
STATUTORY INSTRUMENTS

2006 No. 1183

COMPANIES

**The Takeovers Directive (Interim
Implementation) Regulations 2006**

<i>Made</i>	- - - -	<i>25th April 2006</i>
<i>Laid before Parliament</i>		<i>27th April 2006</i>
<i>Coming into force</i>	- -	<i>20th May 2006</i>

The Secretary of State is a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to company takeovers.

In exercise of the powers conferred by section 2(2) of that Act the Secretary of State makes the following Regulations:

PART 1

General

Citation and Commencement

1. These Regulations may be cited as the Takeovers Directive (Interim Implementation) Regulations 2006 and shall come into force on 20th May 2006.

Interpretation

2.—(1) In these Regulations—

“Code” means the City Code on Takeovers and Mergers and the Rules of Procedure of the Panel’s Hearings Committee as they stand immediately before the day these Regulations are made and are expressed to have effect on 20th May 2006;

“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 (as it has effect from time to time);

“Panel” means the Panel on Takeovers and Mergers;

(1) S.I. 2005/2766.
(2) 1972 c. 68.

“regulated market” has the meaning given by Article 1(13) of Directive 93/22/EEC on investment services in the securities field⁽³⁾;

“takeover bid” has the same meaning as in the Takeovers Directive;

“Takeovers Directive” means Directive 2004/25/EC of the European Parliament and of the Council on Takeover Bids⁽⁴⁾;

“voting rights” means rights to vote at general meetings of the company in question, including rights that arise only in certain circumstances;

“voting shares” means shares carrying voting rights.

(2) In these Regulations “rules” means rules in the Code insofar as necessary to implement Articles 3.1, 4.2, 5, 6.1 to 6.3, 7 to 9 and 13 of the Takeovers Directive or arising out of or related to obligations in those Articles, including rules which—

(a) confer on the Panel the power to—

(i) give a direction to a person to secure compliance with a rule; or

(ii) order a person to pay compensation if he is in breach of a rule; or

(iii) impose sanctions on a person who has acted in breach of a rule or failed to comply with a direction;

(b) make provision for a decision of the Panel to be reviewed by a committee of the Panel and for a decision of that committee to be appealed to an independent tribunal;

(c) make provision for fees or charges to be payable to the Panel for the purpose of meeting its expenses;

(d) make provision subject to exceptions or exemptions;

(e) authorise the Panel to dispense with or modify the application of rules in particular cases and by reference to any circumstances;

(f) provide for the Panel to make rulings on the interpretation, application or effect of rules;

(g) provide for rulings in sub-paragraph (f) to have binding effect.

(3) For the purposes of regulations 8 and 24—

(a) “officer” includes director, manager or secretary;

(b) an officer is “in default” if he authorises or permits, participates in, or fails to take all reasonable steps to prevent, a contravention.

(4) Except as provided in paragraph (5), in these Regulations “court”, in relation to a company, means—

(a) in Great Britain, the court having jurisdiction to wind up the company; and

(b) in Northern Ireland, the High Court.

(5) For the purposes of regulations 11, 17 and 22 “court” means the High Court or, in Scotland, the Court of Session.

⁽³⁾ O.J. No. L 141, 11.6.1993, p.27.

⁽⁴⁾ O.J. No. L 142, 30.4.2004 p.12.

PART 2

The Takeover Panel

CHAPTER 1

The Panel and its rules

The rules

3. The rules shall have effect.

The Panel

4.—(1) For the purposes of these Regulations, a reference to the functions of the Panel is a reference to functions provided for in this Part.

- (2) The Panel shall supervise takeover bids for the purposes of the rules.

- (3) The Panel may do anything that it considers necessary or expedient for the purposes of, or in connection with, its functions.

- (4) The Panel may make arrangements for any of its functions to be discharged by—

- (a) a committee or sub-committee of the Panel; or
- (b) an officer or member of staff of the Panel, or a person acting as such.

Publication of the Code

5.—(1) The Code must be made available to the public, with or without payment, in whatever way the Panel thinks appropriate.

- (2) A person is not to be taken to have contravened a rule if he shows that at the time of the alleged contravention the Code had not been made available as required by paragraph (1).

- (3) The production of a document purporting to be a printed copy of the Code endorsed with a certificate signed by an officer of the Panel authorised by it for that purpose and stating—

- (a) that it is a true copy of the Code, and
- (b) that on a specified date the Code was made available to the public as required by paragraph (1),

is evidence (or in Scotland sufficient evidence) of the facts contained in the certificate.

- (4) A certificate purporting to be signed as mentioned in paragraph (3) is to be treated as having been properly signed unless the contrary is shown.

- (5) A person who wishes in any legal proceedings to rely on the Code may require the Panel to endorse a copy of the Code with a certificate of the kind mentioned in paragraph (3).

CHAPTER 2

Information

Power to require documents and information

6.—(1) The Panel may by notice in writing require a person—

- (a) to produce any documents that are specified or described in the notice;
- (b) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice.

- (2) A requirement under paragraph (1) must be complied with—
 - (a) at a place specified in the notice; and
 - (b) before the end of such reasonable period as may be so specified.
- (3) This regulation applies only to documents and information reasonably required in connection with the exercise by the Panel of its functions.
- (4) The Panel may require—
 - (a) any document produced to be authenticated, or
 - (b) any information provided (whether in a document or otherwise) to be verified,in such manner as it may reasonably require.
- (5) The Panel may authorise a person to exercise any of its powers under this regulation.
- (6) A person exercising a power by virtue of paragraph (5) must, if required to do so, produce evidence of his authority to exercise the power.
- (7) The production of a document in pursuance of this regulation does not affect any lien that a person has on the document.
- (8) The Panel may take copies of or extracts from a document produced in pursuance of this regulation.
- (9) A reference in this regulation to the production of a document includes a reference to the production of—
 - (a) a hard copy of information recorded otherwise than in hard copy form; or
 - (b) information in a form from which a hard copy can be readily obtained.
- (10) A person is not required by this regulation to disclose documents or information in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

Restrictions on disclosure

- 7.—(1) This regulation applies to information (in whatever form)—
 - (a) relating to the private affairs of an individual, or
 - (b) relating to any particular business,that is provided to the Panel in connection with the exercise of its functions.
- (2) No such information may, during the lifetime of the individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or (as the case may be) the person for the time being carrying on that business.
- (3) Paragraph (2) does not apply to any disclosure of information that—
 - (a) is made for the purpose of facilitating the carrying out by the Panel of any of its functions;
 - (b) is made to a person specified in Part 1 of Schedule 1;
 - (c) is of a description specified in Part 2 of that Schedule; or
 - (d) is made in accordance with Part 3 of that Schedule.
- (4) Paragraph (2) does not apply to—
 - (a) the disclosure by an authority within paragraph (5) of information disclosed to it by the Panel in reliance on paragraph (3);
 - (b) the disclosure of such information by anyone who has obtained it directly or indirectly from an authority within paragraph (5).
- (5) The authorities within this paragraph are—

- (a) the Financial Services Authority;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises functions of a public nature, under legislation in an EEA State other than the United Kingdom, that are similar to the Panel's functions or those of the Financial Services Authority.
- (6) This regulation does not prohibit the disclosure of information if the information is or has been available to the public from any other source.
- (7) Nothing in this regulation authorises the making of a disclosure in contravention of the Data Protection Act 1998(5).

Offence of disclosure in contravention of regulation 7

- 8.—(1) A person who discloses information in contravention of regulation 7 is guilty of an offence, unless—
- (a) he did not know, and had no reason to suspect, that the information had been provided as mentioned in regulation 7(1); or
 - (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (2) A person guilty of an offence under this regulation is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);
 - (b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding the statutory maximum (or both).
- (3) Where a company or other body corporate commits an offence under this regulation, an offence is also committed by every officer of the company or other body corporate who is in default.
- (4) Proceedings for an offence under this regulation are not to be brought—
- (a) in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
 - (b) in Northern Ireland except by or with the consent of the Department of Enterprise, Trade and Investment or the Director of Public Prosecutions for Northern Ireland.

CHAPTER 3

Co-operation

Duty of co-operation

- 9.—(1) The Panel must take such steps as it considers appropriate to co-operate with—
- (a) the Financial Services Authority;
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
 - (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Panel to be similar to its own functions or those of the Financial Services Authority.

(2) The Financial Services Authority must take such steps as it considers appropriate to co-operate with—

- (a) the Panel;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
- (c) any other person or body that exercises functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Financial Services Authority to be similar to those of the Panel.

(3) Co-operation may include the sharing of information that the Panel or the Financial Services Authority, as the case may be, is not prevented from disclosing.

CHAPTER 4

Contravention of rules etc.

Failure to comply with rules about bid documentation

10.—(1) This regulation applies where there is a takeover bid to which the offer document rules apply.

(2) Where an offer document published in respect of the bid does not comply with offer document rules, an offence is committed by—

- (a) the person making the bid; and
- (b) where the person making the bid is a body of persons, any director, officer or member of that body who caused the document to be published.

