by a qualifying resolution or resolutions (as hereinafter provided).

(3) The perpetuity period applicable in respect of the Scheme shall be the period of eighty years commencing on the Founding Date, and the Scheme shall not be capable of being continued, or of being altered so as to be continued, beyond that period.

- (4) A qualifying resolution may be moved by—
  - (a) the Union; or
  - (b) the Bank; or
  - (c) any Participating Society.

and it shall be moved by giving at least 28 days' clear notice to the Union, and the Bank and all participating Societies of (a) the business to be transacted and (b) the date time and place of the meeting.

(5) Such notice shall be given in writing and sent by post to the last known address of the person or body so to be notified, but the accidental omission to give one or more notices shall not invalidate the meeting or any resolution passed thereat.

(6) A qualifying resolution shall be duly passed and valid if adopted by Participating Societies at such meeting holding between them 75% of the Deposits held at the date of the resolution by Participating Societies and afforded protection by this Scheme (and so that such percentage shall be calculated by reference to the full amount of such Deposits).

(7) The Union or the Bank may veto any qualifying resolution for the alteration or termination of the Scheme moved by a Participating Society which they may in their absolute discretion regard as prejudicial to the best interests of the Scheme of the Union or of the Bank.

**12.—**(1) Upon termination of the Scheme and in any event at the expiration of the period of 78 years less 1 day from the Founding Date (from which time no new Deposits (with the exception of withdrawable share capital) shall, save under the protection of Part II of the Banking Act 1987, be accepted by Participating Societies), all the then Participating Societies shall within the period of 9 months thereafter either

- (i) repay all their Deposits (with the exception of withdrawable share capital); or
- (ii) secure protection for those Deposits (with the exception of withdrawable share capital) under Part II of the Banking Act 1987.

(2) If any Participating Society (hereinafter called “a Defaulting Society”) shall not in respect of the Deposits (with the exception of withdrawable share capital) taken by it have either

- (i) repaid them, or

(ii) secured protection for them under Part II of the Banking Act 1987, within the period of 9 months from

- (a) such termination or
- (b) the expiration of the said period of 78 years less 1 day whichever is the sooner,

Clause 6 hereof (and the provisions of Clauses 7 and 8 hereof so far as applicable) shall apply to the depositors of that Defaulting Society who have not had their Deposits (with the exception of withdrawable share capital) so repaid or secured as if that Defaulting Society had become insolvent but so that any payment thereunder shall be made within 6 months after the end of the said 9 months period.

(3) Subject to any payments required to be made under this Scheme (including under sub-clause (2) above) and subject to the payment or provision of all proper charges for banking and of all the expenses of administering, managing and winding up this Scheme, the Union shall within 15 months after the expiration of the 9 months' period referred to in the preceding sub-clause (2) distribute the Fund among the Participating Societies other than Defaulting Societies in such amounts and in such manner as it shall in its absolute discretion determine but with a view to making repayments in proportion to their respective contributions.

(4) Clause 6 hereof (and the provisions of Clauses 7 and 8) shall apply in the case of a Participating Society which becomes insolvent during the said period of 9 months referred to in sub-clause (2) of this Clause. Any payment under the said Clause 6 whether made under the present sub-clause or otherwise shall be made not later than 6 months after the end of the said 9 months period.

(5) If by reason of an amalgamation or transfer of engagements (hereinafter called "a merger") a co-operative society (hereinafter called "the Merged Society") becomes possessed of or entitled to Deposits some of which are protected under this Scheme and some of which are not so protected the following provisions shall apply:

- (a) Forthwith upon the merger's becoming effective the merged Society shall marshal its Deposits into two classes namely
  - (i) the Protected Class, being Deposits taken in circumstances such that they were protected by the Scheme; and
  - (ii) the Unprotected Class, being Deposits not so protected.
- (b) To the Protected Class the Scheme shall continue to give protection subject to its terms and conditions for which purpose the Merged Society shall be treated as a Participating Society.
- (c) The Merged Society shall within a period of three months from the Merger's becoming effective by joining the Scheme arrange protection under the Scheme for the Unprotected Class.
- (d) If the Merged Society shall have failed within the said period by joining the Scheme to obtain protection for all of the Unprotected Class it shall be deemed to have given notice under Clause 10(1) hereof as at the expiration of the said period of 3 months.

