

## SCHEDULES

### SCHEDULE 1

Exceptions from prohibition on offers to the public

### PART 2

Supplementary provisions relating to Part 1

**14.** In determining whether paragraph 1 is satisfied in relation to an offer (“offer A”), offer A is to be taken together with any other offer of relevant securities issued or to be issued by the same offeror which was open at any time within the period of 12 months ending with the day on which offer A is first made, if or to the extent that the earlier offer was exempt from the prohibition in regulation 12(1) by reason only of paragraph 1.

**15.—**(1) In paragraphs 2 and 3, “qualified investor”, in relation to an offer of relevant securities, means—

- (a) a person described in paragraph 3 of Schedule 1 to the markets in financial instruments regulation(1), other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of that Schedule;
- (b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with paragraphs 5 and 6 of that Schedule and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of that Schedule;
- (c) a person who—
  - (i) is an eligible counterparty for the purposes of Section 6 of Chapter 3 of the Conduct of Business sourcebook, and
  - (ii) has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of Schedule 1 to the markets in financial instruments regulation; or
- (d) a person whom—
  - (i) any relevant firm was authorised to continue to treat as a professional client immediately before 3 January 2018 by virtue of Article 71.6 (transitional provisions) of [Directive 2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives [85/611/EEC](#) and [93/6/EEC](#) and [Directive 2000/12/EC](#) of the European Parliament and of the Council and repealing Council Directive [93/22/EEC](#), and
  - (ii) the firm was entitled immediately before IP completion day to continue to treat as a professional client by virtue of Section II.2 of Annex II to [Directive 2014/65/EU](#) of

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(1) Schedule 1 was inserted by [S.I. 2018/1403](#).

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending [Directive 2002/92/EC](#) and [Directive 2011/61/EU](#).

(2) In sub-paragraph (1)—

- (a) “relevant firm” means an investment firm or qualifying credit institution acting in connection with the offer;
- (b) the reference to the Conduct of Business sourcebook is a reference to that sourcebook in the Handbook of Rules and Guidance published by the FCA under FSMA 2000, as it has effect from time to time.

**16.** Where—

- (a) a person (“the client”) who is not a qualified investor has engaged a qualified investor falling within paragraph 3(a) of Schedule 1 to the markets in financial instruments regulation to act as the client’s agent, and
- (b) the terms on which the qualified investor is engaged enable the qualified investor to make decisions concerning the acceptance of offers of relevant securities on the client’s behalf without reference to the client,

an offer made to or directed at the qualified investor is not to be regarded for the purposes of paragraph 2 or 3 as also having been made to or directed at the client.

**17.** For the purposes of paragraph 3, the making of an offer of relevant securities to—

- (a) trustees of a trust,
- (b) members of a partnership in their capacity as such, or
- (c) two or more persons jointly,

is to be treated as the making of an offer to a single person.

**18.—(1)** For the purposes of Part 1 of this Schedule, an amount is an “equivalent amount”, in relation to an amount denominated in sterling, if it is an amount of equal value denominated wholly or partly in another currency or unit of account.

(2) The equivalent is to be calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made.