(3) A person commits an offence under paragraph (2) only if—

- (a) he knew that the offer document did not comply, or was reckless as to whether it complied; and
- (b) he failed to take all reasonable steps to secure that it did comply.

(4) Where a response document published in respect of the bid does not comply with response document rules, an offence is committed by any director or other officer of the company for which the bid is made, who—

- (a) knew that the response document did not comply, or was reckless as to whether it complied; and
- (b) failed to take all reasonable steps to secure that it did comply.

(5) Where an offence is committed under subsection (2)(b) or (4) by a company or other body corporate (“the relevant body”)—

- (a) subsection (2)(b) has effect as if the reference to a director, officer or member of the person making the bid included a reference to a director, officer or member of the relevant body;
- (b) subsection (4) has effect as if the reference to a director or other officer of the company referred to in subsection (1) included a reference to the director, officer or member of the relevant body.

(6) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) Proceedings for an offence under this regulation are not to be brought—

- (a) in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;

(b) in Northern Ireland except by or with the consent of the Department of Enterprise, Trade and Investment or the Director of Public Prosecutions for Northern Ireland.

(8) Nothing in this regulation affects any power of the Panel in relation to the enforcement of its rules.

Enforcement by the court

11.—(1) If, on the application of the Panel, the court is satisfied—

(a) that there is a reasonable likelihood that a person will contravene a rule-based requirement, or

(b) that a person has contravened a rule-based requirement or a disclosure requirement,

the court may make any order it thinks fit to secure compliance with the requirement.

(2) Except as provided by paragraph (1), no person—

(a) has a right to seek an injunction, or

(b) in Scotland, has title or interest to seek an interdict or an order for specific performance,

to prevent a person from contravening (or continuing to contravene) a rule-based requirement or a disclosure requirement.

No action for breach of statutory duty etc.

12.—(1) Contravention of a rule-based requirement or a disclosure requirement does not give rise to any right of action for breach of statutory duty.

(2) Contravention of a rule-based requirement does not make any transaction void or unenforceable or affect the validity of any other thing.

Interpretation of Chapter 4

13. In this Chapter—

“contravene” includes fail to comply;

“contravention” includes failure to comply;

“disclosure requirement” means a requirement imposed under regulation 6;

“offer document” means a document required to be published by Rules 30.1 and 32.1 of the Code;

“offer document rules” means rules set out in Rules 24 and 27 of the Code to the extent that they are referred to in section 10(e) of the Introduction to the Code;

“officer” includes director, manager or secretary;

“response document” means a document required to be published by Rules 30.2 and 32.6(a) of the Code;

“response document rules” means rules set out in Rules 25 and 27 of the Code to the extent that they are referred to in section 10(e) of the Introduction to the Code;

“rule-based requirement” means a requirement imposed by or under rules.

CHAPTER 5

Miscellaneous and supplementary

Recovery of fees or charges

14. A fee or charge payable by any person by virtue of the rules is a debt due from that person to the Panel, and is recoverable accordingly.

Panel as party to proceedings

15. In the exercise of its functions the Panel is capable (despite being an unincorporated body) of—

- (a) bringing proceedings under this Part in its own name;
- (b) bringing or defending any other proceedings in its own name.

Exemption from liability in damages

16.—(1) Neither the Panel, nor any person within paragraph (2), is to be liable in damages for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the Panel's functions.

(2) A person is within this paragraph if—

- (a) he is (or is acting as) a member, officer or member of staff of the Panel; or
- (b) he is a person authorised under regulation 6(5).

(3) Paragraph (1) does not apply—

- (a) if the act or omission is shown to have been in bad faith; or
- (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 1998⁽⁶⁾ (acts of public authorities incompatible with Convention rights).

Privilege against self-incrimination

17.—(1) A statement made by a person in response to—

- (a) a requirement under regulation 6(1), or
- (b) an order made by the court under regulation 11 to secure compliance with such a requirement,

may not be used against him in criminal proceedings in which he is charged with an offence to which this paragraph applies.

(2) Paragraph (1) applies to any offence other than an offence under one of the following provisions (which concern false statements made otherwise than on oath)—

- (a) section 5 of the Perjury Act 1911⁽⁷⁾;
- (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995⁽⁸⁾;
- (c) Article 10 of the Perjury (Northern Ireland) Order 1979⁽⁹⁾.

⁽⁶⁾ 1998 c. 42.

⁽⁷⁾ 1911 c. 6.

⁽⁸⁾ 1995 c. 39.

⁽⁹⁾ S.I. 1979/1714 (N.I. 19).

Amendments and modifications to Financial Services and Markets Act 2000

18.—(1) Section 348 of the Financial Services and Markets Act 2000⁽¹⁰⁾ does not apply to—

- (a) the disclosure by an authority to which paragraph (2) applies of confidential information disclosed to it by the Financial Services Authority in reliance on subsection (1) of that section;
- (b) the disclosure of such information by a person obtaining it directly or indirectly from an authority to which paragraph (2) applies.

“Confidential information” has the meaning given by section 348(2) of that Act.

(2) This paragraph applies to—

- (a) the Panel;
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive;
- (c) any other person or body that exercises functions of a public nature, under legislation in an EEA State other than the United Kingdom, that are similar to the Financial Services Authority’s functions or those of the Panel.

(3) The Financial Services and Markets Act 2000 is amended as follows.

(4) In section 143 (power to make rules endorsing the City Code on Takeovers and Mergers etc.), after subsection (1) insert—

“(1A) The Authority may not make endorsing rules in respect of provisions of that Code that are given effect by regulation 3 of the Takeovers Directive (Interim Implementation) Regulations 2006.”

(5) At the end of section 349 (exceptions from section 348) insert—

“(8) Section 348 has effect subject to regulation 18(1) of the Takeovers Directive (Interim Implementation) Regulations 2006.”

PART 3

Impediments to Takeovers

CHAPTER 1

Interpretation

Interpretation of Part

19.—(1) In this Part—

“company” means—

- (a) a company within the meaning of section 735 of the Companies Act 1985⁽¹¹⁾;
- (b) an unregistered company within the meaning of section 718 of that Act⁽¹²⁾;
- (c) a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986⁽¹³⁾; or
- (d) an unregistered company within the meaning of Article 667 of that Order⁽¹⁴⁾;

⁽¹⁰⁾ 2000 c. 8.

⁽¹¹⁾ 1985 c. 6.

⁽¹²⁾ Section 718 was amended by regulation 75 of, and by paragraph 9 of Schedule 8 to, [S.I. 1996/2827](#).

⁽¹³⁾ [S.I. 1986/1032 \(N.I. 6\)](#).

⁽¹⁴⁾ Article 667 was amended by regulation 75 of, and by paragraph 8 of Schedule 8 to, [S.R. 1997/251](#).

“daily default fine” has the meaning in section 730(4) of the Companies Act 1985 (or in the case of Northern Ireland, Article 678(4) of the Companies (Northern Ireland) Order 1986;

“offeror” has the same meaning as in the Takeovers Directive;

“offer period”, in relation to a takeover bid, means the time allowed for acceptance of the bid by—

- (a) rules in the Code giving effect to Article 7(1) of the Takeovers Directive; or
- (b) where the rules giving effect to that Article which apply to the bid are those of an EEA State other than the United Kingdom, those rules;

“opted-in company” means a company in relation to which—

- (a) an opting-in resolution has effect; and
- (b) the conditions in regulation 20(2) and (4) continue to be met;

“opting-in resolution” has the meaning given by regulation 20(1);

“opting-out resolution” has the meaning given by regulation 20(5);

“registrar” has the meaning in section 744 of the Companies Act 1985 (or in the case of Northern Ireland in Article 653(2) of the Companies (Northern Ireland) Order 1986).

(2) For the purposes of this Part—

- (a) securities of a company are treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares;
- (b) debentures issued by a company are treated as shares in the company if they carry voting rights.

CHAPTER 2

Opting in and opting out

Opting in and opting out

20.—(1) A company may by special resolution (an “opting-in resolution”) opt in for the purposes of this Part if the following three conditions are met in relation to the company.

(2) The first condition is that the company has voting shares admitted to trading on a regulated market.

(3) The second condition is that—

- (a) the company’s articles of association—
 - (i) do not contain any such restrictions as are mentioned in Article 11 of the Takeovers Directive; or
 - (ii) if they do contain any such restrictions, provide for the restrictions not to apply at a time when, or in circumstances in which, they would be disapplied by that Article; and
- (b) those articles do not contain any other provision which would be incompatible with that Article.

(4) The third condition is that—

- (a) no shares conferring special rights in the company are held by—
 - (i) a minister,
 - (ii) a nominee of, or any other person acting on behalf of, a minister, or
 - (iii) a company directly or indirectly controlled by a minister, and
- (b) no such rights are exercisable by or on behalf of a minister under any enactment.

(5) A company may revoke an opting-in resolution by a further special resolution (an “opting-out resolution”).

(6) For the purposes of paragraph (3), a reference in Article 11 of the Takeovers Directive to Article 7(1) or 9 of that Directive is to be read as referring to rules in the Code giving effect to the relevant Article.