(6) If by reason of a merger a Merged Society becomes entitled to or possessed of Deposits all of which were taken in the circumstances such that they were protected under the Scheme the Merged Society shall forthwith upon the merger's becoming effective join the Scheme under Clause 2(4) (a) but shall be relieved of a joining contribution, and if it shall fail to join the Scheme within the period of 3 months from the merger's becoming effective it shall be deemed to have given notice under Clause 10(1) hereof.

**13.—**(1) All monies in the Fund shall be held by the Bank and unless and until otherwise invested the Bank shall pay to the Fund interest thereon at the published rate for 7 day deposits.

(2) The Fund may be invested in any one or more of the following:—

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- (i) monies held by or deposited with the Bank at interest as aforesaid;
- (ii) Treasury bills payable not more than 91 days from the date of issue;
- (iii) Deposits with or withdrawable share capital of a building society authorised under the Building Societies Act 1986;
- (iv) Deposits with the National Savings Bank and National Girobank;
- (v) Deposits with an authorised institution within the meaning of the Banking Act 1987 or with a European Deposit-Taker within the meaning of regulation 82(3) of the Banking Co-ordination (Second Council Directive) Regulations 1992.
- (vi) The shares of any company registered under the Companies Acts 1985 to 1989 being a company with limited liability operating or intended to operate as an “investment company” within the meaning of section 130 of the Income and Corporation Taxes Act 1988 or any statutory modification or re-enactment thereof for the time being in force and having powers of investment no wider than those set out in paragraphs (i) to (v) above, for the purpose of holding managing investing and applying monies in the Fund, all the shares of which company shall be held by the Bank as nominee for the Scheme.

**14.—**(1) The Bank may act as bankers to this Scheme and to the Fund and may make advances or loans to the Fund upon the usual terms as to interest and charges in the ordinary course of the Bank’s business and share stockbroker’s commission and generally act as a banker may in relation to his customer and without accounting for any profit so made, and without prejudice to the generality of the foregoing the Bank shall be entitled to charge and recover from the Fund all proper charges for banking, administration and management (including investment management) provided to the Fund or in respect of this Scheme.

(2) The Union shall be entitled to charge and recover from the Fund all proper charges for administration and management provided to the Fund or in respect of this Scheme.

(3) The Union and the Bank shall be entitled to be fully indemnified out of the Fund and in the case of any shortfall by Participating Societies on a joint and several basis in respect of all costs claims losses liabilities and demands whatsoever which the Bank and the Union or either of them may incur or suffer arising out of or in connection with the administration and management of the Fund or this Scheme.

**15.—**(1) This clause applies where the Board consider that a Participating Society is in default by reason of:—

- (a) any failure to observe the provisions of the Code of Practice; or
- (b) any failure to comply with the credit limits stipulated in the Code of Practice; or
- (c) any failure to make any supplementary contribution required by the Union pursuant to clause 5(3) above within such time as may be stipulated by the Board.

(2) Where this clause applies then if with respect to the Participating Society the Board considers it expedient to do so having regard to the interests of persons who have deposited money with or who have withdrawable shares in such Society the Board may by notice (an “Expulsion Notice”) to the Participating Society exclude that Society from Participation in the Scheme

And the Second Schedule to this Scheme shall have effect in relation to the giving of an Expulsion Notice under this clause.

(3) Nothing in paragraph (2) above shall prohibit recovery by the Board or the Union of any unpaid supplementary contribution or other monies due to the Scheme.

(4) Upon receipt of an Expulsion Notice under paragraph (2) above a Participating Society shall, save under the protection of Part II of the Banking Act 1987 cease to accept new Deposits and shall within the period of 9 months from the date of the Expulsion Notice either (i) repay all Deposits (with