(7) In paragraph (4) “minister” means—

(a) the holder of an office in Her Majesty’s Government in the United Kingdom,

(b) the Scottish Ministers,

(c) a Minister within the meaning given by section 7(3) of the Northern Ireland Act 1998⁽¹⁵⁾, and for the purposes of that paragraph “minister” also includes the Treasury, the Board of Trade, the Defence Council and the National Assembly for Wales.

Further provisions about opting-in and opting-out resolutions

21.—(1) An opting-in resolution or an opting-out resolution must specify the date from which it is to have effect (the “effective date”).

(2) The effective date of an opting-in resolution may not be earlier than the date on which the resolution is passed.

(3) The second and third conditions in regulation 20 must be met at the time when an opting-in resolution is passed, but the first one does not need to be met until the effective date.

(4) An opting-in resolution passed before the time when voting shares of the company are admitted to trading on a regulated market complies with the requirement in paragraph (1) if, instead of specifying a particular date, it provides for the resolution to have effect from that time.

(5) The effective date of an opting-out resolution may not be earlier than the first anniversary of the date on which a copy of the opting-in resolution was forwarded to the registrar.

(6) Where a company has passed an opting-in resolution, any alteration of its articles of association that would prevent the second condition in regulation 20 from being met is of no effect until the effective date of an opting-out resolution passed by the company.

CHAPTER 3

Consequences of opting in

Effect on contractual restrictions

22.—(1) The following provisions have effect where a takeover bid is made for an opted-in company.

(2) An agreement to which this regulation applies is invalid in so far as it places any restriction—

(a) on the transfer to the offeror, or at his direction to another person, of shares in the company during the offer period;

(b) on the transfer to any person of shares in the company at a time during the offer period when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company;

(c) on rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid;

(d) on rights to vote at a general meeting of the company that—

(15) 1998 c. 47.

- (i) is the first such meeting to be held after the end of the offer period; and
- (ii) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company.

(3) This regulation applies to an agreement—

- (a) entered into between a person holding shares in the company and another such person on or after 21st April 2004, or
- (b) entered into at any time between such a person and the company,

and it applies to such an agreement even if the law applicable to the agreement (apart from this paragraph) is not the law of a part of the United Kingdom.

(4) The reference in paragraph (2)(c) to rights to vote at a general meeting of the company that decides whether to take any action which might result in the frustration of the bid includes a reference to rights to vote on a written resolution concerned with that question.

(5) For the purposes of paragraph (2)(c), action which might result in the frustration of a bid is any action of that kind specified by rules in the Code giving effect to Article 9 of the Takeovers Directive.

(6) If a person suffers loss as a result of any act or omission that would (but for this regulation) be a breach of an agreement to which this regulation applies, he is entitled to compensation, of such amount as the court considers just and equitable, from any person who would (but for this paragraph) be liable to him for committing or inducing the breach.

(7) A reference in this regulation to voting shares in the company does not include—

- (a) debentures; or
- (b) shares carrying rights to vote that, under the company's articles of association, arise only where specified pecuniary advantages are not provided.

In sub-paragraph (b) “rights to vote” means rights to vote at general meetings of the company.

Power of offeror to require general meeting to be called

23.—(1) Where a takeover bid is made for an opted-in company, section 368 of the Companies Act 1985(16) (extraordinary general meeting on members' requisition) and section 378 of that Act(17) (extraordinary and special resolutions) have effect as follows.

(2) Section 368 has effect as if a member's requisition included a requisition of a person who—

- (a) is the offeror in relation to the takeover bid; and
- (b) holds at the date of the deposit of the requisition shares amounting to not less than 75% in value of all the voting shares in the company.

(3) In relation to a general meeting of the company that—

- (a) is the first such meeting to be held after the end of the offer period, and
- (b) is held at a time when the offeror holds shares amounting to not less than 75% in value of all the voting shares in the company,

section 378(2) (meaning of “special resolution”) has effect as if “14 days' notice” were substituted for “21 days' notice”.

(4) A reference in this regulation to voting shares in the company does not include—

- (a) debentures; or

(16) Section 368 was amended by section 145 of, and by paragraph 9 of Schedule 19 to, the Companies Act 1989 (c. 40), and by regulation 4 of, and by paragraph 19 of the Schedule to, S.I. 2003/1116.

(17) Section 378 was amended by section 115(3) of the Companies Act 1989 (c. 40) and by regulation 4 of, and by paragraph 24 of the Schedule to, S.I. 2003/1116.

- (b) shares carrying rights to vote that, under the company's articles of association, arise only where specified pecuniary advantages are not provided.

In sub-paragraph (b) "rights to vote" means rights to vote at general meetings of the company.

(5) In its application to Northern Ireland, references in this regulation to sections 368 and 378 of the Companies Act 1985 are to be read, respectively, as references to Articles 376(18) and 386(19) of the Companies (Northern Ireland) Order 1986.

CHAPTER 4

Supplementary

Communication of decisions

24.—(1) A company that has passed an opting-in resolution or an opting-out resolution must notify—

- (a) the Panel; and
- (b) where the company—
 - (i) has voting shares admitted to trading on a regulated market in an EEA State other than the United Kingdom, or
 - (ii) has requested such admission,
the authority designated by that State as the supervisory authority for the purposes of Article 4.1 of the Takeovers Directive.

(2) Notification must be given within 15 days after the resolution is passed and, if any admission or request such as is mentioned in paragraph (1)(b) occurs at a later time, within 15 days after that time.

(3) If a company fails to comply with this regulation, an offence is committed by—

- (a) the company; and
- (b) every officer of it who is in default.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, to a daily default fine not exceeding £100.

PART 4

Directors' Report etc.

Matters to be dealt with in directors' report

25.—(1) In this Part "directors' report" means the report prepared under section 234 of the Companies Act 1985(20)(or in the case of Northern Ireland, Article 242 of the Companies (Northern Ireland) Order 1986)(21).

(18) Article 376 was amended by Article 78 of, and by paragraph 9 of Schedule 5 to, S.I. 1990/1504 (N.I. 10) and by paragraph 20 of the Schedule to S.R. 2004/275.

(19) Article 386 was amended by Article 50 of, and by paragraph 25 of Schedule 5 to, S.I. 1990/1504 (N.I. 10) and by paragraph 20 of the Schedule to S.R. 2004/275.

(20) 1985 c. 6; section 234 was inserted by Part 1 of the Companies Act 1989 (c. 40) and substituted by regulation 2 of S.I. 2005/1011.

(21) S.I. 1986/1032 (N.I.6); Article 242 was inserted by Article 10 of S.I. 1990/593 (N.I.5) and substituted by regulation 2 of S.R. 2005/61.

(2) This Part applies to a directors' report for a financial year beginning on or after 20th May 2006, if the company had securities carrying voting rights admitted to trading on a regulated market at the end of that year.

26.—(1) In addition to the matters required by section 234ZZA of the Companies Act 1985⁽²²⁾ (or in the case of Northern Ireland, Article 242ZZA of the Companies (Northern Ireland) Order 1986⁽²³⁾) to be contained in the directors' report, that report shall contain detailed information, by reference to the end of that year, on the following matters—

- (a) the structure of the company's capital, including in particular—
 - (i) the rights and obligations attaching to the shares or, as the case may be, to each class of shares in the company; and
 - (ii) where there are two or more such classes, the percentage of the total share capital represented by each class;
- (b) any restrictions on the transfer of securities in the company, including in particular—
 - (i) limitations on the holding of securities; and
 - (ii) requirements to obtain the approval of the company, or of other holders of securities in the company, for a transfer of securities;
- (c) in the case of each person with a significant direct or indirect holding of securities in the company, such details as are known to the company of—
 - (i) the identity of the person;
 - (ii) the size of the holding; and
 - (iii) the nature of the holding;
- (d) in the case of each person who holds securities carrying special rights with regard to control of the company—
 - (i) the identity of the person; and
 - (ii) the nature of the rights;
- (e) where—
 - (i) the company has an employees' share scheme, and
 - (ii) shares to which the scheme relates have rights with regard to control of the company that are not exercisable directly by the employees,how those rights are exercisable;
- (f) any restrictions on voting rights, including in particular—
 - (i) limitations on voting rights of holders of a given percentage or number of votes;
 - (ii) deadlines for exercising voting rights; and
 - (iii) arrangements by which, with the company's co-operation, financial rights carried by securities are held by a person other than the holder of the securities;
- (g) any agreements between holders of securities that are known to the company and may result in restrictions on the transfer of securities or on voting rights;
- (h) any rules that the company has about—
 - (i) appointment and replacement of directors; or
 - (ii) amendment of the company's articles of association;

⁽²²⁾ Section 234ZZA was substituted by regulation 2 of S.I. 2005/1011.

⁽²³⁾ Article 242ZZA was substituted by regulation 2 of S.R.2005/61.