the exception of withdrawable share capital) held by it or (ii) secure protection for those Deposits (with the exception of withdrawable share capital) under Part II of the Banking Act 1987. At the expiration of the said period of 9 months from the date of the Expulsion Notice and subject to the due performance of (i) or (ii) above within that period the Society shall cease to be a Participating Society, and upon such due performance as above within the said period of 9 months there shall be repaid to such Society out of the Fund such sum (if any) as the Board shall in its absolute discretion consider appropriate provided always that no such repayment shall be made until after the expiration of the said period of 9 months. Without prejudice to the application of clause 6 hereof (and the provisions of Clauses 7 and 8) in the case of a Participating Society which becomes insolvent during the said period of 9 months, if such Society shall not have duly performed (i) or (ii) above within the said period of 9 months Clause 6 hereof (and the provisions of Clauses 7 and 8 so far as applicable) shall apply to the depositors of such Society who have not had their Deposits (with the exception of withdrawable share capital) so repaid or secured as if that Society had become insolvent, but so that any payments thereunder shall be made within 6 months after the end of the said 9 month period.

(5) A Participating Society which is aggrieved by a decision under Clause 15(2) above may within 14 days after the day on which it received the Expulsion Notice appeal against the decision to an Appeal Tribunal (the "Appeal Tribunal") comprising the General Secretary for the time being of the National Association of Co-operative Officials the Chairman for the time being of the United Kingdom Co-operative Council and a Life President for the time being of the Society for Co-operative Studies. An appeal under this paragraph shall be made by sending to the Chief Executive Officer and General Secretary of the Union a Notice of Appeal, including a statement of the grounds of appeal, written representations in support of those grounds and any documents that may be relevant for the purposes of the appeal, and the procedure for determining such an appeal shall be as the Appeal Tribunal may direct. On such an appeal the Appeal Tribunal may confirm or revoke the expulsion of the Participating Society from the Scheme, and written notice of the decision (a "Decision Notice") of the Appeal Tribunal, stating the reasons for it, shall be given to the Participating Society and to the Board, and unless the Appeal Tribunal otherwise directs their decision shall take effect when the Decision Notice is so given.

(6) Where a Participating Society is excluded from participation in the Scheme the Board shall forthwith take all such steps as may be necessary to bring its exclusion and the consequences of such exclusion to the notice of depositors and notice of the giving of an Expulsion Notice with an explanation of the consequences thereof shall be published by the Board in the "Co-operative News" and in any other manner which appears to the Board to be necessary for informing depositors and other members of the public. For the purpose of this subclause any Participating Society which is excluded from participation in the Scheme shall at the request of the Board forthwith supply to the Board all necessary information as to the full names and postal addresses of all its members and depositors.

(7) Where a Participating Society is excluded from participation in the Scheme nevertheless the Scheme shall thereafter continue to give protection to all deposits previously taken by that Society in circumstances such that they were protected by the Scheme:—

(a) in respect of protected withdrawable share capital, and undated loan capital, for a period of nine months from the date of the Expulsion Notice;

and

(b) in respect of all other protected deposits for a period of nine months from the date of the maturity of each such deposit held at the date of the Expulsion Notice;

PROVIDED ALWAYS that no deposits taken by the Society shall be protected deposits for the purposes of the Scheme for any period during which protection for those deposits (with the exception of withdrawal share capital) has been secured under Part II of the Banking Act 1987.

Following receipt of an Expulsion Notice a Participating Society shall thereafter continue to be fully liable for payment of all supplementary contributions required by the Union pursuant to

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Clause 5(3) above until such time as the Scheme has ceased to give protection to all protected deposits previously taken by that Society.

15.—(8) Where a Participating Society is excluded from participation in the Scheme any new deposits taken by that Society thereafter shall not be protected deposits for the purposes of the Scheme.

**IN WITNESS** whereof this Deed has been executed by the parties the day and year first before written

**SEALED** by Co-operative Union Limited

in the presence of:

J. H. Perrow, Chairman

D. L. Wilkinson, General Secretary

**SEALED** by Co-operative Bank Limited

in the presence of:

L. Lee, Director

G. J. Melmoth, Secretary

**THE FIRST SCHEDULE**  
**before referred to**

This Deed is made the        day of        19        **BETWEEN CO-OPERATIVE UNION LIMITED** of Holyoake House Hanover Street Manchester (hereinafter called “the Union”) of the first part **CO-OPERATIVE BANK LIMITED** of New Century House Corporation Street Manchester (hereinafter called “the Bank”) of the second part and        **LIMITED** of        (hereinafter called “the Society”) of the third part

**WHEREAS:**

(A) This Deed is supplemental to a Deed dated the 29th day of February 1980 and made between the Union and the Bank establishing a Scheme (hereinafter called “the Scheme”) which is called the Co-operative Deposit Protection Scheme.