- (i) the powers of the company's directors, including in particular any powers in relation to the issuing or buying back by the company of its shares;
 - (j) any significant agreements to which the company is a party that take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects of any such agreements;
 - (k) any agreements between the company and its directors or employees providing for compensation for loss of office or employment (whether through resignation, purported redundancy or otherwise) that occurs because of a takeover bid.
- (2) For the purposes of paragraph (1)(a) a company's capital includes any securities in the company that are not admitted to trading on a regulated market.
- (3) For the purposes of paragraph (1)(c) a person has an indirect holding of securities if—
- (a) they are held on his behalf; or
 - (b) he is able to secure that rights carried by the securities are exercised in accordance with his wishes.
- (4) Paragraph (1)(j) does not apply to an agreement if—
- (a) disclosure of the agreement would be seriously prejudicial to the company; and
 - (b) the company is not under any other obligation to disclose it.
- (5) The directors' report shall also contain any necessary explanatory material with regard to information that is required to be included in the report by paragraph (1).
- (6) In this regulation "securities" means shares or debentures.

Summary financial statement

27. If, in accordance with section 251 of the Companies Act 1985(24) (or as the case may be Article 259 of the Companies (Northern Ireland) Order 1986(25)), a company sends to an entitled person a summary financial statement instead of a copy of its directors' report the company shall—

- (a) include in the statement the explanatory material required to be included in the directors' report by regulation 26(5); or
- (b) send that material to the entitled person at the same time as it sends the statement.

For the purposes of paragraph (b), section 251(2A) to (2E)(26) (or as the case may be Article 259(2A) to (2E)(27)) applies in relation to the material referred to in that paragraph as it applies in relation to a summary financial statement.

Expressions in the Companies Act 1985

28. Except as otherwise provided expressions that are defined for the purposes of Part 7 of the Companies Act 1985(28) (or in the case of Northern Ireland, Part 8 of the Companies (Northern Ireland) Order 1986(29)) have the same meaning in this Part.

(24) Section 251 was substituted by section 15 of the Companies Act 1989 (c. 40) and further amended under section 257 of the Companies Act 1985 (c. 6).

(25) Article 259 was substituted by Article 17 of S.I. 1990/593 (N.I.5) and further amended under Article 265 of S.I. 1986/1032 (N.I.6).

(26) Section 251(2A) to (2E) was inserted by Article 14 of S.I. 2000/3373 and section 251(2C) was amended by regulation 12(1), (5) and (6)(a) of S.I.2005/1011.

(27) Article 259(2A) to (2E) was inserted by Article 12 of S.R.2003/3 and amended by regulation 11 of S.R.2005/61.

(28) Part 7 was inserted by section 2 of the Companies Act 1989 (c. 40).

(29) Part 8 was amended by Article 3 of S.I. 1990/593 (N.I.5).

PART 5

Squeeze-out and sell-out

Takeover offers

29. This Part applies to any takeover offer where the date of the offer as defined in paragraph 11 of Schedule 2 is on or after 20 May 2006.

30. Where a takeover offer is made for a company that has securities carrying voting rights admitted to trading on a regulated market, Part 13A of the Companies Act 1985(**30**) (or in the case of Northern Ireland, Part 14A of the Companies (Northern Ireland) Order 1986(**31**)) shall not apply and Schedule 2 to these Regulations shall apply.

31. In this Part “company” means—

- (a) a company within the meaning of section 735 of the Companies Act 1985 (**32**);
- (b) an unregistered company within the meaning of section 718 of that Act(**33**);
- (c) a company within the meaning of Article 3 of the Companies (Northern Ireland) Order 1986(**34**); or
- (d) an unregistered company within the meaning of Article 667 of that Order(**35**).

32. Except as otherwise provided expressions that are defined for the purposes of Part 13A of the Companies Act 1985 (or in the case of Northern Ireland, Part 14A of the Companies (Northern Ireland) Order 1986) have the same meaning in this Part.

25th April 2006

Gerry Sutcliffe
Parliamentary Under Secretary of State for
Employment Relations and Consumer Affairs
Department of Trade and Industry

(30) Part 13A was inserted by section 172 of, and by Schedule 12 to, the Financial Services Act 1986 (c. 60).

(31) Part 14A was inserted by Article 26 of S.I. 1989/2404 (N.I.18).

(32) 1985 c. 6.

(33) Section 718 was amended by regulation 75 of, and paragraph 9 of Schedule 8 to, S.I. 1996/2827.

(34) S.I. 1986/1032 (N.I.6).

(35) Article 667 was amended by S.R. 2004/335.

SCHEDULE 1

Regulation 7

SPECIFIED PERSONS, DESCRIPTIONS OF DISCLOSURES ETC. FOR THE PURPOSES OF REGULATION 7

PART 1

SPECIFIED PERSONS

1. The Secretary of State.
2. The Department of Enterprise, Trade and Investment for Northern Ireland.
3. The Treasury.
4. The Bank of England.
5. The Financial Services Authority.
6. The Commissioners for Her Majesty's Revenue and Customs.
7. The Lord Advocate.
8. The Director of Public Prosecutions.
9. The Director of Public Prosecutions for Northern Ireland.
10. A constable.
11. A procurator fiscal.
12. The Scottish Ministers.

PART 2

SPECIFIED DESCRIPTIONS OF DISCLOSURES

13. A disclosure for the purpose of enabling or assisting a person authorised under section 245C of the Companies Act 1985**(36)** (persons authorised to apply to court) to exercise his functions.

14. A disclosure for the purpose of enabling or assisting an inspector appointed under Part 14 of the Companies Act 1985 (investigation of companies and their affairs, etc.) to exercise his functions.

15. A disclosure for the purpose of enabling or assisting a person authorised under section 447 of the Companies Act 1985**(37)** (power to require production of documents) or section 84 of the Companies Act 1989**(38)** (exercise of powers by officer etc.) to exercise his functions.

16. A disclosure for the purpose of enabling or assisting a person appointed under section 167 of the Financial Services and Markets Act 2000**(39)** (general investigations) to conduct an investigation to exercise his functions.

(36) 1985 c. 6; section 245C was inserted by section 12 of the Companies Act 1989 (c. 40) and by section 10 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) and was amended by regulation 3 of, and by paragraphs 1 and 11 of Schedule 1 to, S.I. 2004/2947, by regulation 17 of S.I. 2005/1011 and by regulation 2(2)(a) of, and by paragraph 12 of Schedule 1 to, S.I. 2005/3442.

(37) Section 447 was substituted by section 21 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

(38) 1989 c. 40.

(39) 2000 c. 8.

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17. A disclosure for the purpose of enabling or assisting a person appointed under section 168 of the Financial Services and Markets Act 2000 (investigations in particular cases) to conduct an investigation to exercise his functions.

18. A disclosure for the purpose of enabling or assisting a person appointed under section 169(1) (b) of the Financial Services and Markets Act 2000 (investigation in support of overseas regulator) to conduct an investigation to exercise his functions.

19. A disclosure for the purpose of enabling or assisting the body corporate responsible for administering the scheme referred to in section 225 of the Financial Services and Markets Act 2000 (the ombudsman scheme) to exercise its functions.

20. A disclosure for the purpose of enabling or assisting a person appointed under paragraph 4 (the panel of ombudsmen) or 5 (the Chief Ombudsman) of Schedule 17 to the Financial Services and Markets Act 2000 to exercise his functions.

21. A disclosure for the purpose of enabling or assisting a person appointed under regulations made under section 262(1) and (2)(k) of the Financial Services and Markets Act 2000 (investigations into open-ended investment companies) to conduct an investigation to exercise his functions.

22. A disclosure for the purpose of enabling or assisting a person appointed under section 284 of the Financial Services and Markets Act 2000 (investigations into affairs of certain collective investment schemes) to conduct an investigation to exercise his functions.

23. A disclosure for the purpose of enabling or assisting the investigator appointed under paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000 (arrangements for investigation of complaints) to exercise his functions.

24. A disclosure for the purpose of enabling or assisting a person appointed by the Treasury to hold an inquiry into matters relating to financial services (including an inquiry under section 15 of the Financial Services and Markets Act 2000) to exercise his functions.

25. A disclosure for the purpose of enabling or assisting the Secretary of State or the Treasury to exercise any of their functions under any of the following—

- (a) the Companies Acts;
- (b) Part 5 of the Criminal Justice Act 1993⁽⁴⁰⁾ (insider dealing);
- (c) the Insolvency Act 1986⁽⁴¹⁾;
- (d) the Company Directors Disqualification Act 1986⁽⁴²⁾;
- (e) Part 2 of the Companies Act 1989 (eligibility for appointment as company auditor);
- (f) Part 3 (investigations and powers to obtain information) or 7 (financial markets and insolvency) of the Companies Act 1989;
- (g) the Financial Services and Markets Act 2000.

26. A disclosure for the purpose of enabling or assisting the Scottish Ministers to exercise their functions under the enactments relating to insolvency.

27. A disclosure for the purpose of enabling or assisting the Department of Enterprise, Trade and Investment for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency.

28. A disclosure for the purpose of enabling or assisting a person appointed or authorised by the Department of Enterprise, Trade and Investment for Northern Ireland under the enactments relating to companies or insolvency to exercise his functions.

⁽⁴⁰⁾ 1993 c. 36.

⁽⁴¹⁾ 1986 c. 45.

⁽⁴²⁾ 1986 c. 46.

29. A disclosure for the purpose of enabling or assisting the Pensions Regulator to exercise the functions conferred on it by or by virtue of any of the following—

- (a) the Pension Schemes Act 1993**(43)**;
- (b) the Pensions Act 1995**(44)**;
- (c) the Welfare Reform and Pensions Act 1999**(45)**;
- (d) the Pensions Act 2004**(46)**;
- (e) any enactment in force in Northern Ireland corresponding to any of those enactments.

30. A disclosure for the purpose of enabling or assisting the Board of the Pension Protection Fund to exercise the functions conferred on it by or by virtue of Part 2 of the Pensions Act 2004 or any enactment in force in Northern Ireland corresponding to that Part.

31. A disclosure for the purpose of enabling or assisting—

- (a) the Bank of England,
- (b) the European Central Bank, or
- (c) the central bank of any country or territory outside the United Kingdom,

to exercise its functions.

32. A disclosure for the purpose of enabling or assisting the Commissioners for Her Majesty's Revenue and Customs to exercise their functions.

33. A disclosure for the purpose of enabling or assisting organs of the Society of Lloyd's (being organs constituted by or under the Lloyd's Act 1982**(47)**) to exercise their functions under or by virtue of the Lloyd's Acts 1871 to 1982.

34. A disclosure for the purpose of enabling or assisting the Office of Fair Trading to exercise its functions under any of the following—

- (a) the Fair Trading Act 1973**(48)**;
- (b) the Consumer Credit Act 1974**(49)**;
- (c) the Estate Agents Act 1979**(50)**;
- (d) the Competition Act 1980**(51)**;
- (e) the Competition Act 1998**(52)**;
- (f) the Financial Services and Markets Act 2000;
- (g) the Enterprise Act 2002**(53)**;
- (h) the Control of Misleading Advertisements Regulations 1988**(54)**;
- (i) the Unfair Terms in Consumer Contracts Regulations 1999**(55)**.

35. A disclosure for the purpose of enabling or assisting the Competition Commission to exercise its functions under any of the following—

(43) 1993 c. 48.
(44) 1995 c. 26.
(45) 1999 c. 30.
(46) 2004 c. 35.
(47) 1982 c.xiv.
(48) 1973 c. 41.
(49) 1974 c. 39.
(50) 1979 c. 38.
(51) 1980 c. 21.
(52) 1998 c. 41.
(53) 2002 c. 40.
(54) S.I. 1998/915.
(55) S.I. 1999/2083.

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- (a) the Fair Trading Act 1973;
- (b) the Competition Act 1980;
- (c) the Competition Act 1998;
- (d) the Enterprise Act 2002.

36. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Competition Appeal Tribunal.

37. A disclosure for the purpose of enabling or assisting an enforcer under Part 8 of the Enterprise Act 2002 (enforcement of consumer legislation) to exercise its functions under that Part.

38. A disclosure for the purpose of enabling or assisting the Charity Commissioners (or in the case of Northern Ireland, the Department for Social Development) to exercise their functions.

39. A disclosure for the purpose of enabling or assisting the Attorney General to exercise his functions in connection with charities.

40. A disclosure for the purpose of enabling or assisting the National Lottery Commission to exercise its functions under sections 5 to 10 (licensing) and 15 (power of Secretary of State to require information) of the National Lottery etc. Act 1993**(56)**.

41. A disclosure by the National Lottery Commission to the National Audit Office for the purpose of enabling or assisting the Comptroller and Auditor General to carry out an examination under Part 2 of the National Audit Act 1983**(57)** into the economy, effectiveness and efficiency with which the National Lottery Commission has used its resources in discharging its functions under sections 5 to 10 of the National Lottery etc. Act 1993.

42. A disclosure for the purpose of enabling or assisting a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999**(58)** to exercise its functions under those Regulations.

43. A disclosure for the purpose of enabling or assisting an enforcement authority under the Consumer Protection (Distance Selling) Regulations 2000**(59)** to exercise its functions under those Regulations.

44. A disclosure for the purpose of enabling or assisting an enforcement authority under the Financial Services (Distance Marketing) Regulations 2004**(60)** to exercise its functions under those Regulations.

45. A disclosure for the purpose of enabling or assisting a local weights and measures authority in England and Wales to exercise its functions under section 230(2) of the Enterprise Act 2002 (notice of intention to prosecute, etc.).

46. A disclosure for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following—

- (a) the legislation relating to friendly societies or to industrial and provident societies;
- (b) the Building Societies Act 1986**(61)**;
- (c) Part 7 of the Companies Act 1989 (financial markets and insolvency);
- (d) the Financial Services and Markets Act 2000.

(56) 1993 c. 39; sections 5 to 10 and 15 were amended by section 1(5) of, and by paragraph 4 of Schedule 1 to the National Lottery Act 1998 (c. 22).

(57) 1983 c. 44.

(58) S.I. 1999/2083; as amended by section 2 of the Enterprise Act 2002 (c. 40).

(59) S.I. 2000/2334; as amended by section 2 of the Enterprise Act 2002 (c. 40).

(60) S.I. 2004/2095

(61) 1986 c. 53.

47. A disclosure for the purpose of enabling or assisting the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 (official listing) to exercise its functions under that Part.

48. A disclosure for the purpose of enabling or assisting a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager) to exercise its functions.

49. A disclosure for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to exercise its functions as such.

“Recognised investment exchange” and “recognised clearing house” have the same meaning as in section 285 of the Financial Services and Markets Act 2000.

50. A disclosure for the purpose of enabling or assisting a person approved under the Uncertificated Securities Regulations 2001(62) as an operator of a relevant system (within the meaning of those Regulations) to exercise his functions.

51. A disclosure for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (designated professional bodies) to exercise its functions in its capacity as a body designated under that section.

52. A disclosure with a view to the institution of, or otherwise for the purposes of, civil proceedings arising under or by virtue of the Financial Services and Markets Act 2000.

53. A disclosure for the purpose of enabling or assisting a body designated by order under section 46 of the Companies Act 1989(63) (delegation of functions of Secretary of State) to exercise its functions under Part 2 of that Act (eligibility for appointment as company auditor).

54. A disclosure for the purpose of enabling or assisting a recognised supervisory or qualifying body, within the meaning of Part 2 of the Companies Act 1989.

55. A disclosure for the purpose of enabling or assisting an official receiver (including the Accountant in Bankruptcy in Scotland and the Official Assignee in Northern Ireland) to exercise his functions under the enactments relating to insolvency.

56. A disclosure for the purpose of enabling or assisting the Insolvency Practitioners Tribunal to exercise its functions under the Insolvency Act 1986(64).

57. A disclosure for the purpose of enabling or assisting a body that is for the time being a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 (recognised professional bodies) to exercise its functions as such.

58. A disclosure for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.

“Overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989(65).

59. A disclosure for the purpose of enabling or assisting the Regulator of Community Interest Companies to exercise functions under the Companies (Audit, Investigations and Community Enterprise) Act 2004(66).

(62) [S.I. 2001/3755](#).

(63) Section 46 was substituted by section 3(1) and (2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

(64) 1986 c. 45.

(65) Section 82 was amended by article 76(1) to (3) of [S.I. 2001/3649](#) and by section 79(13) of, and by paragraph 16 of Schedule 5 to the Criminal Justice Act 1993 (c. 36).

(66) 2004 c. 27.

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60. A disclosure with a view to the institution of, or otherwise for the purposes of, criminal proceedings.

61. A disclosure for the purpose of enabling or assisting a person authorised by the Secretary of State under Part 2, 3 or 4 of the Proceeds of Crime Act 2002(**67**) to exercise his functions.

62. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings on an application under section 6, 7 or 8 of the Company Directors Disqualification Act 1986(**68**) (disqualification for unfitness).

63. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Financial Services and Markets Tribunal.

64. A disclosure for the purposes of proceedings before the Financial Services Tribunal by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001(**69**).

65. A disclosure for the purposes of proceedings before the Pensions Regulator Tribunal.

66. A disclosure for the purpose of enabling or assisting a body appointed under section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (supervision of periodic accounts and reports of issuers of listed securities) to exercise functions mentioned in subsection (2) of that section(**70**).

67. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a solicitor, barrister, advocate, foreign lawyer, auditor, accountant, valuer or actuary of his professional duties.

“Foreign lawyer” has the meaning given by section 89(9) of the Courts and Legal Services Act 1990(**71**).

68. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a public servant of his duties.

“Public servant” means an officer or employee of the Crown.

69. A disclosure for the purpose of the provision of a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained.

70. A disclosure in pursuance of any Community obligation.

PART 3

OVERSEAS REGULATORY BODIES

71. A disclosure is made in accordance with this Part of this Schedule if—

- (a) it is made to a person or body within paragraph 72; and
- (b) it is made for the purpose of enabling or assisting that person or body to exercise the functions mentioned in that paragraph.

(67) 2002 c. 29.

(68) 1986 c. 46.

(69) S.I. 2001/3592.

(70) Section 14 was amended by regulation 2(3) of, and by paragraph 3 of Schedule 3 to S.I. 2005/1433.