(B) The purpose of the Scheme is to provide certain protection to Deposits (as defined in the said Deed) with Participating Societies.

(C) The Society is an Industrial and Provident Society and is a member of the Union.

(D) The Society has by resolution of its governing body elected to participate in the Scheme and has by such resolution undertaken to adopt and agree to the Scheme.

(E) The Society has paid a joining contribution in accordance with Clause 5(2) of the said Deed.

(F) The Union has approved the admission of the Society to the Scheme as a participating Society.

**NOW THIS DEED WITNESSETH** that the Society hereby adopts and agrees to the provisions of the Scheme to the intent that it may become a Participating Society as defined in the Scheme and be bound thereby and undertakes to procure that the Scheme’s provisions are incorporated in documents issued by the Society securing Deposits and bind the holders of those Deposits.

**IN WITNESS** whereof the parties have executed this Deed

**THE COMMON SEAL OF CO-OPERATIVE UNION LIMITED** was hereunto affixed in the presence of:

Chairman



General Secretary

**THE COMMON SEAL OF CO-OPERATIVE UNION LIMITED** was hereunto affixed in the presence of:

Director

Secretary

**THE COMMON SEAL OF SOCIETY LIMITED** was hereunto affixed in the presence of:

Director

Secretary

#### **NOTE**

Schedule substituted by the Banking Act 1987 (Exempt Transactions) (Amendment) Regulations 1990 [SI 1990/20](#), reg 3(e), Sch 1 as from 1st February 1990.

### **THE SECOND SCHEDULE before referred to**

#### Procedure in relation to Expulsion under Clause 15

1. Not less than 28 days before giving an Expulsion Notice the Board shall serve on the Participating Society concerned and on every member of its Board of Directors a notice (a “Default Notice”) stating that the Board proposes to give an Expulsion Notice and specifying the considerations which has led the Board to conclude that such an Expulsion Notice should be given.

2. The Board shall consider any representations with respect to the Default Notice which may be made to it by the Participating Society within such period as the Board may allow, not being less than 14 days from the date on which the Participating Society is served with the Default Notice, and if the Participating Society so requests shall afford it an opportunity of being heard by the Board within that period.

(i) On giving an Expulsion Notice the Board shall serve the Expulsion Notice on the Participating Society and shall serve on every member of its Board of Directors a copy of same.

(ii) The Expulsion Notice and copies served in accordance with subparagraph (i) above shall be accompanied by a letter specifying the considerations which have led the Board to conclude that an Expulsion Notice should be given.

(iii) The Board shall not have power to give such an Expulsion Notice unless all the considerations so specified were those or among those which were specified in the Default Notice under paragraph 1 above.

4. A copy Notice under this Schedule may be served on a member of the Board of Directors of a Participating Society by sending it by post addressed to him at his address or latest address as notified by him or by the Participating Society.

5. Failure to serve a copy Notice under this Schedule on any individual Director of a Participating Society shall not affect the validity of an Expulsion Notice.

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## **THE THIRD SCHEDULE before referred to**

### **CO-OPERATIVE DEPOSIT PROTECTION SCHEME CODE OF PRACTICE**

#### **BACKGROUND**

The Co-operative Deposit Protection Scheme (“CDPS”) was established by a Deed dated 29th February 1980 made by Co-operative Union Limited (“the Union”) of the one part and Co-operative Bank Limited (“the Bank”) of the other part the text of which was amended by qualifying resolutions dated 29th May 1989 and 15th January 1997 the purpose of which was to set up a scheme to grant certain protection to persons who have deposited money with or who have withdrawable shares in a co-operative society in membership of the Co-operative Union Limited against the consequences of the insolvency of that society.

Following a review of the CDPS by a Working Group appointed by the CDPS Board, the CDPS Board recommended the introduction of a Code of Practice to regulate the taking of deposits (as defined in the said Deed) by Co-operative Societies participating in the CDPS.

This Code has been established by the Union.

Copies of this Code have been lodged with the Office of Fair Trading in accordance with the requirements of the Restrictive Trade Practices Act 1976.