(71) 1990 c. 41.

72. The persons or bodies that are within this paragraph are those exercising functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Panel to be similar to its own functions or those of the Financial Services Authority.

73. In determining whether to disclose information to a person or body in accordance with this Part of this Schedule, the Panel must have regard to the following considerations—

- (a) whether the use that the person or body is likely to make of the information is sufficiently important to justify making the disclosure;
- (b) whether the person or body has adequate arrangements to prevent the information from being used or further disclosed otherwise than for the purposes of carrying out the functions mentioned in paragraph 72 or any other purposes substantially similar to those for which information disclosed to the Panel could be used or further disclosed.

SCHEDULE 2

Regulation 30

SQUEEZE-OUT AND SELL-OUT

Meaning of takeover offer

1.—(1) In this Schedule “a takeover offer” means an offer to acquire all the shares, or all the shares of any class or classes, in a company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class.

(2) In sub-paragraph (1) “shares” means shares (other than relevant treasury shares) which have been allotted on the date of the offer, but a takeover offer may include among the shares to which it relates—

- (a) all or any shares that are allotted after the date of the offer but before a specified date;
- (b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date;
- (c) all or any other relevant treasury shares.

(3) In this paragraph—

“relevant treasury shares” means shares which—

- (a) are held by the company as treasury shares on the date of the offer; or
- (b) become shares held by the company as treasury shares after that date but before a specified date;

“specified date” means a date specified in or determined in accordance with the terms of the offer.

(4) The terms offered in relation to any shares shall for the purposes of this paragraph be treated as being the same in relation to all the shares or, as the case may be, all the shares of a class to which the offer relates notwithstanding—

- (a) any difference permitted by sub-paragraph (5); or
- (b) any variation permitted by sub-paragraph (6).

(5) A difference is permitted by this sub-paragraph where—

- (a) shares carry an entitlement to a particular dividend which other shares of the same class, by reason of being allotted later, do not carry; and

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- (b) the difference is the value of consideration offered for the shares allotted earlier as against that offered for those allotted later, and merely reflects the difference in entitlement to the dividend.
- (6) A variation is permitted by this sub-paragraph where—
 - (a) the law of a country or territory outside the United Kingdom precludes an offer of consideration in the form or any of the forms specified in the terms in question or precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous; and
 - (b) the variation is such that the persons to whom an offer of consideration in that form is precluded are able to receive consideration otherwise than in that form but of substantially equivalent value.
- (7) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being a takeover offer for the purposes of this Schedule if—
 - (a) those shareholders have no registered address in the United Kingdom;
 - (b) the offer was not communicated to those shareholders in order not to contravene the law of a country or territory outside the United Kingdom; and
 - (c) either—
 - (i) the offer is published in the Gazette; or
 - (ii) the offer can be inspected, or a copy of it obtained, at a place in an EEA State or on a website, and a notice is published in the Gazette specifying the address of that place or website.
- (8) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside the United Kingdom, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer for the purposes of this Schedule.
- (9) It is not to be inferred—
 - (a) that an offer which is not communicated to every holder of shares in the company cannot be a takeover offer for the purposes of this Schedule unless the requirements of sub-paragraphs (7)(a) to (c) are met; or
 - (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for those purposes unless the reason for the impossibility or difficulty is the one mentioned in sub-paragraph (8).
- (10) The reference in sub-paragraph (1) to shares already held by the offeror includes a reference to shares which he has contracted to acquire (whether unconditionally or subject to conditions being met) but that shall not be construed as including shares which are the subject of a contract binding the holder to accept the offer when it is made, being a contract entered into by the holder either for no consideration and under seal or for no consideration other than a promise by the offeror to make the offer.
- (11) In the application of sub-paragraph (10) to Scotland, the words “and under seal” shall be omitted.
- (12) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision shall not be regarded for the purposes of this Schedule as the making of a fresh offer and references in paragraph 11(1) to the offer shall accordingly be construed as references to the original offer.

Right of offeror to buy out minority shareholders

2.—(1) Sub-paragraph (2) applies in a case where a takeover offer does not relate to shares of different classes.

(2) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—

- (a) not less than nine-tenths in value of the shares to which the offer relates, and
- (b) in a case where the shares to which the offer relates are voting shares, not less than nine-tenths of the voting rights carried by those shares,

he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.

(3) Sub-paragraph (4) applies in a case where a takeover offer relates to shares of different classes.

(4) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—

- (a) not less than nine-tenths in value of the shares of any class to which the offer relates, and
- (b) in a case where the shares of that class are voting shares, not less than nine-tenths of the voting rights carried by those shares,

he may give notice to the holder of any shares of that class to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.

(5) No notice shall be given under sub-paragraph (2) or (4) after the end of the period of three months beginning with the day after the last day on which the offer can be accepted.

(6) Sub-paragraph (7) applies where—

- (a) the requirements for the giving of a notice under sub-paragraph (2) or (4) are satisfied; and
- (b) there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional.

(7) The offeror's entitlement to give a notice under sub-paragraph (2) or (4) shall be determined as if—

- (a) the shares to which the offer relates included shares falling within sub-paragraph (6)(b); and
- (b) in relation to shares falling within that paragraph, the words “by virtue of acceptances of the offer” in sub-paragraph (2) or (4) were omitted.

(8) Any notice under this paragraph shall be given in the manner prescribed by regulation 4 of the Companies (Forms) Regulations 1985(72) (“the 1985 Regulations”) for a notice given for the purposes of section 429(4) of the Companies Act 1985 (or in the case of Northern Ireland by regulation 4 of the Companies (Forms) Regulations (Northern Ireland) 1986(73) (“the 1986 Regulations”) for a notice given for the purposes of Article 422(4) of the Companies (Northern Ireland) Order 1986); and when the offeror gives the first notice in relation to an offer he shall send a copy of it to the company together with a statutory declaration by him in the form prescribed by regulation 5(2) of the 1985 Regulations (or in the case of Northern Ireland by regulation 5(2) of the 1986 Regulations), stating that the conditions for the giving of the notice are satisfied.

(9) Where the offeror is a company (whether or not a company within the meaning of the Companies Act 1985 or, in the case of Northern Ireland, the Companies (Northern Ireland) Order 1986) the statutory declaration shall be signed by a director.

(72) S.I. 1985/854 amended by S.I. 1987/752; there are other amending instruments but none is relevant.

(73) S.R. 1986/287 amended by S.R. 1991/412; there are other amending instruments but none is relevant.

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(10) Any person who fails to send a copy of a notice or a statutory declaration as required by sub-paragraph (8) or makes such a declaration for the purposes of that sub-paragraph knowing it to be false or without having reasonable grounds for believing it to be true commits an offence.

(11) A person who commits an offence under sub-paragraph (10), but would have committed an offence under section 429(6)(74) of the Companies Act 1985 (or as the case may be, Article 422(6)(75) of the Companies (Northern Ireland) Order 1986) had that section (or Article) not been disapplied by regulation 30, is liable on conviction to the penalties in that section (or Article).

(12) In all other cases a person who commits an offence under sub-paragraph (10) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or both;
- (c) for continued contravention, to a daily default fine not exceeding £100.

(13) If any person is charged with an offence for failing to send a copy of a notice as required by sub-paragraph (8) it is a defence for him to prove that he took reasonable steps for securing compliance with that sub-paragraph.

(14) Sub-paragraph (15) applies where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates but otherwise than by virtue of acceptances of the offer.

(15) If—

- (a) the value of the consideration for which the shares are acquired or contracted to be acquired (“the acquisition consideration”) does not at that time exceed the value of the consideration specified in the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in paragraph (a), no longer exceeds the value of the consideration specified in those terms,

the offeror shall be treated for the purposes of this paragraph as having acquired or contracted to acquire those shares by virtue of acceptances of the offer; but in any other case those shares shall be treated as excluded from those to which the offer relates.

Effect of notice under paragraph 2

3.—(1) The following provisions shall, subject to paragraph 6, have effect where a notice is given in respect of any shares under paragraph 2.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer.

(3) Where the terms of an offer are such as to give the holder of any shares a choice of consideration the notice shall give particulars of the choice and state—

- (a) that the holder of the shares may within six weeks from the date of the notice indicate his choice by a written communication sent to the offeror at an address specified in the notice, and
- (b) which consideration specified in the offer is to be taken as applying in default of his indicating a choice as aforesaid,

and the terms of the offer mentioned in sub-paragraph (2) shall be determined accordingly.

(74) Section 429(6) was substituted by section 172 of, and by Schedule 12 to, the Financial Services Act 1986 (c. 60).

(75) Article 422(6) was substituted by Article 26 of S.I. 1989/2404 (N.I. 18).

(4) Sub-paragraph (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.

(5) If the consideration offered to or (as the case may be) chosen by the holder of the shares—

(a) is not cash and the offeror is no longer able to provide it, or

(b) was to have been provided by a third party who is no longer bound or able to provide it, the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date of the notice is equivalent to the consideration offered or (as the case may be) chosen.

(6) At the end of six weeks from the date of the notice the offeror shall forthwith—

(a) send a copy of the notice to the company; and

(b) pay or transfer to the company the consideration for the shares to which the notice relates.

(7) If the shares to which the notice relates are registered the copy of the notice sent to the company under sub-paragraph (6)(a) shall be accompanied by an instrument of transfer executed on behalf of the shareholder by a person appointed by the offeror; and on receipt of that instrument the company shall register the offeror as the holder of those shares.

(8) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments the copy of the notice sent to the company under sub-paragraph (6)(a) shall be accompanied by a statement to that effect; and the company shall on receipt of the statement issue the offeror with warrants or other instruments in respect of the shares and those already in issue in respect of the shares shall become void.

(9) Where the consideration referred to in paragraph (b) of sub-paragraph (6) consists of shares or securities to be allotted by the offeror the reference in that paragraph to the transfer of the consideration shall be construed as a reference to the allotment of the shares or securities to the company.

(10) Any sum received by a company under paragraph (b) of sub-paragraph (6) and any other consideration received under that paragraph shall be held by the company on trust for the person entitled to the shares in respect of which the sum or other consideration was received.

(11) Any sum received by a company under paragraph (b) of sub-paragraph (6), and any dividend or other sum accruing from any other consideration received by a company under that paragraph, shall be paid into a separate bank account, being an account the balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

(12) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of sub-paragraph (10) cannot be found and twelve years have elapsed since the consideration was received or the company is wound up the consideration (together with any interest, dividend or other benefit that has accrued from it) shall be paid into court.

(13) In relation to a company registered in Scotland, sub-paragraphs (14) and (15) shall apply in place of sub-paragraph (12).

(14) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of sub-paragraph (10) cannot be found and twelve years have elapsed since the consideration was received or the company is wound up—

(a) the trust shall terminate;

(b) the company or, as the case may be, the liquidator shall sell any consideration other than cash and any benefit other than cash that has accrued from the consideration; and

(c) a sum representing—

(i) the consideration so far as it is cash,

(ii) the proceeds of any sale under paragraph (b), and

(iii) any interest, dividend or other benefit that has accrued from the consideration,

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shall be deposited in the name of the Accountant of Court in a bank account such as is referred to in sub-paragraph (11) and the receipt for the deposit shall be transmitted to the Accountant of Court.

(15) Section 58 of the Bankruptcy (Scotland) Act 1985(76) (so far as consistent with the Companies Act 1985) shall apply with any necessary modifications to sums deposited under sub-paragraph (14) as that sub-paragraph applies to sums deposited under section 57(1)(a) of the Bankruptcy (Scotland) Act 1985.

(16) The expenses of any such enquiry as is mentioned in sub-paragraph (12) or (14) may be defrayed out of the money or other property held on trust for the person or persons to whom the enquiry relates.

Right of minority shareholder to be bought out by offeror

4.—(1) Sub-paragraphs (2) and (3) apply in a case where a takeover offer relates to all the shares in a company.

For this purpose a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of paragraph 1.

(2) The holder of any voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met)—
 - (i) amount to not less than nine-tenths in value of all the voting shares in the company (or would do so but for paragraph 10(1)); and
 - (ii) carry not less than nine-tenths of the voting rights in the company (or would do so but for paragraph 10(1)).

(3) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met), amount to not less than nine-tenths in value of all the shares in the company (or would do so but for paragraph 10(1)).

(4) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares of any class to which the offer relates, and
- (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met)—
 - (i) amount to not less than nine-tenths in value of all the shares of that class, and
 - (ii) in a case where the shares of that class are voting shares, carry not less than nine-tenths of the voting rights carried by the shares of that class,

(76) 1985 c. 66.

the holder of any shares of that class to which the offer relates who has not accepted the offer may require the offeror to acquire those shares.

(5) For the purposes of sub-paragraphs (2), (3) and (4), in calculating nine-tenths of the value of all the shares in the company, or all the shares of any class or classes of shares of the company, any shares held by the company as treasury shares shall be treated as having been acquired by the offeror.

(6) Rights conferred on the holder of shares by sub-paragraph (2), (3) or (4) are exercisable by a written communication addressed to the offeror.

(7) Rights conferred on the holder of shares by sub-paragraph (2), (3) or (4) are not exercisable after the end of the period of three months from—

- (a) the end of the period within which the offer can be accepted; or
- (b) if later, the date of the notice that must be given under sub-paragraph (8).

(8) Within one month of the time specified in sub-paragraph (2), (3) or (4), as the case may be, the offeror shall give any shareholder who has not accepted the offer notice in the manner prescribed by regulation 4 of the Companies (Forms) Regulations 1985⁽⁷⁷⁾ for the purposes of section 430A(3) of the Companies Act 1985, (or in the case of Northern Ireland by regulation 4 of the Companies (Forms) Regulations (Northern Ireland) 1986⁽⁷⁸⁾ for the purposes of Article 423A(3) of the Companies (Northern Ireland) Order 1986), of—

- (a) the rights that are exercisable by the shareholder under that sub-paragraph, and
- (b) the period within which the rights are exercisable,

and if the notice is given before the end of the period within which the offer can be accepted, it shall state that the offer is still open for acceptance.

(9) Sub-paragraph (10) applies where—

- (a) a shareholder exercises rights conferred on him by sub-paragraph (2), (3) or (4);
- (b) at the time when he does so, there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional; and
- (c) the requirement imposed by paragraph (b) of sub-paragraph (2), (3) or (4) (as the case may be) would not be satisfied if those shares were not taken into account.

(10) The shareholder shall be treated for the purposes of paragraph 5 as not having exercised his rights under this paragraph unless the requirement imposed by paragraph (b) of sub-paragraph (2), (3) or (4) (as the case may be) would be satisfied if—

- (a) the reference in paragraph (b) of that sub-paragraph to other shares in the company which the offeror has contracted to acquire unconditionally or subject to conditions being met were a reference to such shares which he has unconditionally contracted to acquire; and
- (b) the reference in that sub-paragraph to the period within which the offer can be accepted were a reference to the period referred to in sub-paragraph (7).

(11) Sub-paragraph (8) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under paragraph 2.

(12) If the offeror fails to comply with sub-paragraph (8) he and, if the offeror is a company, every officer of the company who is in default or to whose neglect the failure is attributable, commits an offence.

(13) A person who commits an offence under sub-paragraph (12), but would have committed an offence under section 430A(6)⁽⁷⁹⁾ of the Companies Act 1985 (or as the case may be, Article

⁽⁷⁷⁾ S.I. 1985/854 as amended by S.I. 1987/752.

⁽⁷⁸⁾ S.R. 1986/287 as amended by S.R. 1991/412.

⁽⁷⁹⁾ Section 430A(6) was substituted by section 172 of, and by Schedule 12 to, the Financial Services Act 1986 (c. 60).

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423A(6)(80) of the Companies (Northern Ireland) Order 1986 had that section (or Article) not been disapplied by regulation 30, is liable on conviction to the penalties in that section (or Article).

(14) In all other cases a person who commits an offence under sub-paragraph (12) is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum;
- (c) for continued contravention, to a daily default fine not exceeding £100.

(15) If an offeror other than a company is charged with an offence for failing to comply with sub-paragraph (8) it is a defence for him to prove that he took all reasonable steps for securing compliance with that sub-paragraph.

Effect of requirement under paragraph 4

5.—(1) The following provisions shall, subject to paragraph 6, have effect where a shareholder exercises his rights in respect of any shares under paragraph 4.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.

(3) Where the terms of an offer are such as to give the holder of shares a choice of consideration the holder of the shares may indicate his choice when requiring the offeror to acquire them and the notice given to the holder under paragraph 4(8)—

- (a) shall give particulars of the choice and of the rights conferred by this sub-paragraph, and
- (b) may state which consideration specified in the offer is to be taken as applying in default of his indicating a choice,

and the terms of the offer mentioned in sub-paragraph (2) shall be determined accordingly.

(4) Sub-paragraph (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.

(5) If the consideration offered to or (as the case may be) chosen by the holder of the shares—

- (a) is not cash and the offeror is no longer able to provide it, or
- (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date when the holder of the shares requires the offeror to acquire them is equivalent to the consideration offered or (as the case may be) chosen.

Applications to the court

6.—(1) Where a notice is given under paragraph 2 to the holder of any shares the court may, on an application made by him within six weeks from the date on which the notice was given—

- (a) order that the offeror shall not be entitled and bound to acquire the shares; or
- (b) specify terms of acquisition different from those of the offer.

(2) If an application to the court under sub-paragraph (1) is pending at the end of the period mentioned in sub-paragraph (6) of paragraph 3 that sub-paragraph shall not have effect until the application has been disposed of.

(3) Where the holder of any shares exercises his rights under paragraph 4 the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.

(4) On an application under sub-paragraph (1) or (3)—

(80) Article 423A(6) was substituted by Article 26 of S.I. 1989/2404 (N.I. 18).