#### **PREFACE TO THE CODE**

This Code sets out the standards of good practice to be observed by Co-operative Societies participating in the CDPS (“Participating Societies”) when taking deposits (as defined in the said Deed) from members and customers in the United Kingdom. Any of the Participating Societies may observe higher standards if they wish.

References in this Code to other Codes of Practice are references to such other Codes of Practice as amended substituted or replaced from time to time.

The Code is effective from 15th January 1997 and will be reviewed from time to time.

#### **INTRODUCTION**

1. The Code was approved and adopted at a meeting of Participating Societies held on 15th January 1997.

2. The Code is written to promote good practice in the taking of deposits by Participating Societies. Some types of deposits may have their own terms and conditions which will comply with the principles contained in this Code.

3. The Code is in two parts—

Part A—This Part relates to the conduct of their deposit taking activities by Participating Societies.

Part B—This Part relates to the advertising by Participating Societies of interest bearing deposits.

4. The governing principles of the Code are:

- (a) To set out the standards of good practice which Participating Societies will follow in their deposit taking activities in their dealings with members and customers;
- (b) That in the conduct of their deposit taking activities Participating Societies will act fairly and reasonably in all their dealings with their members and customers;

- (c) That Participating Societies will help members and customers to understand how their deposit accounts operate and will seek to give them a good understanding of their deposit taking and investment services;
  - (d) To maintain confidence in the security and integrity of their deposit taking activities and investment services. Participating Societies recognise that their systems and technology need to be reliable to protect their members and customers and themselves.
5. The Code requires Participating Societies to provide certain information to members and customers. This will usually be at the time when an account is opened. Information will also be available to members and customers from branches, if any, of the Participating Society. Participating Societies will provide additional information about specific investment services available at any time on request.

## **PART A**

### **CONDUCT OF DEPOSIT TAKING AND INVESTMENT BUSINESS**

#### **OPENING AN ACCOUNT**

6. Participating Societies will satisfy themselves about the identity of any persons seeking to open an account to assist in protecting their members and customers and themselves against fraud and other mis-use of their investment services.

7. Participating Societies will provide to prospective investors details of the identification needed.

#### **TERMS AND CONDITIONS**

8. Written terms and conditions of investments will be expressed in plain language and will provide a fair and balanced view of the relationship between the member or customer and the Participating Society.

9. Participating Societies will tell members and customers how any variation of the terms and conditions will be notified. Participating Societies will give members and customers reasonable notice before any variation takes effect.

10. Participating Societies should issue to their members and customers, if there are sufficient changes in a 12 month period to warrant it, a single document to provide a consolidation of the variations made to their terms and conditions over that period.

11. Participating Societies will not close the accounts of any members or customers without first giving reasonable notice.

#### **INTEREST**

12. Participating Societies will provide members and customers with details of the interest earned by their respective deposits. These will be in the form of published tariffs which will:—

- (A) be given and sent to members and customers:—
  - (i) when accounts are opened
  - (ii) at any time on request
  - (iii) before changes are made
- (B) and be available in branches.

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13. Participating Societies will tell members and customers the interest rates applicable to their accounts, the basis on which interest is calculated and when it will accrue or be added to their accounts. Participating Societies will explain also the basis on which they may vary interest rates.

14. When Participating Societies change interest rates with immediate effect they will publicise those changes by notices in their branches and in the press.

## **CONFIDENTIALITY**

15. Participating Societies will observe a strict duty of confidentiality about their members and customers personal financial affairs and will not disclose details of members or customers accounts or their names and addresses to any third party except as permissible under the rules of Participating Societies other than in the four exceptional cases permitted by law, namely:—

- (i) where a Participating Society is legally compelled to do so;
- (ii) where there is a duty to the public to disclose;
- (iii) where the interests of a Participating Society require disclosure;
- (iv) where disclosure is made at the request or with the consent of the member or customer.

16. Participating Societies will not use exception (iii) above to justify the disclosure for marketing purposes of details of members or customers accounts or their names and addresses to any third party including other societies or companies within the same group.

17. Participating Societies will at all times comply with the Data Protection Act 1984 when obtaining and processing members and customers data.

Participating Societies will explain to their members and customers their right of access under the Data Protection Act 1984 to their personal records held on computer files.

## **MARKETING OF SERVICES**

18. Participating Societies will not pass members or customers names and addresses to other societies or companies in the same group in the absence of express consent.

19. Participating Societies will give new members and customers at the time they open their accounts the opportunity to give instructions that they do not wish to receive marketing material.

20. Participating Societies will remind members and customers from time to time and at least once every three years of their right to give instructions at any time that they do not wish to receive marketing material.

21. Participating Societies will not use direct mail indiscriminately and in particular will exercise restraint and be selective:—

- (a) where members or customers are minors; and
- (b) when marketing securities and investments.

22. Participating Societies in their advertising and promotional material will tell members and customers and potential members and customers that their intended investment will be subject to approval by the Participating Societies concerned.

23. Participating Societies will act responsibly and prudently in marketing their investments and securities. All advertising will comply with the British Code of Advertising Practice, the British Code of Sales Promotion Practice, and other relevant Codes of Practice of similar standing.

In particular Participating Societies will ensure that all advertising and promotional literature is fair and reasonable, does not contain misleading information and complies with all relevant legislation.

## **CREDIT LIMITS**

- (a) (a) No Participating Society will take deposits in the form of withdrawable share capital or loan capital the aggregate of which shall at any time exceed the amount of the credit limit determined by applying the formula set out in sub-clause 24(b) below;
- (b) The credit limit referred to in sub-clause 24(a) above shall be determined by applying the following formula—

$$\frac{R}{R+B}$$

where

R is a figure equivalent to 150% (or such lesser proportion not being less than 100% as the Board may from time to time determine) of the Society's distributable reserves (meaning the total revenue reserves of the Society) and B is the aggregate amount of the Society's borrowings (as defined in clause 24(c) below) both as recorded in the most recent annual return of the Society to the Registrar of Friendly Societies or in the audited financial statements submitted with that return.

- (c) For the purpose of the formula set out in sub-clause 24(b) above the expression "the aggregate amount of the Society's borrowings" means but is not restricted to the total of moneys on loan from the Superannuation Fund, Bank Loans, Finance Leases (as per Accounting Standard SSAP21 or any modification or replacement thereof), Other Loans, Bank Overdrafts, Petrol Company Loans, Bank Borrowings, Loans from Regional Development Agencies and similar government quangos, Bonds, Notes, Loan Stock, Debentures, Acceptances, Documentary Credits, Deferred Payments for assets tangible or otherwise acquired, and Letters of Credit, together with all other borrowings and loans of whatsoever description but excluding borrowings protected under the Scheme, moneys due under operating leases, and all contingent liabilities, and reduced by cash and balances at bank with the exception of monies held on trust for funeral bond holders.

## **CORPORATE GOVERNANCE—CODE OF BEST PRACTICE**

**25.** Participating Societies will observe and implement the recommendations of the Code of Best Practice in relation to their corporate governance as published by the Central Executive of the Union in July 1995.

## **PART B**

### **ADVERTISING OF INTEREST BEARING DEPOSITS**

#### **GENERAL**

**26.** The terms of this part of the Code apply to the advertising of all interest bearing deposits offered by Participating Societies within the United Kingdom. For the purpose of this Code the term "advertisement" includes press and broadcast advertisements, direct marketing, window displays, posters, brochures, leaflets and automated teller machine displays. Interest bearing deposits are defined as shares, loans, bonds, etc on which interest is paid to the depositor.

**27.** Advertisements must comply with the spirit and letter of this Code, the British Code of Advertising Practice, the Independent Broadcasting Authority Code and with any relevant legislation.

**28.** Advertisements must state that in the event of the offering society being unable to repay the deposit due to insolvency the CDPS will repay 90% of the capital with a maximum payment per investor of £18,000.00.

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**29.** Advertisers of interest bearing deposits must take special care to ensure that members of the general public are fully aware of the nature of any commitment into which they may enter as a result of responding to an advertisement.

**30.** The registered or business name (and, in the case of press advertisements, direct marketing, brochures and leaflets, the address) of the Participating Society must be clearly stated.