- (a) the court shall not require consideration of a higher value than that specified in the terms of the offer (“the offer value”) to be given for the shares to which the application relates unless the holder of the shares shows that the offer value would be unfair;
 - (b) the court shall not require consideration of a lower value than the offer value to be given for the shares.
- (5) No order for costs or expenses shall be made against a shareholder making an application under sub-paragraph (1) or (3) unless the court considers—
- (a) that the application was unnecessary, improper or vexatious; or
 - (b) that there has been unreasonable delay in making the application or unreasonable conduct on his part in conducting the proceedings on the application.
- (6) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under sub-paragraph (2) or (4) of paragraph 2 the court may, on the application of the offeror, make an order authorising him to give notices under that sub-paragraph if satisfied—
- (a) that the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates,
 - (b) that the requirements of that sub-paragraph would have been met if the person, or all the persons, mentioned in paragraph (a) had accepted the offer, and
 - (c) that the consideration offered is fair and reasonable,
- but the court shall not make an order under this sub-paragraph unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

Joint offers

7.—(1) A takeover offer may be made by two or more persons jointly and in that event this Schedule has effect with the following modifications.

(2) The conditions for the exercise of the rights conferred by paragraph 2 shall be satisfied by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases).

(3) The conditions for the exercise of the rights conferred by paragraph 4 shall be satisfied—

- (a) as respects acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
- (b) in other cases, by the joint offerors acquiring or contracting (whether conditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately.

(4) Subject to the following provisions, the rights and obligations of the offeror under paragraphs 2 to 5 shall be respectively joint rights and joint and several obligations of the joint offerors.

(5) It shall be a sufficient compliance with any provision of paragraphs 2 to 6 requiring or authorising a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them; but the statutory declaration required by paragraph 2(8) shall be made by all of them and, in the case of a joint offeror being a company, signed by a director of that company.

(6) In paragraphs 1, 3(9) and 8 references to the offeror shall be construed as references to the joint offerors or any of them.

(7) In paragraph 3(7) and (8) references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.

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(8) In paragraphs 3(5)(a) and 5(5)(a) references to the offeror being no longer able to provide the relevant consideration shall be construed as references to none of the joint offerors being able to do so.

(9) In paragraph 6 references to the offeror shall be construed as references to the joint offerors except that any application under sub-paragraph (3) or (6) may be made by any of them and the reference in sub-paragraph (6)(a) to the offeror having been unable to trace one or more of the persons holding shares shall be construed as a reference to none of the offerors having been able to do so.

Associates

8.—(1) The requirement in paragraph 1(1) that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a company shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror hold or have contracted to acquire; but, subject to sub-paragraph (3), shares which any such associate holds or has contracted to acquire, whether at the date of the offer or subsequently, shall be disregarded for the purposes of any reference in this Schedule to the shares to which a takeover offer relates.

(2) In sub-paragraph (1) “contracted” means contracted unconditionally or subject to conditions being met.

(3) Where during the period mentioned in paragraph 2(14) any associate of the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates, then, if the condition specified in paragraph 2(15)(a) or (b) is satisfied as respects those shares they shall be treated for the purposes of that paragraph as shares to which the offer relates.

(4) A reference in paragraph 2(6) or paragraph 4(2)(b), (3)(b), (4)(b), (9) or (10) to shares which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of his has acquired or contracted to acquire.

(5) In this paragraph “associate”, in relation to an offeror, means—

- (a) a nominee of the offeror;
- (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;
- (c) a body corporate in which the offeror is substantially interested; or
- (d) any person who is, or is a nominee of, a party to an agreement with the offeror for the acquisition of, or of an interest in, the shares which are the subject of the takeover offer, being an agreement which includes provisions imposing obligations or restrictions such as are mentioned in section 204(2)(a) of the Companies Act 1985 or as the case may be Article 212(2)(a) of the Companies (Northern Ireland) Order 1986⁽⁸¹⁾.

(6) For the purposes of sub-paragraph (5)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(7) For the purposes of sub-paragraph (5)(c) an offeror has a substantial interest in a body corporate if—

- (a) that body or its directors are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body.

(8) Subsections (5) and (6) of section 204 of the Companies Act 1985 or as the case may be paragraphs (5) and (6) of Article 212 of the Companies (Northern Ireland) Order 1986 shall apply to sub-paragraph (5)(d) above as they apply to that section and Article and subsections (3) and (4) of

⁽⁸¹⁾ S.I. 1986/1032 (N.I.6).

section 203 of the Companies Act 1985 or as the case may be paragraphs (3) and (4) of Article 211 of the Companies (Northern Ireland) Order 1986 shall apply for the purposes of sub-paragraph (7) above as they apply for the purposes of subsection (2)(b) of that section and paragraph (2)(b) of that Article.

(9) Where the offeror is an individual his associates shall also include his spouse or civil partner and any minor child or step-child of his.

Convertible securities

9.—(1) For the purposes of this Schedule securities of a company shall be treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares; and references to the holder of shares or a shareholder shall be construed accordingly.

(2) Sub-paragraph (1) shall not be construed as requiring any securities to be treated—

- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or
- (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

Debentures carrying voting rights

10.—(1) For the purposes of this Schedule debentures issued by a company to which sub-paragraph (2) applies shall be treated as shares in the company if they carry voting rights.

(2) This sub-paragraph applies to a company that has voting shares, or debentures carrying voting rights, which are admitted to trading on a regulated market.

(3) In this Schedule, in relation to debentures treated as shares by virtue of sub-paragraph (1)—

- (a) references to the holder of shares or a shareholder shall be construed accordingly;
- (b) references to shares being allotted shall be construed as references to debentures being issued.

Interpretation

11.—(1) In this Schedule—

“the company” means the company whose shares are the subject of the offer;

“date of the offer” means—

- (a) the date of publication; or
- (b) where any notices of the offer are given before the date of publication, the date when notices of the offer (or the first such notices) are given;

“non-voting shares” means shares that are not voting shares;

“the offeror” means, subject to paragraph 7, the person making a takeover offer.

(2) For the purposes of this Schedule a person contracts unconditionally to acquire shares if his entitlement under the contract to acquire them is not (or is no longer) subject to conditions or if all conditions to which it was subject have been met.

A reference to a contract becoming unconditional is to be construed accordingly.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under section 2(2) of the European Communities Act 1972, implement Directive [2004/25/EC](#) of the European Parliament and of the Council of 21 April 2004 on Takeover Bids (“the Directive”).

Part 2 makes provision for the operation of regulatory activities of the Panel on Takeovers and Mergers, the body designated to supervise takeover bids. It gives effect to the rules in the City Code on Takeovers and Mergers and the Rules of Procedure of the Panel’s Hearings Committee that implement the Directive. It confers powers on the Panel including the power to require information (regulation 6) and to apply to the court to secure compliance with certain requirements (regulation 11). The provisions contain new offences at regulation 8 (the disclosure offence) and regulation 10 (failure to comply with rules about bid documentation).

Part 3 provides for defensive devices that may be adopted by a company prior to a takeover bid, to be overridden in certain circumstances. Such provisions are optional and regulations 20 and 21 set out the basis on which companies can opt-in and opt-out should they choose to do so. Regulation 22 deals with consequences of opting in.

Part 4 supplements section 234 of the Companies Act 1985 (“the 1985 Act”)(**82**) (or in the case of Northern Ireland, Article 243 of the Companies (Northern Ireland) Order 1986 (“the 1986 Order”)(**83**), by setting out the additional information that must be contained in the directors’ report of certain companies (regulation 26). Regulation 27 amends section 251 of the 1985 Act (or Article 259 of the 1986 Order) on summary financial statements to provide for the explanatory material either to be included in any summary financial statement or to accompany it.

Part 5 and Schedule 2 contain provisions designed to address the problem of and for residual minority shareholders following a successful takeover bid. Known as “squeeze out” and “sell out”, these provisions enable a successful bidder to compulsorily purchase the shares of remaining minority shareholders and for those shareholders to require the majority shareholder to purchase their shares. Regulation 30 disapplies the existing provisions for “squeeze out” and “sell out” in the 1985 Act and 1986 Order where a takeover offer is made for a company with securities admitted to trading on a regulated market and instead applies Schedule 2. This is a consolidation of the existing provisions and the amendments required to implement the Directive or arising out of or related to obligations in the Directive.

Part 2 applies to takeover bids covered by the Directive for all companies with securities traded on a regulated market in the United Kingdom or for companies registered in the United Kingdom whose securities are traded on a regulated market in one or more member states of the European Economic Area (other than the United Kingdom). Parts 3 to 5 apply only to companies registered under the Companies Act 1985 (or in the case of Northern Ireland, the Companies (Northern Ireland) Order 1986) and to unregistered companies.

Copies of the City Code on Takeovers and Mergers and the Rules of Procedure of the Panel’s Hearings Committee are available from The Panel on Takeovers and Mergers, 10 Paternoster Square, London, EC4M 7DY.

A Transposition Note and a full Regulatory Impact Assessment of the effect that this instrument will have on the costs to business are available from the Company Law and Governance Directorate,

(82) 1985 c. 6.

(83) S.I. 1986/1032 (N.I.6).

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Department of Trade and Industry, Bay V565, 1 Victoria Street, London, SW1H 0ET. Copies have also been placed in the libraries of both Houses of Parliament.