## **INTEREST RATES**

**31.** Rates of interest shall not be advertised unless they are described appropriately; the following terms should be used—

- (a) “Y% gross”;
- (b) “Z% compounded annual rate”

Where—

- (a) is the contractual rate of interest payable not taking account of income tax; an explanatory phrase conveying this meaning must be used to qualify the rate quoted.  
The depositor must also be informed that although the interest is paid gross it is liable to tax.
- (b) is the rate equivalent to a “gross” rate annualised to take account of the compounding of interest paid other than once a year; an explanatory phrase conveying this meaning must be included if the “compounded annual rate” is quoted. “CAR”, following a percentage rate, is acceptable as the abbreviation of “compounded annual rate”. A “CAR” must not be quoted without the relevant “gross” rate. A “CAR” must not have greater prominence in size or type or otherwise than the other rate quoted. The rules for calculation of compound annual rates are set out in the Supplement to the Code.

**32.** It follows from paragraph 31 that all advertisements in which a rate is quoted must include the contractual rate, i.e. the “gross” rate. No rate shall be given greater prominence in size or type or otherwise than the contractual rate provided interest is due at least annually. Where interest is paid less frequently (e.g. after 5 years) the “CAR” must be shown and the contractual rate shall be given no greater prominence than the “compounded annual rate”. Where rates are quoted on the basis of other than a 12 month period, this must clearly be stated.

**33.** Advertisements quoting a rate of interest must contain a specific statement indicating—

- (a) the term, if any, of the deposits;
- (b) the frequency of payment of interest; and either that
- (c) the rate quoted is fixed for any term specified; or
- (d) interest rates are subject to variation.

**34.** Advertisements quoting a rate of interest which are intended for media or direct mail with long copy dates must contain a suitable qualification, such as “rate correct at time of going to press”, and may state that time.

**35.** The explanatory phrases and statements required by this Code must be clearly audible or legible as appropriate.

## **NOTICE OF RATES**

**36.** A general notice to shareholders and lenders of changes in rates (or a simple list of the range of deposits and their rates) displayed in offices on a rate board, primarily to fulfil contractual obligations, need only comply with paragraphs 31 and 32 of the Code. In the case of such notices or lists, the words “gross” and “CAR” as appropriate need not appear after each rate. However, it

must be clear from the whole of the notice or list which term applies to which rate, for example, by the use of column headings or footnotes.

## **TERMS AND CONDITIONS**

- 37.** A clear indication of the type of deposit must be given by satisfying the following—
- (a) Advertisements must contain a clear statement of the conditions for withdrawal, including the amount of any charges levied, the period of any notice required and the extent of any interest forfeited.
  - (b) Where interest is forfeited on any withdrawal without notice, words such as “instant access” or “immediate withdrawals” must not be displayed together with the rate of interest without clear qualification.
  - (c) For accounts which do not allow withdrawals, even after notice, without forfeiting interest, the text of the advertisement must include a statement indicating that, if a withdrawal is made, the stated interest rate will not be achieved.
  - (d) Where a maximum or minimum amount must be deposited to achieve the stated interest rate, the text of the advertisement must include a clear statement to this effect.
- 38.** Advertisements which invite deposits by immediate coupon response must—
- (a) include the full terms and conditions or state that they are available on request;
  - (b) clearly state in the part of the advertisement to be retained by the consumer a full postal address at which the advertiser can be contacted during normal business hours and the description and details of the advertised product including the information required by this Code.

## **SUPPLEMENT TO THE CODE**

### **RULES FOR CALCULATION OF COMPOUNDED ANNUAL RATES**

#### **GENERAL**

**1.** These rules relate to the Code of Practice issued by the trustees of the CDPS for the advertising of interest bearing deposits.

**2.** Paragraphs 31(b) and 32 of the Code refer to the use of compounded annual rate (“CAR”) as the rate equivalent to a “gross” rate, annualised to take account of the compounding of interest paid other than once a year.

#### **USE OF FORMULA**

**3.** The compounded annual rate is given by the following formula—

$$\frac{r}{[(1 + m \times 100) - 1]} \times 100$$

where

r is the nominal annual rate and m is the number of times interest is paid in a year.

#### **ASSUMPTIONS FOR CALCULATIONS**

**4.** For the purpose of calculation of the compounded annual rate—

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- (a) it shall be assumed that there are no other associated costs or benefits arising during the period in which the account is held;
- (b) compounded annual rates shall be quoted to two decimal places, except in cases where the final digit or digits is/are zero(s), in which case it/they may be omitted. The decimals shall be rounded up or down to the nearest 0.01% viz. 12.154% should be rounded down to 12.15%, 12.147% should be rounded up to 12.15%, 12.155% should be rounded up to 12.16%. For the purpose of rounding to two decimal places, the third digit after the decimal only should be taken into consideration and subsequent digits ignored. Where the third and fourth decimal places are 50, the figure should be rounded up. For example, 12.5650% becomes 12.57% but 12.5649% must not be rounded to 12.565% and then 12.57%.

## SCHEDULE 2

Regulation 10

### BODIES REFERRED TO IN REGULATION 10

The British Broadcasting Corporation.  
British Shipbuilders.  
The British Waterways Board.  
The Civil Aviation Authority.  
The Commission for the New Towns.  
The Housing Corporation.  
London Regional Transport.  
The Northern Ireland Housing Executive.  
The Northern Ireland Transport Holding Company.  
The Post Office.  
The Scottish Transport Group.

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## EXPLANATORY NOTE

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

These Regulations prescribe certain transactions as ones to which the prohibition on unauthorised deposit-taking imposed by section 3 of the Banking Act 1987 does not apply. They replace the Banking Act 1987 (Exempt Transactions) Regulations 1988 as amended. In addition to minor and drafting amendments they make the following changes of substance.

Regulations 13 and 14 set out the circumstances in which the acceptance of a deposit involving the issue of a debt security is an exempt transaction. The previous rules for the issue of commercial paper is largely retained, but companies issuing debt securities with a maturity of between one and three years, referred to as “shorter term debt securities”, will no longer need assets of at least £25 million if the debt securities in respect of which the exemption is sought are listed on or are the subject of an application for listing on the Stock Exchange or on an Exchange in another EEA State in respect of



which listing particulars or a prospectus have been published and the redemption value of each debt security is not less than £100,000 (or foreign currency equivalent). An exemption will also apply to debt securities with a maturity of over three years without any maximum maturity, referred to as “longer term debt securities”, which are listed on the Stock Exchange or on another EEA Exchange. The issuing company will no longer need assets of at least £25 million if the longer term securities in respect of which the exemption is sought are listed on or are the subject of an application for listing on the the Stock Exchange or on another EEA Exchange in respect of which listing particulars or a prospectus have been published, and in such circumstances there are no restrictions on the redemption value of each debt security. The listing particulars or prospectus concerning shares listed on or relevant debt securities listed or to be listed on another EEA Exchange will need to be filed with the Stock Exchange before debt securities are offered for sale instead of the issuer having to provide detailed special information. Debt securities issued by governments or public authorities outside the UK and traded or listed on the Stock Exchange, another EEA Exchange or an Approved Organisation will continue to be exempt, as will be such debt securities for which an exemption is sought and for which admission to trading or listing has been applied on the Stock Exchange or another EEA Exchange. The issue of relevant debt securities guaranteed by companies whose shares or debt securities have been listed on another EEA Exchange or by governments whose debt securities are traded on or have been listed on the Stock Exchange, another EEA Exchange or an Approved Organisation will also attract exemption. Debt securities may qualify for exemption either on account of the issuer or through a guarantee. The statements to be included in physical securities have been simplified; a factual statement about the debt securities will be included in any selling documents for relevant debt securities and a statement of compliance with listing obligations will be included in any selling documents for issues of listed debt securities intended to be subject to exemption. Selling documents for issues of debt securities listed or to be listed on another EEA Exchange and intended to be subject to exemption will include a statement of compliance with the requirements in the Regulations for lodging relevant information.

The exemption previously given for debt securities issued by unlisted UK incorporated companies and companies the shares or debt securities of which had been admitted to listing on a recognised overseas exchange and which provided specified information to the Stock Exchange has been withdrawn because of the minimal usage of this exemption and the broader scope for exempt issuance under the Regulations.

These Regulations incorporate amendments made to the Co-operative Deposit Protection Scheme at a meeting of Participating Societies on 15th January 1997. Schedule 1 to the Regulations sets out the deed establishing the Co-operative Deposit Protection Scheme dated 29th February 1980 in its amended form.